

## Chapter 14:

# Probation

<b>14.1 Overview</b>	<b>229</b>
<b>14.2 Terminology Used in This Chapter</b>	<b>230</b>
<b>14.3 When Probation May Be Ordered</b>	<b>230</b>
<b>14.4 Conditions of Probation</b>	<b>231</b>
A. Generally	
B. As Directed by Chief Court Counselor: Generally	
C. As Directed by Chief Court Counselor: Level 2	
<b>14.5 Conditions of Probation: Case Law</b>	<b>233</b>
A. Restitution	
B. Submission to Urinalysis, Blood, or Breathalyzer Testing	
C. Other Conditions	
<b>14.6 Intensive Probation</b>	<b>235</b>
<b>14.7 Term of Probation</b>	<b>235</b>
<b>14.8 Violation of Probation</b>	<b>236</b>
A. Motion and Notice Required	
B. Secure Custody Pending Hearing	
C. Burden of Proof	
D. Preparation for Hearing	
E. Advocacy at Probation Violation Hearing	
F. Alternatives on Finding of a Violation	
G. Admission of Probation Violation Does Not Bar Subsequent Adjudication on Same Allegation	
<b>14.9 Termination of Probation</b>	<b>238</b>

---

## 14.1

### Overview

Probation is a dispositional alternative that may be ordered by the court pursuant to either a Level 1 or Level 2 disposition. A juvenile who is on probation is placed under the supervision of a juvenile court counselor and may be subject to a number of statutory conditions.

Violation of a condition of probation may subject a juvenile to extension of probation, modification of the terms of probation, or in some cases entry of disposition at the next higher level. A juvenile who is moved from a Level 2 to Level 3 disposition as a result of a probation violation will usually receive a commitment to the Department for confinement in a locked facility.

## 14.2 Terminology Used in This Chapter

*Department* is the Department of Juvenile Justice and Delinquency Prevention. G.S. 7B-1501(7a).

*Intensive probation* is a dispositional alternative under G.S. 7B-2506(15), although the term is not defined by either statute or policy. Under Department policy it is treated as a category under intensive supervision.

*Intensive supervision* is court-ordered supervision by a juvenile court counselor. G.S. 7B-2510(b)(5). The intensive supervision counselor maintains a small caseload and makes frequent contacts with the juvenile, the juvenile's parent, guardian, or custodian, and others involved with the juvenile. *See infra* § 14.4C (Intensive supervision).

*Motion for review hearing* is a hearing pursuant to G.S. 7B-2510(d) to review the progress of a juvenile on probation at any time during probation or at the end of probation. *See infra* § 14.8A (Motion and Notice Required). Although a motion for review may contain an allegation of a violation of probation, a review hearing should not be a probation violation hearing unless proper notice has been given.

*Probation* is a dispositional alternative in which the juvenile is ordered to comply with specified conditions under the supervision of a juvenile court counselor. A juvenile may be returned to court for violation of those conditions during the probationary period. G.S. 7B-1501(22).

*Probation violation hearing* is a hearing to review a juvenile's probation on motion and notice pursuant to G.S. 7B-2510(d), alleging a specific violation of probation. *See infra* § 14.8 (Violation of Probation).

## 14.3 When Probation May Be Ordered

Probation is a dispositional alternative after an adjudication of delinquency if the juvenile is eligible for a Level 1 or Level 2 disposition. *See supra* § 13.8 (Dispositional Limits for Each Class of Offense and History Level). Under Level 1 (community disposition), regular probation may be ordered. G.S. 7B-2506(8), -2508(c). Under Level 2 (intermediate disposition), the juvenile may be placed on either regular or intensive probation. G.S. 7B-2506(8), (15); 7B-2508(d).

Although probation is not a required dispositional alternative, it is often routinely ordered. Counsel should argue against an order of probation when not warranted by the facts to avoid exposing the juvenile to a possible allegation of violation of probation in the future.

