

Children's Law Center
University of South Carolina School of Law

Creative Sentencing in Juvenile Court

Enhancing Probation as an Alternative to Commitment



UNIVERSITY OF
SOUTH CAROLINA
School of Law

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The Children's Law Center, University of South Carolina School of Law developed this guide to assist family court judges, attorneys, and court personnel who are constantly faced with the arduous task of ordering or recommending meaningful sentences for juveniles while working with limited community services and resources. This is not an exhaustive list, but is meant to encourage a creative approach to sentencing juveniles in family court.

The information presented in the Guide is intended for educational and informational purposes only. It is not intended to provide legal advice or legal opinion on any specific issue. Readers should not rely on this guide as a primary source of legal authority, but should consult official versions of South Carolina statutes, rules, and cases prior to making decisions or taking action in legal proceedings.

Citations to South Carolina statutes used throughout this guide are formatted as concisely as possible, and therefore, are not necessarily appropriate for formal citations in pleadings and papers filed with the family court. South Carolina statutes are cited as § __-__-__ (e.g., § 63-3-651 instead of S.C. Code Ann. § 63-3-651 (2010)).

For more detailed information about the juvenile justice system and representing juveniles, refer to the Quick Reference Guide to South Carolina's Juvenile Justice System found at <http://childlaw.sc.edu> under Juvenile Justice Publications.

I. PROBATIONARY OPTIONS

In certain cases involving minor, non-violent offenses, a short probationary sentence with the standard terms of probation (e.g., obey all laws, attend school with no unexcused absences, and obey the rules of the home) is sufficient. In most cases, however, the judge will likely determine that while probation is the appropriate sentence, additional terms are needed. These terms should address the individual needs of the child, reflect the nature and severity of the offense, and take into consideration the concerns of the victim and the community. The end result should be a sentence that reduces the likelihood of recidivism.

The following is a list of probationary options that can be used when appropriate:

Community Service

The two main goals of community service are: (1) to give back to the community or pay a debt owed to society, and (2) to enable the child to learn new skills while enhancing self-esteem. If a child is ordered to perform community service that he or she finds meaningful, it may lead to continued volunteer work even after the community service hours are completed or possibly a paid position.

Types of community service that might be appropriate include picking up trash along roadsides, cleaning up local parks, cleaning publicly owned vehicles, painting little league football bleachers, and helping at animal shelters. Other options include unskilled work for private nonprofit organizations, churches, cemeteries, Goodwill, Habitat for Humanity, Home Works of America, libraries, and schools.

Counseling

The child and family may be ordered to participate in individual, group, and family counseling through the child's school, the Department of Mental Health (DMH), the Department of Social Services (DSS), or the Department of Disabilities and Special Needs (DDSN); drug and alcohol counseling through the Department of Alcohol and Other Drug Abuse Services (DAODAS); or parenting classes for teen parents.

Random Drug and Alcohol Testing

If the juvenile is 16 and employed, the juvenile may be ordered to pay for his or her own testing.

Restitution

Restitution may involve the child paying the victim for any damages caused by the

child's behavior. If the child's parents pay the restitution, the child could be ordered to perform additional chores to reimburse the parents.

Letters of Apology

The child may be ordered to write a letter of apology to the victims and others affected by the child's negative behavior. If the offense is a "victimless crime," the child could be ordered to write an apology letter to the taxpayers who are paying for his or her involvement in the court system. The letter to the taxpayers would be an exercise to help the child realize the far reaching impact his or her behavior has on the community and should be provided to the probation officer.

Book Reports

The court may require the child to read a book and write a book report. Librarians at the child's school or the public library are good resources for book recommendations, and there are usually pamphlets available at the public library listing recommended books for specific age groups.

Another option is to order that the child's parent take the child to the local public library, get a library card for the child, and have the child read a book a week and report on each one.

Essays

The child may be ordered to write an essay on a topic that requires the child to think about the impact his or her behavior has had on others.

