

Legislative Changes to Required Mental Health Assessments Before Entering a Delinquency Disposition: New Provisions of G.S. 7B-2502

This is the third in a series of blogs about the changes contained in Session Law 2021-123. It summarizes the new requirement for court ordered mental health assessments, including a new care review team process. (see [Raise the Age Legislative Changes](#) and [From 6 to 10: New Minimum Age for Juvenile Delinquency and Undisciplined Jurisdiction](#) for previous blogs about the other provisions in S.L. 2021-123).

A steady stream of appellate caselaw, beginning with [In re E.M., 263 N.C.App. 476 \(2019\)](#), established that [G.S.7B-2502\(c\)](#) requires the trial court to refer a juvenile who is adjudicated delinquent to the local management entity (LME) prior to ordering a disposition when there is any amount of evidence that the juvenile has a mental illness. The purpose of the referral is for the LME to conduct an interdisciplinary evaluation and mobilize resources. Beginning with petitions filed on December 1, 2021, this statutory mandate is changing. The court will be required to order mental health assessments under different circumstances and, in some cases, to order a care review team after the assessment is completed.

Where We Have Been under G.S. 7B-2502(c)

In re E.M. relied on the statutory language of G.S. 7B-2502(c) that “the court shall refer the juvenile” to the LME to hold that failure to make the referral was reversible error. (For more information about *In re E.M.*, see my previous blog post [here](#)). The holding of *In re E.M.* was reaffirmed by three more published decisions: [In re E.A., 267 N.C.App. 396 \(2019\)](#), [In re A.L.B., 849 S.E.2d. 352 \(2020\)](#), and [In re K.M., 854 S.E.2d 453 \(2021\)](#). The central issue in each case was the trial court’s failure to make a referral to the LME prior to entering a disposition. The Court of Appeals consistently held that the trial court committed reversible error despite the fact that there were often mental health assessments from other sources available to the court.

The requirement that the court make a referral to the LME in the many cases in which there is evidence of a juvenile’s mental illness created practical problems:

- Many localities have processes in place to obtain timely mental health assessments for juveniles who have been adjudicated delinquent, but those processes sometimes do not go through the LME;
- Juvenile court counselors sometimes make the referral to the LME and a second referral from the court is duplicative and slows the time to disposition; and
- LME’s are not funded to work with youth who have private insurance, making referral of these youth to the LME unproductive.

Where We are Going under the Amended G.S. 7B-2502

Part VI of Session Law 2021-123 significantly changes the mandate on the court to order an assessment and it creates a new process to follow once a court-ordered assessment is completed. The statute that formed the basis of the holding in *E.M.*, G.S. 7B-2502(c), will be deleted in its entirety. Beginning with petitions filed on December 1, 2021, the mandate on the court to order an assessment will be contained in a new 7B-2502(a2) – (a4).

When the Court Must Order an Assessment

Under the new statutory language (G.S. 7B-2502(a2)), the court must order that Juvenile Justice make a referral for a comprehensive clinical assessment (CCA) or equivalent mental health assessment when

1. The juvenile is suspected of having a mental illness, developmental disability, or intellectual disability;
2. The juvenile has been adjudicated delinquent; and
3. A CCA or equivalent mental health assessment has NOT been conducted within the 45 days before the adjudication hearing.

This new statute contains two fundamental changes to the current structure. First, the court is not required to order an assessment if there is an assessment that was conducted up to 45 days before the adjudication hearing. This applies no matter when disposition is being heard. Therefore, if a new disposition is being entered in a case as a result of a probation violation, the court must still look to the date of the assessment in relation to the adjudication hearing.

Second, the court no longer orders the LME to complete an evaluation. Instead, the court must order Juvenile Justice to make a referral for a CCA or equivalent mental health assessment. This new structure allows for use of locally established processes to obtain an assessment, which may or may not involve the LME.

Procedure Following the Assessment

The new G.S. 7B-2502(a3) requires that if the court orders a referral for an assessment because the three criteria in G.S. 7B-2502(a2) (listed above) are present, then the court must review the assessment prior to the date of disposition in the case. If the court finds there is sufficient evidence that certain statutory criteria are met, then the court must order that Juvenile Justice convene a care review team. Those criteria are that

1. The juvenile has severe emotional disturbance, a developmental disability, or an intellectual disability;
2. The disturbance or disability substantially contributed to the juvenile's delinquent behavior;

and

3. The juvenile is eligible for a Level 3 disposition and/or is recommended for a psychiatric residential treatment facility placement.

Severe emotional disturbance is defined as “[a] diagnosable mental, behavioral, or emotional disorder of sufficient duration to meet diagnostic criteria specified within the DSM-5 that resulted in functional impairment which substantially interferes with or limits the child’s role or functioning in family, school, or community activities in a person who is under the age of 18.” G.S. 7B-1501(24a).

Developmental Disability is defined as “[a] severe, chronic disability of a person that satisfies all of the following:

1. Is attributable to one or more impairments.
2. Is manifested before the person attains age 22, unless the disability is caused by a traumatic brain injury, in which case the disability may be manifested after attaining age 22.
3. Is likely to continue indefinitely.
4. Results in substantial functional limitations in three or more of the following areas of major life activity: self-care, receptive and expressive language, capacity for independent living, learning, mobility, self-direction, and economic self-sufficiency.
5. Reflects the person's need for a combination and sequence of special interdisciplinary, or generic care, treatment, or other services that are of a lifelong or extended duration and are individually planned and coordinated; or when applied to children from birth through age four, may be evidenced as a developmental delay.” [G.S. 122C-3\(12a\)](#).

