

PROBATION VIOLATIONS AND MOTIONS FOR REVIEW

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- I. Probation Violations (§7B-2510(e))
 - A. research the juvenile's record
 - B. determine disposition level and conditions ordered at the last hearing
 - C. determine if allegation is an actual violation of probation
 - D. understand the court's options
 - a. continue the original conditions of probation
 - b. modify the conditions of probation (see §7B-2510(a)-(b))
 - c. order a new disposition at the next higher level
 - i. may include up to twice the detention time authorized by §7B-2508
 - ii. court shall NOT order a Level 3 disposition for a violation of probation on a minor offense
- II. Motions for Review (§7B-2510(c)-(d))
 - A. §7B-2510(c) – Extension of Probation
 - a. two purposes:
 - i. protect the community
 - ii. safeguard the welfare of the juvenile
 - b. juvenile may be on probation for no longer than 2 years for the same offense
 - B. §7B-2510(d) – Probation Review
 - a. may be filed/requested by juvenile court counselor, the court, or the juvenile

- b. probation conditions or duration may be modified after notice and a hearing
- c. variety of reasons for juvenile's attorney to file
 - i. special education issues
 - ii. transfer out of supervised day program
 - iii. to get juvenile back into school
 - iv. to enforce previous order
 - v. virtually any issue that needs to be brought to the court's attention

III. Termination of Probation (§7B-2511)

- A. Termination Order - at the end of the probationary period the juvenile court counselor may provide a motion and order to the court for termination from court supervision
- B. If no order is entered at the end of the probationary period and no new motion is filed by the last day of probation, then probation is complete
- C. Probation may be modified or extended after the original probationary period is over if a motion was timely filed, notice and a hearing within a reasonable time after its expiration. (see *In re T.J.*, 146 N.C. App 605, 553 S.E.2d 418, 2001 N.C. App. LEXIS 980 (2001))

IV. Getting Around Violations

- A. Violations Coupled with New Petitions – if the violation arises out

of the same conduct as the new petition, then many ADA's will
VD the violations – the issue then becomes would the juvenile be
better off in the long run with fewer points?

C. Ideas??

V. Other Case Law

- *In the Matter of: L.C.L.*, 2004 N.C. App. LEXIS 501 (2004) (unpublished opinion) The juvenile was found in violation of the protective supervision of the court, and the court ordered a Level 3 disposition committing the juvenile to a Youth Development Center. The Court of Appeals considered whether or not the trial court could impose a Level 3 disposition. The Court noted that under N.C.G.S. §7B-2510(e), after a finding of violation of probation, the court may order a new disposition at the next higher level on the disposition chart. The Court also noted that under N.C.G.S. §7B-2508(e), a Level 3 disposition may not be imposed if the juvenile is on probation for a "minor offense". The Court found that because the juvenile had been adjudicated of assault on a government official, a Class A1 misdemeanor and therefore a "serious offense," the trial court properly imposed a Level 3 disposition. (*Author's note*: The Court of Appeals recognized that the Class A1 misdemeanor was not the juvenile's most recent offense, (a simple assault) but did not discuss whether or not under N.C.G.S. §7B-2508(e) the "serious offense" must be the juvenile's most recent offense, or merely an offense the juvenile committed at some point in the past. Also, the opinion did not state whether or not the juvenile had already been placed on Level 2 supervision prior to the juvenile's probation violation, required under N.C.G.S. §7B-2510(e)).