

## Violation of an Undisciplined Court Order Resulting in Delinquency Adjudication

Is it legally permissible to adjudicate a juvenile delinquent based on that juvenile's violation of an order for protective supervision in an undisciplined matter? The North Carolina Court of Appeals says yes. The court upheld the practice of adjudicating a juvenile delinquent following an admission to indirect contempt related to violation of an order issued in an undisciplined case in [In re B.W.C., 2022-NCCOA-590 \(September 6, 2022\)](#). This post details the court's holding and explores ramifications of the decision.

### The Facts of *In re B.W.C.*

The juvenile, age 15, was adjudicated undisciplined in April of 2021 based on 58 unexcused school absences. He was given a contempt warning in open court following adjudication. A second order issued by the court on the date of the adjudication included that the juvenile was to attend school daily; have no unexcused absences, tardies, or suspensions; and complete all assigned schoolwork. This order included that the juvenile verbally acknowledged his understanding that violation of the conditions could result in being held in contempt. The related dispositional order, entered in June of 2021, placed the juvenile on protective supervision and required him to comply with a list of conditions that included regular school attendance. It also provided that the contempt warning provided after adjudication remained in effect.

A delinquency petition was filed in August of 2021 alleging that the juvenile had three unexcused absences and was therefore in violation of the contempt warning contained in the undisciplined dispositional order. The juvenile filed a motion to dismiss, alleging a violation of his due process and statutory rights because [G.S. 7B-2505](#) (Violation of protective supervision by undisciplined juvenile), read together with [G.S. 7B-2503](#) (Dispositional alternatives for undisciplined juveniles), did not allow for the trial court to pursue a delinquency action following an undisciplined adjudication. The trial court denied the motion, the juvenile admitted to indirect contempt, and he was adjudicated delinquent and placed on probation for six months.

### The Statutory Argument

Prior to 2012, G.S. 7B-2505 was titled "Contempt of court for undisciplined juveniles." That statute laid out a procedure for holding a juvenile in contempt of court for the willful violation of a court order issued in an undisciplined matter. It also provided for confinement in a juvenile detention facility on the court's finding of contempt, with the potential time in detention increasing on repeated findings of contempt. The statute authorized up to 24 hours of detention on the first instance of being held in contempt, up to three days of detention following a second contempt, and up to five days of detention on the third and all subsequent instances of contempt. The statute also placed a limit of 14 days in detention during any 12-month period.

[Section 5 of session law 2012-172](#) amended G.S. 7B-2505. This amended statute remains in place today. The title was changed to “Violation of protective supervision by undisciplined juvenile.” The contempt language was removed from the statute. Instead, the statute describes a procedure for court review of the juvenile’s progress on protective supervision. It also lists the following three options for the court following a finding of a violation of an order for protective supervision.

1. Continue or modify the conditions of protective supervision.
2. Order any disposition authorized by G.S. 7B-2503.
3. Notwithstanding the time limitation in G.S. 7B-2503(2), extend the period of protective supervision for up to three months. G.S. 7B-2505(b).

The dispositions authorized by G.S. 7B-2503 include supervision in the juvenile’s own home, placement in the custody of certain people or a private agency offering placement services, placement in DSS custody, placement under the protective supervision of a juvenile court counselor, and excuse of the juvenile from the compulsory school attendance law when a suitable alternative plan can be arranged by the family.

There is, therefore, no remaining statute that specifically provides for the use of contempt in response to a violation of an order for protective supervision. There is also no authority in G.S. 7B-2505 or G.S. 7B-2503 for the use of detention in an undisciplined matter. The dispositional alternatives that do allow for removal of the juvenile from their home are limited to nonsecure settings.

The juvenile in *In re B.W.C.* argued that the current statutory structure provides a distinction between juveniles who are adjudicated delinquent and those who are adjudicated undisciplined and that, when reading G.S. 7B-2505 and G.S. 7B-2503 together, the Juvenile Code does not allow for an adjudication of delinquency following an undisciplined adjudication.