## 14.4 Conditions of Probation

### A. Generally

A juvenile court counselor has the authority to visit a juvenile's residence if the juvenile is on probation. In addition, the court may order a juvenile to comply with conditions that are "related to the needs of the juvenile and that are reasonably necessary to ensure that the juvenile will lead a law-abiding life. . . ." G.S. 7B-2510(a). The statute lists 14 conditions that are specifically authorized. The court may order that a juvenile:

- remain on good behavior;
- not violate any laws;
- not violate any reasonable and lawful rules of a parent, guardian, or custodian;
- attend school regularly;
- maintain passing grades in up to four courses and cooperate with planning for such;
- not associate with specified persons or be in specified places;
- refrain from use or possession of any controlled substance, refrain from use or possession of any alcoholic beverage, *and* submit to random drug testing;
- abide by a prescribed curfew;
- submit to a warrantless search at reasonable times;
- possess no firearm, explosive device, or other deadly weapon;
- report to a juvenile court counselor as required by the counselor;
- make specified financial restitution;
- be employed regularly if not attending school;
- satisfy any other conditions determined appropriate by the court.

*See infra* § 14.5 (Conditions of Probation: Case Law).

Although certain conditions of probation are routinely ordered in every case in some districts, counsel should argue that the conditions of probation should be related to the adjudicated offense and the needs of the juvenile as contemplated by G.S. 7B-2501(c). *See In re McDonald*, 133 N.C. App. 433 (1999) (amount of restitution must be related to amount of monetary damage as finding of fact; special condition of probation restricting television upheld when court found juvenile's actions influenced by television show).

### B. As Directed by Chief Court Counselor: Generally

The juvenile may also be ordered to comply with other conditions "if directed to comply by the chief court counselor." G.S. 7B-2510(b). Under G.S. 7B-2510 (b)(1)–(3), the juvenile may be required by the chief juvenile court counselor to:

- perform up to 20 hours of community service,

- submit to substance abuse monitoring and treatment, and
- participate in a life skills or educational skills program administered by the Department.

### C. As Directed by Chief Court Counselor: Level 2

Under G.S. 7B-2510(b)(4)–(5), a juvenile who is eligible for a Level 2 disposition may be ordered to comply with the following conditions at the direction of the chief court counselor:

- cooperate with electronic monitoring, and
- cooperate with intensive supervision.

**Electronic monitoring.** Electronic monitoring is defined by the Department as “recording of a juvenile’s schedule with telecommunication equipment located in the juvenile’s residence. Two levels of monitoring are offered: 1) Electronic House Arrest; and 2) Electronic Monitoring.” House arrest requires the juvenile to be in the juvenile’s residence unless at a designated place, such as at school or work. Electronic monitoring requires the juvenile to abide by a specified schedule, which usually includes a nighttime or other curfew. *See* Court Services Terms Defined, at [www.ncdjdp.org/resources/policies/ip/DEFINITIONS.pdf](http://www.ncdjdp.org/resources/policies/ip/DEFINITIONS.pdf); *see also* Number CS 13.1, “Electronic Monitoring,” Department of Juvenile Justice and Delinquency Prevention (Oct. 17, 2006), at [www.ncdjdp.org/resources/policies/ip/CS%2013.1.pdf](http://www.ncdjdp.org/resources/policies/ip/CS%2013.1.pdf). Electronic monitoring is not the same as a dispositional order for house arrest under G.S. 7B-2506(18).

**Intensive supervision.** The requirements for intensive supervision are outlined by Department policy but are not defined by statute. *See* Number CS 3.1, “Supervision,” Department of Juvenile Justice and Delinquency Prevention (Oct. 17, 2006), at [www.ncdjdp.org/resources/policies/ip/CS%203.1.pdf](http://www.ncdjdp.org/resources/policies/ip/CS%203.1.pdf). Under Department policy, a juvenile court counselor may supervise a maximum of 12 juveniles on intensive supervision. The counselor must contact the juvenile and the juvenile’s parent, guardian, or custodian immediately after the juvenile is assigned to intensive supervision. Face-to-face contact must be made by the counselor with the juvenile at least three times every seven days, with at least one contact to be on the weekend or outside of regular school hours. In addition, contact with the parent must be made in person at least once every seven days, with a visit to the juvenile’s residence at least every seven days. Finally, the counselor is required to make one contact per week with someone at the juvenile’s school, the juvenile’s work, or others involved significantly with the juvenile.

