

Chapter 15:

Commitment to the Department of Juvenile Justice and Delinquency Prevention

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15.1 Overview

Commitment to the Department of Juvenile Justice and Delinquency Prevention is the most severe disposition under the Juvenile Code. Juveniles who are committed are confined in a youth development center, a locked facility operated by the State. The term of commitment is almost always indefinite with a six-month minimum. A juvenile who is committed must be released on post-release supervision, which is subject to revocation for violation of the terms of release.

15.2 Terminology Used in This Chapter

Department is the Department of Juvenile Justice and Delinquency Prevention. G.S. 7B-1501(7a). The Department is charged with far-reaching duties, which include responsibility for State juvenile facilities and youth development centers and establishment of community-based treatment and prevention services. *See* G.S. 143B-516(b)(1)–(18).

Detention facility is a facility approved to provide secure, or locked, confinement and care for juveniles. G.S. 7B-1501(9).

Holdover facility is a place in a jail that has been approved by the Department of Health and Human Services as meeting the State standards for detention as required under G.S. 153A-221 (Law Enforcement and Confinement Facilities: Minimum Standards). A holdover facility must provide close supervision of the juvenile, and the juvenile must not be able to talk with, see, or be seen by the adult population of the jail. G.S. 7B-1501(11).

Post-release supervision is supervision of a juvenile in the community after release from commitment to the Department. G.S. 7B-1501(21); *see infra* § 15.9 (Post-Release Supervision).

Youth development center is a secure residential facility, sometimes referred to as training school, authorized to provide long-term treatment, education, and rehabilitative services for juveniles committed to the Department after an adjudication of delinquency. G.S. 7B-1501(29).

15.3 Juveniles Subject to Commitment

Commitment to the Department is a dispositional alternative only for a juvenile who is at least 10 years old and who has been adjudicated delinquent. G.S. 7B-2506(24), -2513(a). An order of commitment may not be imposed for a juvenile who has been found to be undisciplined, or for one who has been adjudicated to be abused, neglected, or dependent. *See* G.S. 7B-2503 (Dispositional alternatives for undisciplined juveniles); G.S. 7B-903 (Dispositional alternatives for abused, neglected, or dependent juvenile).

A juvenile must be committed if the statutory dispositional chart prescribes a Level 3 disposition unless the court makes written findings that the juvenile has “extraordinary needs” that justify a Level 2 disposition. G.S. 7B-2508(e); *see supra* Appendix 13-3 (Disposition Chart). Commitment may also be ordered for a juvenile who is eligible for a Level 2 disposition if a Level 3 disposition has been ordered in a prior juvenile proceeding, or if a juvenile who has committed a minor offense has been adjudicated delinquent for four or more prior offenses. G.S. 7B-2508(d), (g).

It is within the court’s discretion to choose between two appropriate dispositional levels. *In re Robinson*, 151 N.C. App. 733 (2002) (court did not abuse discretion in committing juvenile under Level 3 where he was adjudicated delinquent for two “violent” and one “serious” offense and had a “low” delinquency history level; court considered risk and needs assessment, severity of case, lack of progress to date, and community alternatives in determining that commitment was in juvenile’s best interest). Counsel should be prepared to argue for the lower dispositional level based on factors relating to the offense and the juvenile’s needs.

The court does not have discretion to order a disposition at a level higher than that authorized by statute. In *In re T.B.*, the court found that the juvenile had violated the conditions of his probation. Because the juvenile’s original disposition had been at Level 1, the court had discretion to order either a Level 1 or a Level 2 disposition for the probation violation. It did not have statutory authority, however, to order a Level 3 disposition. An order of commitment was therefore impermissible. *In re T.B.*, 178 N.C. App. 542 (2006).

15.4 Holdover Facility Pending Placement

A juvenile committed to the Department following adjudication for an offense that would be a Class A, B1, B2, C, D, or E felony if committed by an adult may be held for up to 72 hours in a holdover facility pending placement in a youth development center. The court must make a determination, based on information provided by the juvenile court counselor, that there is no acceptable alternative placement and that the protection of the public requires that the juvenile be housed in a holdover facility. G.S. 7B-2513(h).

