

**JUVENILE COURT  
POST TRIAL  
HEARINGS**

**Mary Wilson**  
**Wake Public**  
**Defenders Office**

Marywilson\_ada@yahoo.com

919-715-8593

# 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 partial applies to kids!!!

NO right to:

Bail, jury trial, speedy trial, self representation.

Constitutionalize your arguments.

# 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.)

Don't be rushed!

BUT don't leave your kid in SC if can hear today.

# PROBATION VIOLATIONS



# Probation Violations

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

MUST be a petition - usually AOC –J-241

MUST allege:

Condition(s) that were violated &  
HOW juvenile violated (specifics).

MUST be service of notice

5 days (unless juvenile waives).

# Secured Custody on PV

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

# 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!



# Violation Hearings

State's Burden of Proof that juvenile violated conditions.

Standard:

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

“preponderance of evidence” (caselaw)

Reliable Hearsay is admissible.

# Hearsay

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) ?

# 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!

# 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.

CHECK to see if new petition in intake process.

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

# PV Dispositions

## 7B-2510(e)

Ct may:

continue original conditions

modify the conditions OR

order new disposition at higher level

including 2x IC days

except NOT level 3 for minor offense

# Appeal of PV

7B-2602(3) = “any order of disposition”

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” ct. can place juvenile (leave in SC/YDC).

# ORDERS TO SHOW CAUSE

# Juvenile's OSC

OSC for Violation of Protective Supervision.

7B-2505 “willfully failing to comply.”

AOC-J-252

MUST serve notice & have right to hearing.

LIKE PV:

Must allege HOW and stick to allegations.

LOOK at disposition order.

# Juvenile's OSC

UNLIKE PV:

Status “offense”/ violation of court order

Contempt standard/procedures= Chapter 5A

State's burden = Beyond a Reasonable Doubt

(judges forget this)

# Secure Custody on OSC

7B-2505 (AOC form -4)

IF court finds violation/contempt

1<sup>st</sup>- not exceed 1 day

2<sup>nd</sup>- not exceed 3 days

3<sup>rd</sup>- not exceed 5 days

MAX: 14 days in one 12 month period

# Secure Custody on OSC

Timing/length of SC is in discretion of court.

JCC always asks 1, 3, 5 days

Judge does NOT have to!!

Argue: NOT supposed to be punishment.

suggest alternatives: comm. serv./paper/etc.

NOT more than 14 days in a 12 month period



# Parents' OSC

FTA = 7B-1805(b)(4)

FTA with juvenile = 7B-1805(b)(5)

Failure to abide by court order = 7B-2706:

Supplemental orders: AOC-J-463

LOOK at the order.

Criminal contempt of court = Chapter 5A

# Contempt of Court

5A-11(a)(3) = “Willfull disobedience of/resistance to/interference with court’s lawful process, order, directive, instruction.”

Standard: Beyond a Reasonable Doubt=5A-15(f)

Formal procedures = 5A-15

Plenary proceedings for indirect contempt.

# Procedures

Notice- “reasonable time specified”

Right to court-appointed counsel.

CAN ask judge to recuse – if “so involved...his objectivity may be reasonably questioned.”

5<sup>th</sup> Am=can't be compelled to testify against self.

Ct. MUST make findings of facts Beyond a Reasonable Doubt

# Punishment

Censure (include modifying supp. order?)

Up to 30 days in jail

Not to exceed \$500 fine

OR Any combination of the three

Judge may modify his punishment “at any time”

Can't imprison unless:

Act or omission was:

willfully contemptuous or

preceded by clear warning of ct that conduct  
was improper

Ex) can't lock up for "bad parenting"

# OSC Hearing

Similar to PV hearings:  
LOOK at Supp. Order.

State's burden = MUST show:

Notice (must have been legally served)

Willfull (state's burden by statute)

Failure to comply (act or omission)

# Appeal of Contempt

5A-17

Appeal is to Superior Court Judge.

Standard of review: hearing de novo

Findings of fact are binding- reviewable only for sufficiency to warrant judgment.

Judge's failure to make specific finding that proof was BARD is fatal error.

State v. Ford, 164 NC App 566 (2004)

# MOTIONS FOR REVIEW



# MOTION FOR REVIEW

## 7B-2600

MUST be petition & 5 days notice to juvenile  
For modifications/extensions without a violation.

Ct. MAY:

Modify OR Vacate the prior order based on:  
changes in circumstances OR  
needs of the juvenile

# 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)

# Juvenile CAN file MFR

To modify conditions

To change custody

To change/remit restitution

To ??? Get creative!

UNLIKE adult M.A.R.:

Purpose: “To determine whether the order of the court is in the best interest of the juvenile.”

# Motions to Seal 7B-3000(c)

Can have sensitive info in clerks file sealed.  
Protect your kids privacy!

JCC puts Mental Health or SOSE with the  
disposition report in clerk's file.

Order it sealed after disposition hearing.

# 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.



# EXPUNCTION

## 7B-3200

Advise juvenile & parent of this right.

For adjudication of minor & serious ONLY.

WHY file?

New statute allows adult probation to gain access to juvenile adjudications & dispositions until 25yo.

WHEN to file?

Must be 18yo.

At least 18 months off juvenile probation.

WHERE to file?

In juvenile ct. where adjudicated.

WHAT to file?

petition, affidavits, order

AOC-J-903M    -904M    -905M

EFFECT of filing?

Juvenile & parent CAN'T be held guilty of perjury for failure to acknowledge record (college apps, job apps, etc)

# 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 ct. will release from SC)

They CAN'T give report to ADA/judge.

**BEWARE:** it's your clients' 5<sup>th</sup> 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.