Contacts may gradually become less frequent with the approval of the chief court counselor. At a minimum, the counselor must have contact with the juvenile at least once every seven days, with the parent, guardian, or custodian every 14 days, and with school personnel and others at least once every 21 calendar days. Counsel will generally have to ask the juvenile court counselor or review the juvenile court counselor’s file to learn if less frequent contacts have been approved.

## 14.5

### Conditions of Probation: Case Law

The North Carolina appellate courts have considered dispositional orders that impose one of the specified statutory conditions, as well as orders that impose “any other conditions determined appropriate by the court.” G.S. 7B-2510. This section contains a brief review of some of these cases. Opinions of the North Carolina Supreme Court from 1997 to the present and of the North Carolina Court of Appeals from 1996 to the present are available online at [www.aoc.state.nc.us/www/public/html/opinions.htm](http://www.aoc.state.nc.us/www/public/html/opinions.htm). Professor Janet Mason of the School of Government periodically sends out e-mail summaries of recent case law and legislation affecting juvenile proceedings. To receive these e-mails, go to [www.sog.unc.edu/listservs.html](http://www.sog.unc.edu/listservs.html), scroll to sogjuvenile, and click on the subscribe link. Additionally, the Office of the Juvenile Defender website has a section on case law, updated quarterly, online at [www.ncids.org/Juvenile%20Defender/JuvDef%20HomePage.htm](http://www.ncids.org/Juvenile%20Defender/JuvDef%20HomePage.htm).

#### A. Restitution

**Ability to pay.** Although the court may order restitution as a condition of probation pursuant to G.S. 7B-2510(a)(12), the record must show that the juvenile has the ability to pay. *In re Schrimpsber*, 143 N.C. App. 461, 464 (2001). In *Schrimpsber*, the Court held that although the lower court does not have absolute discretion to order restitution, the burden is on the juvenile under G.S. 7A-649(2) [now G.S. 7B-2506(4), (22)] to show that “the juvenile does not have, and could not reasonably acquire, the means to make restitution.” 143 N.C. App. at 464. Because the juvenile was 16 years old, was ordered to obtain a full-time job until school started, and presented no evidence of inability to pay, the Court found there were appropriate findings to support the ability to pay restitution. *Id.* at 464–65; *see also In re Heil*, 145 N.C. App. 24, 31–33 (2001) (court must consider whether paying restitution is in juvenile’s best interest and whether the juvenile has the ability to pay restitution, and must restrict payment schedule to 12 months under G.S. 7A-646, now 7B-2500, and 7A-649(2) (now 7B-2506(4))).

In a recent unpublished decision, the Court of Appeals reaffirmed earlier cases holding that victim compensation should not be the only or paramount concern of restitution. Further, the record must support that payment of restitution as a condition of probation is “fair and reasonable, related to the needs of the child, and calculated to promote the best interest of the juvenile. . . .” *In re B.K.C.*, 650 S.E.2d 676 (2007) (unpublished), *quoting Schrimpsber, supra*. The lower court must make findings as to whether restitution is in the juvenile’s best interest and whether the juvenile has the ability to pay restitution. *B.K.C.*, *citing In re Heil*, 145 N.C. App. 24, 32 (2001).

**Jointly and severally liable.** In *Schrimpsber*, the Court held that if more than one person is responsible for damages, all should be held jointly and severally liable for payment of restitution. 143 N.C. App. 461, 465–66 (2001). As there was evidence that more than one person participated in the break-in but no findings in the record indicating the amount of harm caused by the juvenile or whether others should be held jointly and severally liable, the case was remanded for further findings on these issues.

**Amount of restitution.** The court must make findings of fact that justify the amount of restitution ordered. *In re McDonald*, 133 N.C. App. 433, 436 (1999). In *McDonald*, the order for restitution was reversed because it contained no findings of fact regarding the cost of the damage caused by the juvenile, and the only evidence in the record was pictures showing the damage.

