

Can Probation Be Revoked in Juvenile's Absence?

Suppose you are a North Carolina district court judge presiding over a probation revocation hearing in the case of a juvenile who was adjudicated delinquent for a serious or violent offense. Present at the hearing are the juvenile's counsel, the juvenile's parent(s), the prosecutor, and the juvenile court counselor. In other words, everyone is present, except for the juvenile, who received notice but failed to appear. To complicate things, the juvenile's maximum 2-year probation term expires today. Can you proceed? And, if so, can you revoke the juvenile's probation and commit the juvenile to a youth development center (YDC)? Surprisingly, there doesn't appear to be a clear answer. Here's why.

Unlike some states' statutes or court rules (e.g., [Florida](#) and [Ohio](#)), North Carolina law does not explicitly require a juvenile's physical presence at a probation revocation hearing. Instead, the Juvenile Code provides that at a dispositional hearing (which includes probation revocation), a juvenile and the juvenile's parent, guardian, or custodian "shall have an opportunity to present evidence" and "may advise the court concerning the disposition[.]" [G.S. 7B-2501\(b\)](#). Also, the court may only revoke a juvenile's probation after notice and a hearing at which the court finds by the greater weight of the evidence that the juvenile violated the conditions of his or her probation. [G.S. 7B-2510\(e\)](#). Thus, at a minimum, juveniles in NC are entitled to notice and an opportunity to present evidence and be heard regarding the disposition before the court may revoke probation, which implicitly encompasses a right to be present.

It's unclear whether a juvenile can waive this statutory right to be heard by failing to appear. *Cf. In re Jason R.*, 666 N.E.2d 666, 668-69 (Ohio Misc. 2d, 1995) (juvenile waived statutory right to be present at dispositional hearing by failing to appear after receiving proper notice). However, our appellate courts have repeatedly emphasized that there is a "greater duty to protect the rights of a respondent in a juvenile proceeding than in a criminal prosecution." *In re T.E.F.*, 359 N.C. 570, 575 (2005). As such, they have typically demanded strict compliance by trial courts with Juvenile Code procedures that relate to protecting a juvenile's rights. *Id.* Given this practice, a waiver probably shouldn't be implied in this context, even if the juvenile's failure to appear is willful.

Juveniles also have due process rights. Although juvenile delinquency hearings are not criminal prosecutions (hence, the reason this post appears on a civil law blog), juveniles are entitled to constitutional due process protections in a delinquency proceeding similar to those afforded adult criminal defendants at trial. *In re Gault*, 387 U.S. 1 (1967). But, while constitutional due process has been clearly defined at the adjudicatory stage, much less has been said about due process rights of juveniles at disposition or probation revocation hearings. See, e.g., [G.S. 7B-2405](#) (statutorily mandated due process protections apply in adjudication hearings); *In re Walker*, 282 N.C. 28, 38 (1972) (explaining that *Gault's* holding was limited to the adjudicatory stage of the juvenile process).

The Court of Appeals has held that, like criminal defendants, juveniles have a constitutional right to be physically present at “every stage” of the delinquency proceeding, under Article I, Section 23 of the North Carolina Constitution. [In re Lineberry](#), 154 N.C. App. 246 (2002). For criminal defendants, this right to be present “extends to all times during the trial when anything is said or done which materially affects defendant as to the charge against him.” [State v. Thomas](#), 134 N.C. App. 560, 570 (1999). By this reasoning, it seems logical that disposition (the functional equivalent of sentencing for adults) is a stage of a delinquency proceeding at which the juvenile’s right to be physically present would apply.

However, is *probation revocation* a “stage” of the proceeding? For criminal defendants, probation revocation is not a part of the criminal trial. [State v. Belcher](#), 173 N.C. App. 620 (2005). But, even adult probation violators still have due process rights that include a right to be physically present, which may be waived for good cause. [Gagnon v. Scarpelli](#), 411 U.S. 778, 782 (1973). This is partly so because revocation of a defendant’s probation typically results in the activation of a previously imposed sentence that was entered in the defendant’s presence. Probation violations in juvenile court, however, are fundamentally different. In the juvenile context, the finding of a violation does not result in the activation of an already-imposed disposition, but rather triggers a requirement to hold a new disposition hearing. [G.S. 7B-2510\(e\)](#). Thus, juvenile probation revocation hearings are, ultimately, disposition hearings, and whatever rights apply on the front end likely apply with equal force after a violation. *But see* [In re O’Neal](#), 160 N.C. App. 409, 413 (2003) (“the better view is to treat a juvenile probation violation as analogous to the revocation of probation in the criminal justice system[.]”); [In re W.G.C.](#), No. COA03-1288 (N.C. Ct. App., Oct. 5, 2004) (unpublished) (holding that a juvenile’s constitutional right to be present at every “stage” is not implicated in a probation revocation hearing).

As a practical matter, moving forward with the probation revocation hearing doesn’t seem very efficient. It’s unlikely that authorities would apprehend a juvenile on the street and take him or her directly to a YDC without presenting the juvenile to a court for some form of a hearing. Thus, proceeding in the juvenile’s absence probably won’t save court time in the long run.

The bottom line is that the best practice would be to not proceed in the juvenile’s absence. My advice for judges who encounter this situation is to continue the hearing and enter a secure custody order, if the court finds the juvenile willfully failed to appear. See [G.S. 7B-1903\(b\)\(3\)](#). Once the juvenile is located, the hearing may be held in the juvenile’s presence, even though the juvenile’s probation has already expired, as long as the juvenile had notice of the hearing prior to the expiration date. [In re T.J.](#), 146 N.C. App. 605 (2001).