15.5 Role of Attorney Following Commitment

No statutory role is defined for the juvenile’s attorney following an order of commitment unless the matter comes back before the court for further proceedings, such as a hearing on a motion alleging violation of the terms of post-release supervision. *See infra* § 15.10 (Revocation of Post-Release Supervision). There is also no provision for payment of attorney’s fees by the Office of Indigent Defense Services for follow-up or other involvement after commitment in the absence of a subsequent court proceeding requiring representation of the juvenile. A juvenile could benefit from representation by counsel regarding many issues

arising from commitment, including placement, post-release planning, and extension of commitment. Local practice is varied in the degree of involvement by counsel following commitment, from formal release of the attorney to the attorney maintaining some contact and providing advice to the juvenile on a pro bono basis. The issue is currently being reviewed by the Office of the Juvenile Defender and the Office of Indigent Defense Services.

15.6

Term of Commitment

A. Indefinite Term of at Least Six Months

Minimum term. Commitment is usually for an indefinite term of at least six months. G.S. 7B-2513(a); *see In re Allison*, 143 N.C. App. 586, 596 (2001) (statute does not violate the Equal Protection Clause by authorizing a longer period of confinement for a juvenile than could be imposed on an adult committing the same offense because a rational basis exists for disparate treatment of adults and children based on juvenile's need for supervision and control).

Maximum term. An indefinite commitment must end by the following birthdays of the juvenile pursuant to G.S. 7B-2513(a)(1)–(3):

- 21st birthday if the juvenile is committed for an offense that would be first-degree murder pursuant to G.S. 14-17, first-degree rape pursuant to G.S. 14-27.2, or first-degree sexual offense pursuant to G.S. 14-27.4 if committed by an adult;
- 19th birthday if the juvenile is committed for an offense that would be a Class B1, B2, C, D, or E felony if committed by an adult, other than those listed immediately above;
- 18th birthday if the juvenile is committed for an offense other than those listed above.

Additionally, although a juvenile may be committed for a minimum of six months, he or she ordinarily may not be committed in excess of the maximum term of imprisonment that an adult, with prior record level VI for felonies or with prior conviction level III for misdemeanors, would receive for the same offense. There is an exception for extended commitment under G.S. 7B-2515 when the Department determines that the juvenile's commitment should be extended to continue care or treatment under its statutory plan. G.S. 7B-2513(a); *see infra* § 15.8 (Department's Plan of Care).

For misdemeanor offenses, six months is both the minimum and maximum term of commitment because the maximum sentence an adult could receive for these offenses is less than six months. A commitment for a Class I or H felony could be similarly limited. An adult could receive up to 15 months for a Class I felony and up to 30 months for a Class H felony. The maximum term of a juvenile's commitment for these offenses might therefore expire prior to the juvenile's 18th birthday. The Department may extend commitment beyond the maximum adult sentence in some circumstances. *See infra* 15.6D (Extension of Commitment).

B. Definite Term

A juvenile who is at least 14 years old, who has been previously adjudicated delinquent for two or more felony offenses, and who has previously been committed may be committed to a definite term of not less than six months and not more than two years. G.S. 7B-2513(b).

C. Credit for Time in Detention

The North Carolina Court of Appeals has held that criminal law statute G.S. 15-196.1 (Credits allowed) applies to juvenile cases. *In re Allison*, 143 N.C. App. 586, 600 (2001) (time in detention credited to one term of commitment; under G.S. 15-196.1 juvenile was not also entitled to credit against subsequent term of commitment); *In re R.T.L.*, 644 S.E.2d 269 (2007) (unpublished) (citing *Allison*, Court held that juvenile entitled to credit for days spent in detention prior to adjudicatory hearing). While it is unclear whether credit for time served can be applied to a juvenile's minimum term of six months, thereby reducing that term to less than six months, attorneys may request that the credit for time in detention be applied to the six months. *See generally* G.S. 7B-2513.