Potential topics

- Why what I did was wrong
- Why I am sorry for what I did
- Consequences of my negative behavior
- How I plan to stay out of the juvenile justice system in the future

- What will happen if I break the law again
- What I want to do with my life (with regards to education, job, family, home, etc.) and how my behavior needs to change in order to meet my goals
- My goals for the future
- How I would feel if I were the victim and why I am sorry for what I did
- What it takes to be a good parent or How to be a good parent (for pregnant teens or teen parents)
- What my freedom means to me

Participation in After-School Activities

- After-school tutoring program
- Sports
- School mentor program

Participation in Other Activities

- Neighborhood park activities, such as sports, camps, and tutoring programs
- Big Brothers, Big Sisters
- Church youth group
- Mentor program
- Alcoholics Anonymous (when appropriate)
- Narcotics Anonymous (when appropriate)
- Parenting classes for teen parents

Restrictions of Important Privileges

- Restrict or suspend the child's driver's license. The child may be restricted from driving anywhere except to and from school, church, etc.
- Prohibit watching television during the week and no television in the child's bedroom.
- Prohibit playing any electronic games during the week.
- Take away the child's cell phone or other electronic device.

Additional Restrictions

- Place child under a restraining order that prohibits the child from having any direct or indirect contact with the victims, including but not limited to social media interaction.
- Prohibit the child from going to certain locations.
- Prohibit the child from associating with negative peers such as co-defendants, other people known to have been adjudicated or convicted of crimes, or other individuals named by the court.
- Prohibit gang association - place in the order that the child is prohibited from associating

with any known gang members; going to any known gathering area of gangs; wearing gang colors, clothing, or emblems associated with gang membership; or attending court proceedings for which they were not a party, victim, or witness.

Additional Probationary Terms

- Place the child under a strict or stricter curfew or order that the child must be at home from 8:00 pm until 7:00 am.
- Order the child to spend at least two hours a day on homework and if finished with homework before the two hours lapse, read books for the duration.
- Order the child to tour DJJ or the local juvenile detention center.
- Have the child write a description of his or her heroes (or people the child admires) and why they are heroes.
- Order additional chores at home
- Require the child to seek or maintain employment.
- Order the child to read a copy of Kid's Law (posted on the Children's Law Center website) and write a report each week on one of the chapters.
- Order the child to write a list of everyone the child or someone in the child's family knows who has been injured or killed by guns or knives - or is on jail because of guns or knives.
- Require the child to write 500 times "I will not steal other people's property" or "I will not be a thief anymore."
- Order a dress code for the child during school hours, such as keeping his shirt tucked in at all times and no gang colors if there is any suspicion of gang involvement.

House Arrest

A judge may order that a child be placed on home detention or house arrest. There are a number of ways this can be done and several options for monitoring compliance by the child.

Optional House Arrest Terms

- The child is restricted from leaving his or her home under any circumstances.
- The child is allowed to leave home only to attend school and church services.
- The child is allowed to attend all school- and church-related activities approved by the parent/guardian or probation officer.

- The child is to be on house arrest unless accompanied by a responsible adult approved by the court.
- The child is allowed to go to work during the hours that have been approved by the court or probation officer.
- The child is under house arrest from a certain time in the afternoon/evening until a certain time in the morning.

Monitoring Options

- The parent/guardian may be placed under

an order to report any violations of house arrest.

- The child may be required to call in and report to his or her probation officer at certain times.
- The probation officer may make random calls to the home or home visits to check on the child's whereabouts.
- Electronic monitoring may be used to monitor the child's presence in the home 24 hours a day. There must be a phone in the home to use this option.

II. Offense-Specific Sanctions

Habitual Truancy

Order the child to:

- Attend school regularly.
- Cooperate with any intervention plan developed by the child's school.
- Cooperate with a psychoeducational evaluation or other testing to determine if the child has any learning disabilities or should be placed in special classes.
- Develop a written plan with the assistance of the probation officer of how he/she will attend school with no unexcused absences in the future.
- Participate in a mentoring program.
- Attend after-school tutoring program if needed.
- Attend individual counseling, especially if the child has been diagnosed with depression or some type of mental illness that is likely contributing to the child's truancy.
- Attend family counseling.
- Receive family assistance from the appropriate agency.
- If the child indicates that he or she is afraid to go to school because of threats or harassment by other students, this should not be taken lightly. The child should be ordered to report any bullying or threats made by other students towards the child, to the school resource officer, who should in turn report to the child's probation officer for further investigation and action.

