

## 14.7 Term of Probation

- A. Generally
  - B. Extending Probation
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#### A. Generally

A term of probation is limited to one year but may be extended by the court. If the court orders probation or extends probation, counsel should ask the court to specify a date certain for the end of probation or a time for a review hearing before the period of probation expires to ensure that there is no confusion about when the juvenile's probation ends.

#### B. Extending Probation

There are two ways that a court can extend probation, discussed below.

**To protect community or safeguard juvenile.** The court may extend probation under G.S. 7B-2510(c) if the extension is “necessary to protect the community or to safeguard the welfare of the juvenile.” The juvenile must be provided notice and a hearing before probation is extended. Although G.S. 7B-2510(c) does not specify the type of notice that is required, G.S. 7B-1807 states that the clerk must give the juvenile five days written notice of the date and time of hearings unless the juvenile is notified in open court. The hearing under G.S. 7B-2510(c) should occur before probation expires. However, the court has discretion to extend probation after probation expires if the hearing occurs “at the next regularly scheduled court date or if the juvenile fails to appear in court.”

If the court extends probation, it must make findings to support the conclusion that the extension is necessary to protect the community or to safeguard the welfare of the juvenile. *See In re D.L.H.*, 198 N.C. App. 286, 296 (2009) (upholding extension order where the trial court made multiple findings indicating that the juvenile was absent from school and the juvenile's mother was not willing to have the juvenile placed in her home), *overruled on other grounds*, 364 N.C. 214 (2010).

Appellate courts have not interpreted this part of subsection (c). Some trial courts may interpret this language to mean that they can extend probation multiple times for up to a year. Regardless of how the language is interpreted, counsel should oppose any efforts to extend the juvenile's probation beyond a year.

**For probation violations.** The court may extend probation under G.S. 7B-2510(d) and (e) if it finds by the greater weight of the evidence that the juvenile has violated the conditions of probation. The juvenile must be given notice and a hearing before the court extends the juvenile's probation. G.S. 7B-2510(d). A stipulation by the juvenile at a later hearing that probation had previously been extended is not a substitute for the notice and

hearing requirements of G.S. 7B-2510(d). *In re A.F.*, 231 N.C. App. 348, 356 (2013). Additionally, G.S. 7B-2510(d) provides that “the conditions or duration of probation may be modified *only as provided in this subchapter . . .*” (emphasis added). Under G.S. 7B-2510(c), probation may not be extended beyond a year. Based on the language in subsection (c), counsel should argue that an extension under subsections (d) and (e) should not exceed a year.

The court has limited authority to extend probation under G.S. 7B-2510(d) and (e) after the original term of probation expires. In *In re T.J.*, 146 N.C. App. 605 (2001), the juvenile court counselor filed a motion for review before the expiration of the probationary term. The court then held a hearing two weeks after the probationary period was set to end and extended the juvenile’s probation for six months. 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.

If the court counselor files a motion for review *after* the probationary term has ended, counsel should move to dismiss the motion on the ground that probation has expired. Counsel should distinguish *T.J.*, where the motion was filed during the probationary period, and assert that the court’s jurisdiction to extend probation expired when the period of probation ended. *See, e.g., State v. Moore*, 148 N.C. App. 568, 570 (2002) (trial court did not have jurisdiction to modify the defendant’s probation where the State failed to establish that the violation report was filed before the probationary period expired).

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**Practice note:** Counsel should object if the State seeks to extend probation for a reason not provided in the notice for the hearing. For example, the juvenile court counselor might file a motion for review alleging that the juvenile violated the conditions of probation, but then argue at the hearing on the motion that probation should be extended to safeguard the welfare of the juvenile. Counsel should oppose the extension and argue that extending probation for a reason that was not included in the motion for review would violate the juvenile’s rights to notice and due process.

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