### The Decision of the Court of Appeals

The court relied on a plain language reading of the juvenile contempt statute and the Juvenile Code to hold that the current statutes allow for an adjudication of delinquency based on indirect contempt of an undisciplined order for protective supervision.

First, [G.S. 5A-31\(a\)\(3\)](#) defines contempt by a juvenile as, among other things, “[w]illful disobedience of, resistance to, or interference with a court’s lawful process, order, directive, or instruction or its execution.” [G.S. 5A-31](#) also provides that contempt that occurs outside the courthouse is indirect contempt. Finally, [G.S. 5A-33](#) states that the procedure in the Juvenile Code governs the adjudication and sanction of indirect contempt by a juvenile.

Turning to the Juvenile Code, [G.S. 7B-1501\(7\)](#) includes a juvenile between the ages of 10 and 18 who commits indirect contempt in the definition of delinquent juvenile. Thus, a juvenile can be

adjudicated delinquent based on indirect contempt.

The court reasoned that the undisciplined statutes stopped governing the case once the juvenile, who had been warned that violation of the court order would constitute contempt, violated the undisciplined order. Based on the language contained in Article 3 of Chapter 5A of the General Statutes, he committed indirect contempt when he failed to comply with the protective supervision order. Indirect contempt, in turn, can only be adjudged and sanctioned under Subchapter II of Chapter 7B of the Juvenile Code, which defines indirect contempt as an act of delinquency. There was therefore no violation of the statutes in adjudicating the juvenile delinquent as a result of his violation of the undisciplined order.

## Implications

Once a juvenile is adjudicated delinquent, the statutes regarding disposition in delinquency cases apply. Those statutes do expressly account for delinquency adjudications based on contempt. [G.S. 7B-2508\(a\)\(3\)](#) states that an adjudication of indirect contempt by a juvenile is classified as a minor offense for the purpose of determining disposition level according to the disposition chart contained in [G.S. 7B-2508\(f\)](#). The disposition chart dictates that a minor offense, combined with a low delinquency history level, results in a level 1 disposition. If the juvenile has a medium delinquency history level, the court can choose either a level 1 or a level 2 disposition. If the juvenile has a high delinquency history level, the disposition chart dictates a level 2 disposition.

[G.S. 7B-2506](#) contains a long list of dispositional alternatives for level 1 and level 2 dispositions, including dispositions such as placing the juvenile on probation (as the court did in *In re B.W.C.*), community service, restitution, and imposing a curfew. There are also a range of dispositional alternatives that include out of home placement in nonsecure settings, including many of the settings that are already available to the court in the undisciplined case under G.S. 7B-2503.

The dispositional alternatives available to the court following an adjudication of delinquency also include the use of intermittent confinement (IC) in a detention facility. The court can order up to five IC days under a level 1 disposition (G.S. 7B-2506(12)) and up to 14 IC days under a level 2 disposition (G.S. 7B-2506(20)). This raises an interesting question regarding the legislative intent of S.L. 2012-172. Was the express procedure regarding the use of contempt to enforce violations of an order for protective supervision, with time in detention as a sanction, removed from the Juvenile Code because the legislature determined that this procedure was not appropriate in undisciplined cases or was it removed because the statute continued to allow an adjudication of delinquency based on indirect contempt, followed by the possibility of time in detention as a sanction?

The Court of Appeals did not address this question in *In re B.W.C.*, relying instead on the plain language of the existing statutes. We could get an answer to this question if the Supreme Court of North Carolina decides to hear the case. A petition for discretionary review (PDR) was filed in this case on October 11<sup>th</sup>. For now, an adjudication of delinquency for indirect contempt of an order for

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protective supervision is allowed. That will continue to be the case should the Supreme Court decide not to hear the appeal or if the Supreme Court upholds the decision from the Court of Appeals. Stay tuned.