

JUVENILE COURT: PROBATION VIOLATIONS

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CONSTITUTION

How can they do that?!

PRIVACY

Delinquency = “protection of public”

Statute MUST allow government interference with
MY right to raise my child!!!

ALWAYS ask yourself: Under what authority can
the State/JCC do what they are proposing?

Extend Gault?

In re Gault, 387 US 1 (1967)

The Constitution only partially applies to kids!!!

NO right to:

Bail, jury trial, speedy trial, self representation.

Constitutionalize your arguments.

Juvenile Probation

7B-2506 - basic dispositions

7B-2510 - basic conditions

7B-2510(c)-(e) - violations

READ the statute!!

Service 7B-1806

MUST serve juvenile AND the parent
If not serve juvenile-Can NOT do bench order for FTA
If serves parent-CAN hold parent in contempt if comes without juvenile =7B-1806(b)(5)

Defects waived if juvenile appears in court.

Notice

Must give 5 days notice before hearing
(but requirement is waivable by juv.)

BUT don't leave your kid in SC if can hear today.
Don't be rushed!

7B-2510(d): modified ONLY after notice & hearing! Due process applies!

Petitions

MUST be a petition - usually AOC -J-241
MUST allege:
 Condition(s) that were violated &
 HOW juvenile violated (specifics).

Dismiss for insufficiency? OR
Use as negotiation chip!

Filing of petition

Filing of Violation petition:

7B-2510(d)-"may review any time during OR at end of probation" BUT

7B-2510(c)- "prior to the expiration date, may extend..."

Argue: MUST be filed before expiration!

Secure Custody on Probation Violation

Secured Custody

7B-1903 gives specific reasons for SC

Are ONLY basis for SC (except IC days)

Ct MUST make findings: (AOC-J-440)

Reasonable factual basis juv committed offense
&

ONE of these specified circumstances:

7B-1903

(b3) FTA on pending charge, VOP, VPRS if proper notice (AOC form-1e)

(b4) Pending charge & REASONABLE cause to believe juvenile won't appear (form-1f)

7B-1903

(c) "pending disposition" & "pending placement" (AOC form-2)

(d) VOP, VPRS -and committed damage/injury (AOC form-3)

NOT just a violation!!

Make them use IC days

SC Hearings

"mini pc:" MAKE court find reason to hold juv.
LOOK at the SCO for VALID reason.

IF can't go home: Seek alternative places:

Ask juvenile & family

Local temporary shelter

ALWAYS object to continued SC (preserve)

Motion to release from SC

1903(c) allows SC “pending placement.”

If months drag by and no placement is found, file motion to release based on fact that juvenile has served entire sentence he could have served as an adult.

IC days- level I

7B-2506(12):

“shall be limited to not more than five 24-hour periods, the timing of which is determined by the court in it’s discretion.”

SHOULD require hearing & notice – but doesn’t!

IC days- level II

7B-2506(20):

“shall not be imposed consecutively with IC pursuant to sub (12) at the same dispositional hearing.”

“timing shall be determined by the court.”

Argue: In re: Hartsock, 158 NC App. 287 (2003)

Constitutionality?

BASIC 5th Amendment!

Your client has been deprived of LIBERTY
without DUE PROCESS of law!

Object “for the record” to the previous IC days
being served without notice & hearing.

Let’s extend Gault!!

Find out before PV hearing if your client has
already been in on IC days for this conduct.

Object if judge puts back into SC for the PV.
Not legally “double jeopardy” but is unfair!

Argue that IC days without hearing IS a violation
of due process!

HEARINGS

Formality

PV hearing is “NOT a criminal prosecution”

BUT: juv CAN lose liberty so treat is as formal:

- record it
- put on evidence
- make objections
- preserve your record

Recordation 7B-2410

ONLY certain hearings REQUIRE it:
adjudicatory, disposition, PC, transfer

All others, ct. “may” order recorded.

Recordation

If your county doesn’t always do it,
ASK for ALL hearings to be recorded:

MOST appeals are to Ct. of Appeals:
Be aware to make record &
preserve your client’s rights.
CONSTITUTIONALIZE issues!

Burden of Proof

State's Burden of Proof that juvenile violated conditions.

Standard:

“greater weight of the evidence” (7B-2510(e))

“preponderance of evidence” (caselaw)

Hearsay is admissible

What is “reliable hearsay”?

JCC can testify to what care providers/adult school personnel told them (because CAN introduce school records, truancy report)

JCC should NOT be able to testify about:
“rumors” from streets or school
things they didn’t check themselves

Hearsay

Object if: (preserve your record)

Witness has no actual knowledge what declarant said (hearsay within hearsay=unreliable)
ex) “I heard he was (whatever rumor)”

It’s not “reliable” (no independent verification)
ex) “neighbor says he’s out all night”

Willfulness

7B-2510(e) does NOT state “willfully” violated
(not in 15A either, except in crim.contempt)

But court must find respondent violated “without
lawful excuse.”