Counsel should request that the court specifically order that the juvenile receive credit for time detained prior to commitment. Presumably the other statutes under the article allowing credit for time served, including G.S. 15-196.4 (Procedures for judicial award), also apply to determination of the credit the juvenile will receive. Under the criminal statutes, the judge must determine the credit that the defendant is entitled to receive against the sentence for time previously served and that information must be forwarded to the custodian of the defendant. The statute also permits the defendant to petition the court for credit that has not been previously allowed. Counsel should file such a petition in juvenile court if a juvenile has not been given credit for time served allowable under the statute.

The statute allows credit for time "committed to or in confinement in any State or local correctional, mental, or other institution as a result of the charge that culminated in the sentence." G.S. 15-196.1. A juvenile might be entitled to credit for time spent in a mental health facility under a voluntary or involuntary commitment or in any other placement where freedom of movement was restricted, if the confinement resulted from the adjudicated offense.

D. Extension of Commitment

The Department may extend commitment beyond the maximum adult sentence or beyond the juvenile's 18th birthday if it determines that extension will promote protection of the public and will be likely to lead to further rehabilitation. G.S. 7B-2515(a). It must also determine that the statutorily-mandated plan of care needs to be continued for an additional period of time. G.S. 7B-2513(a). The juvenile has the right to contest the proposed extension at a review hearing.

The Department may determine that a juvenile's commitment should be extended if it decides that the juvenile needs additional treatment or rehabilitation. If the Department determines that commitment should be extended beyond the maximum adult sentence

or past the juvenile's 18th birthday, it must notify the juvenile and the juvenile's parent, guardian, or custodian in writing at least 30 days in advance of those dates. G.S. 7B-2515(a). There is no provision for notification or reappointment of counsel for the juvenile.

A court review of the Department's decision to extend commitment may be requested by the juvenile and the juvenile's parent, guardian, or custodian. G.S. 7B-2515(c). If a review is requested, the court must hold a hearing. The statute does not provide procedures for this hearing or specify that the juvenile must be represented at the hearing. A juvenile has the right to counsel in "all proceedings" pursuant to G.S. 7B-2000, however, and therefore should be entitled to representation. Additionally, a juvenile should be afforded counsel because an extension of commitment is a restraint on the juvenile's liberty that was not imposed by the original disposition.

15.7

Placement by Department

A. Youth Development Centers

A juvenile may be placed in a particular youth development center in the discretion of the Department. Placement is to be made based on best serving the juvenile's needs and may be in a Department institution or one licensed by the Department. G.S. 7B-2513(e).

There are currently five youth development centers operated by the Department: C.A. Dillon in Butner, Dobbs in Kinston, Samarkand in Eagle Springs (the only facility serving females), Stonewall Jackson in Concord, and Swannanoa Valley in Swannanoa. All committed juveniles, including females, are first sent to C.A. Dillon, which has a 60-bed unit dedicated to assessment for placement within the Department. Construction of smaller facilities intended to provide more community-oriented treatment is in progress. Information on programs offered by each facility as well as additional information regarding the youth development centers is available at www.ncdjdp.org/facilities/youth_development_centers.html#.

B. Assessment by the Department

A plan for care and treatment of the juvenile must be prepared by the Department within 30 days of assuming physical custody. G.S. 7B-2513(f). The chief court counselor is charged with providing the Department with all required records of the juvenile. The records are to be sent with the juvenile when the juvenile is transported to the youth development center, or if not obtainable at the time of admission, within 15 days of admission. G.S. 7B-2513(d).

Confidential records that are provided to the Department pursuant to this section must remain confidential. The statute provides that these records must be "used in a manner consistent with the best interests of the juvenile." G.S. 7B-2513(d).