#### B. Submission to Urinalysis, Blood, or Breathalyzer Testing

A juvenile court counselor may require the juvenile to submit to drug testing if the court makes this a condition of probation. G.S. 7B-2510(a)(7)(c), -2510(b)(2); *see In re Schrimpsheer*, 143 N.C. App. 461, 466–67 (2001) (court did not have authority to order as a condition of probation that the juvenile submit to urinalysis, blood, or Breathalyzer testing on request of any law enforcement officer; juvenile conceded that court had authority to order as a condition of probation that the juvenile submit to testing on request of court counselor). Under the statute (now G.S. 7B-1500(4)), juveniles are entitled to fair and equitable procedures and protection of their constitutional rights. *Id.* at 466.

#### C. Other Conditions

**Requiring others to consent to warrantless searches.** Pursuant to G.S. 7B-2510(a)(6), the court may order that the juvenile “not associate with specified persons or be in specified places.” That authority does not extend, however, to ordering that those with whom the juvenile resides or rides consent to warrantless searches. *In re Schrimpsheer*, 143 N.C. App. 461, 468–69 (2001). The Court found that it was “unfair and unreasonable” to require those not under the court’s jurisdiction to consent to warrantless searches. Additionally, such a requirement would give persons other than the juvenile control over the success or failure of the probation.

**Wearing sign.** The court may not order a juvenile to wear a sign in public that identifies the juvenile as delinquent. *In re MEB*, 153 N.C. App. 278 (2002). In *MEB*, the juvenile was ordered to wear a large sign in public stating “I am a juvenile criminal.” This requirement was held to violate the juvenile’s right to confidentiality pursuant to G.S. 7B-3001(b), and to subject the juvenile to a choice between public ridicule and *de facto* house arrest in violation of the Juvenile Code and public policy.

**Wearing necklace with victim’s picture and visiting gravesite on anniversaries of victim’s birth and death.** The court distinguished the condition in *MEB* from requirements that a juvenile wear a necklace containing the victim’s picture and place flowers on the victim’s grave on the anniversaries of the victim’s birth and death. *In re J.B.*, 172 N.C. App. 747, 751–53 (2005). In *J.B.*, the Court found that the special conditions of probation, unlike those in *MEB*, did not expose the juvenile’s record of delinquency to the public and did not amount to *de facto* house arrest. The juvenile could wear the victim’s picture enclosed in a locket, which could be worn under clothing; visiting the gravesite was not addressed. Additionally, the Court found that there was no requirement that the lower court solicit or consider a therapist’s opinion regarding the potential for either benefit or damage to the juvenile from these conditions.

**Restricting participation in activities.** A prohibition on watching television for one year has been upheld as a condition of probation. *In re McDonald*, 133 N.C. App. 433 (1999). In *McDonald*, the juvenile stated in court that she spray-painted the words “Charles Manson Rules” on someone else’s property because she had recently watched a television documentary about him. Because the condition was related to the juvenile’s misconduct, the injury to property, and her need to be free of negative influences, the Court found that the special condition was proper.

A restriction on participating in school activities, such as football or dances, was held to be proper where the court had evidence that the juvenile had difficulty with age-appropriate complex social interactions. *In re J.B.*, 172 N.C. App. 747, 753 (2005). The Court noted that the juvenile could continue to interact with his peers in more structured settings, such as during regular school hours and at church, and was restricted only from those activities that posed the greatest danger for inappropriate or delinquent conduct.

**Requiring admission of sex offense.** The decision of the U.S. Supreme Court in *Minnesota v. Murphy*, 465 U.S. 420 (1984), that the constitutional right against self-incrimination prohibits making a waiver of the right a condition of probation, has been held applicable to juvenile cases. *In re T.R.B.*, 157 N.C. App. 609, 620 (2003). In *T.R.B.*, the Court of Appeals held that under *Murphy* a condition of probation ordering that the juvenile complete a sex offender evaluation and treatment program, which required attendance at all meetings and admission of responsibility for the offense, was impermissible. The Court noted that there may be an exception if the juvenile is granted immunity from use of the statements in subsequent prosecutions. *Id.* at 621–22, quoting *Murphy*.