In re: O’Neal, 160 N.C.App. 409 (2003)

Who’s Burden?

Willfulness

State must show “violated, without lawful excuse.”

Cases say, once State shows violation, lack of
willfulness is juvenile’s burden.

Difference between “lack of willfulness” and
“inability” to perform condition(s) ?

Lack of willfulness:

suspension because Juv. was assaulted
parent’s lack of transportation

Inability:

can’t get a job (has tried/applied)
no such service anymore!

Allegations

Petition must allege WHAT condition was violated
And HOW juvenile violated it.

LOOK at disposition order:

- was it actually ordered?
- who was to provide the service?
- was it possible? (why not?)

Evidence

Limit questions to THIS violation allegation.

Object if State presents/JCC testifies to evidence
beyond what's alleged in the petition.

Other info is admissible at disposition, not during
adjudication.

CAVEAT: don't get NEW PV served!

Reliance on 15A

CAN use adult court analogies when your issue is
not specifically addressed in 7B.

7B-2405 Conduct of Adjudicatory Hearing:

“Court shall protect...rights...to assure due
process: (6) all rights afforded adult offenders.”

PV not adjudication BUT can deprive of liberty!

Double Jeopardy

CAVEAT: double jeopardy does NOT bar new petition for same act as violation.

In re: O'Neal, 160 N.C.App.409 (2003)

PV v. New Petition

State usually wants new charge.

Juvenile is better with PV:

because no points to admit PV & can't extend past 2 years.

CHECK to see if new petition in intake process.

Ask ADA to dismiss new charge or get ADA to agree not to file petition.

Disposition of Probation Violations

PV Dispostions 7B-2510(e)

Ct may:

continue original conditions,

modify the conditions, OR

order new disposition at higher level

Continue Original Conditions

Judge CAN do nothing!

But probably won't!

Modify the Conditions

JCC can/will ask to add/change them

So can you!

ADVOCATE for your kid:

Take some conditions off the juvenile

Add parenting class or family therapy

Change custody

Modification means the juvenile is still on the same term of probation.
MAX = 2 years (7B-2510(c))

DON'T let them extend past the 2 years.
CAN'T without new charge (place on "new term" of probation).

New/Higher Disposition

If level I: can give 10 IC days OR
can make a level II (give 14 IC days)

If level II: can give 28 IC days OR
can make level III (commit to YDC)
except 7B-2510(f) = CAN'T commit on PV
if on probation for minor offense (need new charge).

New Dispositions

CAVEAT:
Watch "abide by all previous conditions"

Get a new disposition order that specifies all conditions.
Clarify if necessary!

MFR to Extend AOC-J-241

Usually extend to finish treatment or restitution.

MAKE sure there is a VALID reason:

7B-2510(c) allows extension IF:

Court FINDS it's necessary to:

“Protect the community” OR

“Safeguard the welfare of the juvenile.”

Treatment extensions

Usually “necessary to safeguard juvenile’s welfare.”

BUT:

Has JCC/service provider(s) gotten services in
place in a timely manner?!

Ask to terminate when completed.

Restitution extensions

If extend past year “to finish paying restitution:”

Argue to remit balance = 7B-2506(22):

“payable within a 12 month period”

Juvenile’s “ability to pay” MUST be considered:

Ct. SHOULD remit because of inability to pay
within 12 month period.

“Compensation of the victims should never become the only or paramount concern in the administration of juvenile justice.”

In re Register, 84 NC App. 336 (1987)

APPEAL 7B-2602

Appeal of PV

7B-2602(3) = “any order of disposition”
MUST be a “final order”

To Court of Appeals:
Preserve your record!

7B-2605= Disposition pending appeal:
“release SHOULD issue unless ct finds otherwise”
“for compelling reasons which must be stated in writing” = Court can place juvenile (ie: leave in SC/YDC).

OBJECT to continued secure custody (preserve)

JUVENILE COURT PRACTICE

DEALING WITH JCC

You have right to complete JCC files (7B-3001c)

Watch for ex parte communications!

ANY of juvenile's statements made to JCC
CAN'T be used against him prior to disposition.
(7B-2408)

MH evaluations (“initial assessments”)

JCC routinely asks for before adjudication (often before court will release from SC)

They CAN’T give report to ADA/judge.

BEWARE: it’s your clients’ 5th Am. rights being trampled!

Confidentiality & child abuse:

RPC 120 & RPC 175

It is in your discretion to report or not.

Talk to your client about what could happen if reported.

Let them help you decide but it is YOUR decision.