Each juvenile committed to the Department for placement in a youth development center must be tested for controlled substances and alcohol. These initial test results must be incorporated into the plan of care but may be used for evaluation and treatment purposes

only. G.S. 7B-2513(i). Subsequent testing may presumably be used to monitor compliance with rules and restrictions and could be used for other purposes.

The Department must evaluate the juvenile's progress at least once every six months as long as the juvenile remains in placement with the Department. G.S. 7B-2514(a).

C. Provision of Commitment Services in Non-YDC Facility

The Department may provide services in a placement that is not a youth development center or detention facility, sometimes referred to as a "community commitment," after assessing the needs of the juvenile. Before doing so, it must file a motion with the committing court outlining services to be provided and give notice of the motion to the prosecutor, the juvenile, and the juvenile's attorney. The court may enter an order approving the placement without a hearing unless the juvenile or the juvenile's attorney requests a hearing. If the court determines that it will hold a hearing, it must notify the Department of the hearing, and the Department must place the juvenile in a youth development center or detention facility pending the hearing. G.S. 7B-2513(e).

Counsel should be prepared to argue for a community commitment if that is an acceptable alternative for the juvenile. Examples of community placements are Eckerd Wilderness Camp, which is a structured outdoor living program, and psychiatric residential treatment facilities, or PRTF's, which are non-hospital facilities that provide psychiatric treatment, such as a secure group home with a highly-trained staff.

D. No Effect on Jurisdiction of Court or Legal Custody

Commitment to the Department for placement does not terminate the court's jurisdiction over the juvenile and the juvenile's parent, guardian, or custodian. It also has no effect on legal custody, which remains with the parent or other person or agency previously having custody, although physical custody is placed with the Department. G.S. 7B-2513(g).

15.8

Department's Plan of Care

The Department must develop a plan of care or treatment within 30 days of assuming physical custody of the juvenile. G.S. 7B-2513(f). This plan must be re-assessed at least every six months as long as the juvenile remains under commitment. G.S. 7B-2514(a).

15.9

Post-Release Supervision

A. Post-Release Planning Process

The Department is required to begin formulation of a post-release plan on determination that the juvenile is ready for release from commitment. Written notice of the post-release supervision planning process must be given to the committing court. G.S. 7B-2514(a)(1).

A post-release planning conference is required by statute and must include the juvenile, the juvenile's parent, guardian, or custodian, juvenile court counselors who have supervised the juvenile on probation or who will supervise the juvenile after release, and the staff of the facility recommending release. G.S. 7B-2514(a).

There is no provision for notification or involvement of an attorney representing the juvenile.

B. Post-Release Plan Requirements

Each post-release plan must be in writing and must provide for at least 90 days, but not more than one year, of post-release supervision. The plan must address both the needs of the juvenile and the protection of the public. G.S. 7B-2514(b). A juvenile court counselor must supervise the juvenile during post-release supervision. G.S. 7B-2514(g).

C. Date of Release

Pursuant to G.S. 7B-2514(c), the Department is required to release the juvenile under a plan of post-release supervision at least 90 days prior to one of the following:

- completion of a definite term of commitment, which includes credit for time spent on post-release supervision under G.S. 7B-2514(f);
- the juvenile's 21st birthday if the juvenile was committed for an offense that would be first-degree murder, first-degree rape, or first-degree sexual offense if committed by an adult;
- the juvenile's 19th birthday if the juvenile was committed for an offense that would be a Class B1, B2, C, D, or E felony if committed by an adult, other than an offense set forth in G.S. 7B-1602(a) (first-degree murder, first-degree rape, or first-degree sexual offense if committed by an adult); or
- the juvenile's 18th birthday if the juvenile was committed for an offense other than an offense that would be a Class A, B1, B2, C, D, or E felony if committed by an adult.

The release date is subject to the proviso that a juvenile under an indefinite commitment may be released to post-release supervision only after a commitment period of at least six months. G.S. 7B-2514(e). The Department may only extend commitment beyond the maximum adult sentence or beyond the juvenile's 18th birthday in some circumstances. *See supra* § 15.6D (Extension of Commitment).