Intellectual Disability is defined as “[a] developmental disability characterized by significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested before age 22.” [G.S. 122C-3\(17a\)](#).

The Care Review Team

If the court orders Juvenile Justice to convene a care review team, that team must develop a “recommendation plan for appropriate services and resources that address the identified needs of the juvenile.” G.S. 7B-2502(a4). The team must submit its recommendation to the court within 30 calendar days of the date the court ordered the team to be convened. The care review team must be comprised of, at least

- The juvenile;
- The juvenile's parents, guardian, or custodian;
- Representatives from Juvenile Justice;
- Representative from the local management entity/managed care organization or prepaid health plan in which the juvenile is enrolled; and
- Representatives from any State agency or local department of social services that is

currently providing services to the juvenile or the juvenile's family.

Intersection of Care Review Team Recommendation and Disposition

The new statute, G.S. 7B-2502 (a4), requires the court to review the recommendation plan submitted by the care review team. However, the court is not bound by that recommendation when ordering a disposition. Instead, the court is only required to review the recommendation when determining the disposition in accordance with the existing statute that governs the court's selection of a disposition—[G.S. 7B-2501\(c\)](#).

Payment

Part VI of S.L. 2021-123 also enacts changes to the statutory language regarding payment for assessment, evaluation, or treatment that is ordered pursuant to G.S. 7B-2502. Under the new law, G.S. 7B-2502(b), if the juvenile does not have health insurance coverage for the recommended treatment, the court must hold a hearing to determine who should pay the cost of assessment, evaluation, or treatment. Notice of the hearing must be provided to the county manager, or any other person who is designated by the chair of the board of county commissioners, in the county of the juvenile's residence. That person must have the opportunity to be heard at the hearing addressing payment.

Under G.S. 7B-2502(b), the court has following options:

1. The court must allow the parent, guardian, custodian, or other responsible person to arrange for the juvenile's evaluation or treatment.
2. If the parent, guardian, or custodian declines or is unable to arrange for the juvenile's evaluation or treatment, the court may order the needed evaluation or treatment and the parent may be ordered to pay the cost of care pursuant to [Article 27](#) of Chapter 7B of the General Statutes.
3. If the court finds that the parent and funding from Juvenile Justice are unable to pay for the cost of evaluation or treatment, the court must order the county to arrange for evaluation or treatment of the juvenile and to pay for the cost of the evaluation or treatment.

While these options reference a guardian or custodian in relation to the individuals who must be allowed to arrange for the juvenile's evaluation or treatment, the guardian or custodian is not included in the payment language. The statute does not permit the court to order the guardian or custodian to pay for the cost of care and the guardian or custodian's ability to pay is not referenced in relation to ordering the county to pay. Therefore, it appears that the court cannot consider a guardian or custodian's ability to pay, nor can the court order a guardian or custodian to pay.

Court Still Not Permitted to Commit Juveniles Adjudicated Delinquent to State Hospitals or

Developmental Centers

G.S. 7B-2502(c) contains more than the current mandate for the court to make a referral to the LME prior to ordering a disposition under certain circumstances. It also contains language that prohibits the court from committing a juvenile to a State Hospital or State Developmental Center, other than for an examination to determine capacity to proceed. That language is preserved in S.L. 2021-123 by adding it as a new 7B-2502(c1).

The Effective Date is Based on the Date the Petition is Filed

Part VI of S.L. 2021-123 contains its own effective date, different from the effective date that applies to the rest of the amendments contained in the other Parts of the session law. The provisions discussed in this post apply to petitions filed on or after December 1, 2021. It will therefore be critical to check the date the petition was filed in any delinquency case prior to a disposition hearing. Some cases with petitions filed well before the effective date will likely continue to return to court on probation violations. If the petition in those cases was filed before December 1, 2021, then the law under *E.M.* and its progeny will continue to apply. This new law will apply to those cases in which the petition is filed on or after December 1, 2021.

The chart below outlines which law applies to which cases.

Law Governing Court's Duty to Refer for Mental Health Evaluation

Petition filed before 12/1/21

G.S. 7B-2502(c) *will be deleted from statutes after 12/1/21, so look to a statute book published before 2022

Duty triggered by evidence, or court belief, of mental illness or developmental disability

Order the LME to arrange for an interdisciplinary evaluation and mobilizing resources to meet the juvenile's needs
No further orders required

Petition filed on or after 12/1/21

G.S. 7B-2502(a2) – (a4)

Duty triggered by suspected mental illness, developmental disability, or intellectual disability; adjudication of delinquency; and lack of CCA (or its equivalent) in the 45 days before the adjudication hearing

Order Juvenile Justice to make a referral for a comprehensive clinical assessment (or its equivalent)
Court may be required to order a care review team after reviewing the assessment. See G.S.7B-2502(a3)

Absent a major development in delinquency law before the end of 2021, this will be my last blog post until the new year. Happy holidays to all of you. I hope you find time to relax and rejuvenate.