## 14.6 Intensive Probation

Although the court may order intensive probation as a disposition pursuant to G.S. 7B-2506(15), the term is not defined by statute. The policies of the Department do not address the requirements for intensive probation but appear to categorize it under court-ordered supervision as the same as intensive supervision. See *supra* § 14.4C (As Directed by Chief Court Counselor: Level 2: Intensive supervision); see also Number CS 3.1, “Supervision,” Department of Juvenile Justice and Delinquency Prevention (Oct. 17, 2006), at [www.ncdjdp.org/resources/policies/ip/CS%203.1.pdf](http://www.ncdjdp.org/resources/policies/ip/CS%203.1.pdf).

## 14.7 Term of Probation

A term of probation is limited to one year subject to an extension of up to an additional year. An extension of probation is allowed only if, after a hearing on the matter, the court finds an extension of probation is necessary “to protect the community or to safeguard the welfare of the juvenile.” G.S. 7B-2510(c). The court should be asked to specify in the dispositional order either a date certain for the end of probation or a time for a review hearing.

The term of probation may be extended even after expiration of the original term after timely notice and a hearing. *In re T.J.*, 146 N.C. App. 605, 607–08 (2001). In *T.J.*, the juvenile court counselor filed a motion for review prior to the expiration of the probationary period alleging that the juvenile had not completed the community service hours ordered as a condition of probation. Citing G.S. 7B-2510(d), which provides that the court may review the juvenile’s progress “at any time during the period of probation or at the end of probation,” the Court held that the court had limited discretion to modify probation within a reasonable time after its expiration. *Id.* at 607.

The North Carolina appellate courts have not specifically considered the issue of the timeliness of a motion alleging a juvenile court probation violation filed after the probationary period has expired. Counsel should argue that a motion filed after probation has ended is untimely, as distinguished from the facts in *In re T.J.*, where the motion was filed during the probationary period. Analogous provisions from criminal court may be relevant, such as G.S. 15A-1344(f) (court does not have jurisdiction to revoke probation after probationary period has ended unless State filed a motion alleging probation violation during probationary period and shows reasonable efforts to conduct hearing before probation ended).

## 14.8

### Violation of Probation

#### A. Motion and Notice Required

The progress of the juvenile on probation may be reviewed on motion of the juvenile court counselor, the juvenile, or the court. Conditions or the duration of probation may be modified only after notice and a hearing as provided by statute. G.S. 7B-2510(d). Counsel should object at the review hearing if the State attempts to introduce evidence relating to a violation of probation that was not alleged in the motion for review. Objections should also be made if there is an attempt to impose additional conditions of probation without a motion and notice. *See* G.S. 7B-1807, -2600.

The juvenile and the juvenile’s parent, guardian, or custodian are entitled to five days written notice prior to a hearing on an alleged violation of probation. G.S. 7B-1807. Counsel may have grounds to move to dismiss the State’s motion alleging violation of probation if less than five days notice is given prior to expiration of the term of probation; the basis would be insufficient statutory notice. To ensure protection of the juvenile’s rights in the proceeding, counsel should request formal presentation of evidence supporting allegations of violation of probation.

#### B. Secure Custody Pending Hearing

Where the juvenile is alleged to have violated probation, the court may order secure custody pending the probation violation hearing if the juvenile is alleged to have damaged property or injured persons. G.S. 7B-1903(d).

### C. Burden of Proof

An order for probation may be amended for a violation of probation only if the court, after a hearing, finds by the greater weight of the evidence that the juvenile violated conditions of probation. G.S. 7B-2510(e).

Counsel should argue that the court must find a “willful violation,” analogizing to the requirements in criminal case law. *See State v. Young*, 21 N.C. App. 316 (1974). In criminal cases the burden is on the defense to present competent evidence of inability to comply. *See State v. Crouch*, 74 N.C. App. 565, 567 (1985). Counsel should be prepared to offer evidence that the juvenile was not able to comply with conditions.

Juvenile probation revocation proceedings are considered “dispositional.” *In re D.J.M.*, 181 N.C. App. 126 (2007); *In re O’Neal*, 160 N.C. App. 409 (2003). As a result, the probation violation hearing may be less formal than an adjudicatory hearing, and the court may be able to consider any evidence, including hearsay evidence, that the court finds to be relevant, reliable, and necessary to its determination. G.S. 7B-2501.