D. Notification of Victim and Others of Release

If a juvenile is committed to the Department for an offense that would have been a Class A or B1 felony if committed by an adult, the chief court counselor must notify the victim and members of the victim's immediate family that they may request in writing to be notified in advance of the juvenile's scheduled release date. G.S. 7B-2513(j). If a request for notification is received, the Department must notify the person filing the request at least 45 days in advance of the scheduled release. The notice must include the juvenile's name, offense, date of

commitment, and the date of the proposed release. G.S. 7B-2514(d). There is no provision for filing an objection to the release.

Persons who must be notified at least 45 days prior to release to post-release supervision of a juvenile who was committed for an offense that would be a Class A or B1 felony if committed by an adult are: the juvenile, the juvenile's parent, guardian, or custodian, the district attorney where the juvenile was adjudicated, and the head of the law enforcement agency that took the juvenile into custody. These persons are not required to request notification of release. The notice must contain the information provided in the notice to the victim, and must also be sent to the clerk of court for placement in the juvenile court file. G.S. 7B-2514(d).

E. Termination of Post-Release Supervision

The maximum period of post-release supervision is one year. G.S. 7B-2514(b). Termination of post-release supervision is by order of the court. G.S. 7B-2514(g).

15.10 Revocation of Post-Release Supervision

A. Motion and Notice

The juvenile, the juvenile court counselor providing post-release supervision, or the court on its own motion, may request a review hearing concerning the juvenile's progress on post-release supervision. Written notice of the allegations must be provided to the juvenile within a reasonable time. The notice must specify that the purpose of the hearing is to determine whether the juvenile has violated the terms of post-release supervision and whether revocation is warranted. G.S. 7B-2516(a).

B. Hearing on Motion

A hearing must be held to determine whether the allegation that the juvenile has violated the terms of post-release supervision is true. The statute provides that the juvenile shall be represented by an attorney at the hearing and has the right to confront and cross-examine witnesses. Additionally, the juvenile is allowed to admit, deny, or explain the violation alleged and to present proof, including affidavits and other evidence. A record of the proceeding must be made and maintained in the juvenile's record. G.S. 7B-2516(a).

Preparation for a hearing on allegations of violation of the terms of post-release supervision involves elements of preparation for both adjudicatory and dispositional hearings. Counsel should meet with the juvenile and contact necessary witnesses regarding the alleged violation. Witnesses should be subpoenaed or affidavits obtained supporting the juvenile's position on the allegations. Records should be reviewed, particularly those of the supervising juvenile court counselor. If a violation is found, counsel should be prepared to offer alternatives to revocation of post-release supervision.

The standard of proof is by the greater weight of the evidence. If violation of the terms of post-release supervision is found, the court may, but is not required to, revoke the post-release supervision. The court may also impose any other disposition provided by statute. G.S. 7B-2516.

C. Disposition on Revocation

The juvenile must be placed in a youth development center for an indefinite term of at least 90 days if post-release supervision is revoked. This term is subject to the same limitations on the maximum set forth for the original commitment in G.S. 7B-2513(a). G.S. 7B-2516(c); *see supra* § 15.6A (Maximum term).

15.11

Transfer Authority of Governor from Jail or Prison to Department

The governor has the authority to order a person who is less than 18 years of age who is being held in a jail or penal facility of the State to be transferred to a residential facility operated by the Department. This must be done in consultation with the Department regarding the appropriateness of the transfer. G.S. 7B-2517.

Although this provision does not apply to a juvenile case, it may be applicable to a case transferred from juvenile court to superior court. A juvenile who is transferred to superior court and convicted may request that the governor order a transfer from the jail or prison to a youth development center for confinement. There are no guidelines set forth in the statute, but special needs, immaturity, suitability for Department programs, and danger from the prison population could be argued. Under G.S. 7B-2517, the Department has discretion to release the juvenile after transfer based on the needs of the juvenile and the best interests of the State.