

## 14.5 Conditions of Probation: Case Law

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## 14.5 Conditions of Probation: Case Law

North Carolina appellate courts have considered the propriety of some of the regular conditions of probation, including the provision under G.S. 7B-2510(a)(14) permitting courts to impose “other conditions determined appropriate by the court.” This section contains a brief review of some of these cases as well as pertinent statutory limitations.

Although courts in some districts routinely order certain regular conditions of probation, G.S. 7B-2510(a) states that courts can only impose regular 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.” In adult criminal cases, courts are permitted to impose non-statutory special conditions of probation that are “reasonably related” to the defendant’s rehabilitation. G.S. 15A-1343(b1)(10). This language “operates as a check on the discretion of trial judges.” *State v. Lambert*, 146 N.C. App. 360, 367 (2001). Likewise, where appropriate, counsel should argue that the statutory language in G.S. 7B-2510(a) limits the discretion of judges to impose certain regular conditions of probation in juvenile cases.

### A. Restitution

The court may require the juvenile to pay restitution as a condition of probation, G.S. 7B-2510(a)(12). However, the following limitations apply to any order of restitution:

1. If the court imposes a Level 1 disposition, it may not order more than \$500.00 of restitution. G.S. 7B-2506(4), 7B-2508(c). The court may order more than \$500.00 if the court imposes a Level 2 disposition. G.S. 7B-2506(22), 7B-2508(d).
2. The court may not order restitution without finding that payment of restitution is in the juvenile’s best interest. *In re Z.A.K.*, 189 N.C. App. 354, 362 (2008).
3. The court may not order restitution if the juvenile is unable to pay the restitution amount. G.S. 7B-2506(4). The burden is on the juvenile to establish an inability to pay. *Id.*; see also *In re Schrimpsheer*, 143 N.C. App. 461, 464 (2001) (holding that imposition of restitution was proper where the juvenile, when given an opportunity to be heard, presented no evidence that he lacked the means to pay restitution).
4. Unless the juvenile stipulates to the amount of restitution, an order of restitution must be supported by findings of fact, which in turn must be supported by some evidence in the record. *In re McDonald*, 133 N.C. App. 433, 436 (1999).
5. The period within which the court may require the juvenile to pay restitution may not exceed 12 months. G.S. 7B-2506(4); *In re Heil*, 145 N.C. App. 24, 31–33 (2001).

The court may hold multiple individuals jointly and severally liable for payment of restitution. G.S. 7B-2506(4), (22). However, restitution will not be upheld even if the record indicates that the others participated in the crime if the court fails to make any findings from which the appellate court can determine that the others “acted jointly in causing harm.” *In re Schrimpsheer*, 143 N.C. App. 461, 465–66 (2001).

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

The trial court may require the juvenile to submit to random drug testing as a condition of probation. G.S. 7B-2510(a)(7)c. However, as with other probation conditions, any testing must be “related to the needs of the juvenile” and “reasonably necessary to ensure that the juvenile will lead a law-abiding life.” G.S. 7B-2510(a). Counsel should carefully review the predisposition report and risk and needs assessment. If the predisposition report and risk and needs assessment indicate that the juvenile has not used alcohol or drugs, and the juvenile has not been adjudicated of an offense involving alcohol or drugs, counsel should argue that testing is not warranted. If the court imposes drug testing, it may not require the juvenile to submit to testing requested by “any law enforcement.” *In re Schrimpsheer*, 143 N.C. App. 461, 466–67 (2001). Any testing must instead be requested by the juvenile court counselor. *Id.*

The trial court also may impose substance abuse monitoring and treatment as a condition of probation under G.S. 7B-2510(b)(2). However, monitoring and treatment under this provision may only occur if it is directed by the chief court counselor. G.S. 7B-2510(b).

If it is unclear whether the court has ordered random drug testing under G.S. 7B-2510(a)(7)c. or substance abuse monitoring and treatment under G.S. 7B-2510(b)(2), counsel should ask the court to clarify which condition it intended to impose and the basis for doing so.

### **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 people 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, 282 (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.*, which involved the offense of involuntary manslaughter, 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. 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, 435 (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 engaging in age-appropriate behavior during 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*, 465 U.S. at 435 n.7).