### D. Preparation for Hearing

Preparation for a hearing on a motion alleging a violation of probation is generally the same as for a hearing on a petition. Counsel should meet with the juvenile and prepare the juvenile to testify when helpful to the case, talk with the juvenile court counselor and review the counselor’s records, and make other contacts as required to investigate and respond to the alleged violation. Witnesses and records should be subpoenaed as necessary. If appropriate, counsel should explore negotiating an agreement with the juvenile court counselor or prosecutor.

Counsel should check the following items during hearing preparation to determine whether:

- the motion alleging violation of probation was filed within the probationary period;
- the juvenile was given adequate written notice of the alleged violation and hearing;
- the juvenile court counselor has correctly calculated the period of probation;
- the original order of probation was for a period of probation within the statutory provisions of G.S. 7B-2510(c); and
- the condition of probation that is alleged to have been violated was set forth in the dispositional order and was a condition of probation allowed under G.S. 7B-2510(a).

### E. Advocacy at Probation Violation Hearing

The State must prove an alleged violation of probation by the greater weight of the evidence if the juvenile denies the allegation.

Objections should be made to evidence that is not related to the alleged probation violation. Counsel should also object to hearsay and other evidence that has not been established to be reliable. *See In re J.P.M.*, 645 S.E.2d 902 (2007) (juvenile probation hearings are considered “dispositional”); G.S. 7B-2501 (dispositional hearings may be

informal and the court may consider any evidence, including hearsay evidence that the court finds to be relevant, reliable, and necessary to its determination).

Counsel should argue against an allegation that the juvenile has violated probation by virtue of having been alleged to be delinquent or charged with a new offense. Under G.S. 7B-2510(a)(2), the court may order the juvenile not to violate any laws. The juvenile is not in violation, however, by merely being accused of violating a law.

#### **F. Alternatives on Finding of a Violation**

If a violation is found, the court may keep in place the original terms of probation, modify the terms of probation or, with one exception, order a new disposition at the next higher level from the original disposition. G.S. 7B-2510(e). The exception is that a Level 3 disposition may not be ordered for a violation of probation if the original adjudication was for an offense classified as minor under G.S. 7B-2508. G.S. 7B-2510(f). If a new disposition is ordered, the court may order a period of confinement in a secure juvenile detention facility for up to twice the term authorized by G.S. 7B-2508, which sets forth dispositional limits for each class of offense and delinquency history level. G.S. 7B-2510(e). If detention is ordered, counsel should request that the juvenile be given credit for any time already served.

If a violation is found, the court should enter a new disposition immediately rather than holding the juvenile in detention and continuing the matter; there is not a statutory provision authorizing the new disposition to be continued.

#### **G. Admission of Probation Violation Does Not Bar Subsequent Adjudication on Same Allegation**

A finding by the court of a violation of probation for a specified act does not bar the filing of a petition and an adjudication of delinquency based on the same act. *In re O'Neal*, 160 N.C. App. 409 (2003). In *O'Neal*, the juvenile admitted violating probation by, among other acts, being physically aggressive with another juvenile. As a result, he was placed on a new Level 2 probation for one year. He was subsequently adjudicated delinquent based on the same act of aggression that was the basis of the probation violation. The Court held that double jeopardy does not apply to probation violations because there is a different burden of proof and any new disposition imposed results from the original adjudication of delinquency and not from the act that violates probation.

## **14.9**

### **Termination of Probation**

The court may enter a written order terminating probation on finding that there is no further need for supervision, either at the end of the probationary term originally ordered or at any time during probation. At the election of the court, an order may be entered in chambers based on a report of the juvenile court counselor or may be entered after notice and a hearing with the juvenile's attendance. G.S. 7B-2511. Termination of probation does not terminate the court's jurisdiction unless ordered by the court, or when statutory conditions ending jurisdiction are met. G.S. 7B-1601(b); *see supra* § 3.3 (Jurisdiction). Counsel should

therefore request that the court terminate jurisdiction as well as probation, which may be done by checking a box on the order terminating probation. *See* Form AOC-J-465 (Order to Terminate Supervision (Undisciplined/Delinquent)) (April 2000), at [www.nccourts.org/Forms/Documents/537.pdf](http://www.nccourts.org/Forms/Documents/537.pdf).

