

## Extending a Juvenile's Probation Term: Frequently Asked Questions

Unless the court has specified a shorter term, a juvenile's initial term of probation expires after one year, if not extended by the court. Extensions of probation are governed by [G.S. 7B-2510\(c\)](#), which was amended by [HB 879](#) effective December 1, 2015. The statute now provides that "[p]rior to expiration of an order of probation, the court may extend it for an additional period of one year after notice and a hearing, if the court finds that the extension is necessary to protect the community or to safeguard the welfare of the juvenile." Since December, I've received numerous questions about the new notice requirement, which apparently is being interpreted in many different ways. To help clarify this question and other issues related to extensions of probation, here's a brief summary of FAQ's about the procedure for extending a juvenile's probation.

### What Constitutes Notice?

Prior to the enactment of HB 879, a juvenile's probation could be extended "after a hearing." The amendment to the statute changed that requirement to "after notice and a hearing," without specifying a procedure for providing notice. Compare [G.S. 7B-2515\(a\)](#) (requiring the Division to notify a juvenile and his or her parents of an extension of the juvenile's YDC commitment "in writing at least 30 days in advance"). Due to the lack of statutory guidance, judges, attorneys, and court counselors are left to determine what constitutes sufficient notice in this context.

#### 1. *Sufficient Notice*

Although the statute doesn't specify what the notice must include, the notice requirement is intended to protect the juvenile's right to due process. The right to adequate notice and an opportunity to be heard prior to a deprivation of liberty are the basic requirements of procedural due process under the Fourteenth Amendment to the United States Constitution. North Carolina courts have generally held that "procedural due process requires notice sufficient to inform the recipient in advance of a hearing of the bases for the proceedings against him or her so that the individual will have a meaningful opportunity to respond." [State v. Stines](#), 200 N.C. App. 193, 201 (2009).

Relying on due process guidelines, the notice should be sufficient to inform a juvenile that the purpose of the hearing is to review and possibly extend the juvenile's probation so that the juvenile can prepare a meaningful defense to the proposed extension. See, e.g., [In re J.L.H.](#), 230 N.C. App. 214, 223 (2013) (stating that "adequate notice has a direct impact upon" a juvenile's ability to contest the Division's plan to extend the juvenile's commitment).

In some districts, courts routinely set "status hearings" to monitor a juvenile's progress on probation without the need for a motion for review alleging a violation of probation by the juvenile court counselor. Since the Code previously only required a hearing to extend a juvenile's

probation, a juvenile could appear at such a hearing and have his or her probation term extended by the court without any prior notice that an extension was being considered. Under the current version of G.S. 7B-2510(c), an extension of probation would not be authorized if the juvenile was not given prior notice of the extension.

In an effort to help court counselors comply with the notice requirements, the Administrative Office of the Courts amended the motion for review form (“AOC-J-241”) to add a checkbox for “Extension of Probation” in the caption which can be checked to notify the juvenile of the nature of the hearing. Court counselors should check this box (along with any other applicable designation) for any hearing in which a court might consider extending a juvenile’s probation.

## *2. Method of Notice*

Since the statute does not specify otherwise, notice should be given according to [G.S. 7B-1807](#), which generally requires a juvenile and the juvenile’s parents to receive “five days’ written notice of the date and time of all scheduled hearings unless . . . notified in open court[.]” Although the juvenile court counselor must file the motion for review with the clerk, it is the clerk’s responsibility to send the notice to all parties. *Id.*

## **Can Probation Be Extended After the Initial Term Expires?**

Yes. A court may extend a juvenile’s probation term after the initial term has expired, if the juvenile court counselor filed the motion for review prior to the expiration of the term. [In re T.J.](#), 146 N.C. App. 605 (2001).

Although G.S. 7B-2510(c) provides that the extension should occur “prior to expiration of an order of probation,” subsection (d) of that statute allows the court to review a juvenile’s progress on probation “at any time during the period of probation or at the end of probation.” [G.S. 7B-2510\(d\)](#). The Court of Appeals held that this language reflects the legislature’s intent to give juvenile court judges the flexibility to modify or extend probation “within a reasonable time after its expiration.” *T.J.*, 146 N.C. App. at 607.

After HB 879, extension hearings may still occur after the initial probation term has expired, but the time period has been shortened. Under the amended statute, if the juvenile’s probation term has expired, the extension hearing must occur at “the next regularly scheduled court date” unless the hearing was delayed due to the juvenile’s failure to appear. Although not explicitly stated, the “next regularly scheduled court date” apparently refers to the next regularly scheduled session of juvenile court in the city or county where the order was entered, similar to expedited custody review hearings required under [G.S. 7B-1906\(a\)](#) when a secure custody order is issued by a court counselor. If the juvenile failed to appear for the hearing, the hearing may be scheduled in the court’s discretion.

## **Can the Probation Term Be Extended Multiple Times?**

Yes. Under G.S. 7B-2510(c), a juvenile may receive an initial period of probation of up to one year, with a possible extension of up to an additional one year. Thus, unless the juvenile receives a new disposition (based on a violation of probation or a new adjudication), the maximum possible probation term is two years.

Although the statute provides that the term may be extended for “an additional period of one year,” it does not limit how the court may use that additional one year period. Given the Juvenile Code’s emphasis on flexibility in juvenile dispositions, it is unlikely that the legislature intended to restrict the court to only one extension of probation in a particular case. The more reasonable interpretation is that as long as the extension does not exceed a period of one year, the juvenile’s probation can be extended multiple times (e.g., 3 months and then an additional 9 months).

## **Must the Court Enter Findings of Fact?**

An order extending a juvenile’s probation, like any other disposition order, must include “appropriate findings of fact and conclusions of law.” See [G.S. 7B-2512](#). However, the trial court is not required to enter a specific finding of fact that “extension is necessary to protect the community or to safeguard the welfare of the juvenile,” as long as the court makes sufficient findings to support the extension of probation. See, e.g., [In re D.L.H.](#), 198 N.C. App. 286 (2009) (the trial court made sufficient findings of fact to support the extension of the juvenile’s probation where the court found that the juvenile was repeatedly absent from school, ignores curfews, her mother wanted an out-of-home placement, she was disrespectful to a school resource officer and received 15 risk points on a Risk and Needs Assessment), *rev’d on other grounds*, 364 N.C. 214 (2010).

It is also unnecessary for the court to find that a juvenile has violated the conditions of his or her probation in order to extend the probation term since extension is governed by a separate provision of the statute.

If you have other questions about extensions of probation, please let me know. I’m keeping a running list!