Shoplifting

Order the child to:

- Write a letter of apology to the store owner.
- Participate in an educational shoplifting

program. The National Association for Shoplifting Prevention (NASP) has an education program for juveniles available in two formats: interactive online and home-study. Learn more at <http://www.shopliftingprevention.org/what-we-do/education-programs/education-program-for-juveniles/>.

- Refrain from using the types of items stolen. For example, if a child attempted to steal a Tommy Hilfiger shirt, include in the order that the child is not to wear any Tommy Hilfiger clothing for the duration of probation.
- Write an essay on the effects of shoplifting on the store owner and the public in general.
- Make restitution.
- Perform community service.
- Avoid the store location as well as other connected stores if it is a chain.

Disorderly Conduct or Simple Assault and Battery

Order the child to:

- Write a letter of apology to the victim(s).
- Write a paper on better ways to resolve conflict and deal with anger.
- Attend anger management counseling.
- Perform community service.

Smoking (this is a civil offense, not a crime)

Order the child to:

- Write an essay on the negative effects of smoking.
- Participate in a smoking cessation or education program.
- Tour the cancer ward of a local hospital.

Drug or Alcohol Related Offenses

Order the child to:

- Undergo an assessment for treatment needs.
- Submit to random drug and alcohol tests.
- Participate in drug and alcohol counseling.
- Participate in school or other education programs.
- Write a paper on the negative effects of drugs and alcohol abuse.
- Attend Alcoholics Anonymous (AA) or Narcotics Anonymous (NA) meetings.
- When the drug or alcohol abuse is serious, consider in-patient treatment.
- Make a list of all the people he or she has known who have suffered because of alcohol or drug use and how they have hurt others with their substance abuse.

Malicious Injury to Property

Order the child to:

- Write a letter of apology to victim(s).
- Fix or clean up the damaged property.
- Pay restitution.
- Perform community service such as cleaning up a local building, park, or roadside.
- If the offense involved graffiti, have the child guard the area he or she damaged and clean it if anyone else tries to deface it.

Bomb Threats

Order the child to:

- Write a letter of apology to the school officials.
- Write an essay on the impact of calling in a bomb threat on the students, danger to disabled students, etc.
- Perform community service such as picking up trash at the school.

Burglary or Trespassing

Order the child to:

- Work with a crew such as Habitat for Humanity building homes for the disadvantaged.
- Make repairs to the homes of neighbors in need.
- Volunteer with Home Works of America - a nonprofit organization that allows youths to give back to their community by repairing homes of homeowners in need - which has volunteer opportunities for youth across the state.
- Write an essay on how he/she would feel if someone broke into his home or room.

Possession of Weapon

Order the child to:

- Plan his own funeral by meeting with a local funeral director, writing his own obituary, and choosing the clothes he would be buried in. Also have the juvenile write a paper about what he would say to his family and friends if he were to die tomorrow.
- Read the newspaper every day for a month or longer, cut out stories about shootings or stabbings or acts of violence and put them in a scrap book and include as much information about the victims and the families of the victims as possible.
- Perform community service at a cemetery helping with upkeep.

Failure to Stop for a Blue Light

Order the child to build a relationship with school resource officer by reporting in with the officer twice a week.

III. Sentencing Options Authorized by Law

Examination, Treatment, and Assessment

Once the family court establishes jurisdiction over the child, the court is authorized by § 63-19-1410 to order:

- that the child be examined or treated by a physician, psychiatrist, or psychologist and, if needed, placed in a hospital or other suitable facility for the examination.
- care and treatment as it considers best and may designate a state agency as the lead agency to provide a family assessment to

the court.

- The assessment shall at least include the family's strengths and weaknesses, problems interfering with the family's functioning and the child's best interests, and recommendations for a comprehensive service plan to strengthen the family and resolve the problems
- Following the assessment, the court will conduct a hearing to adopt a plan to

meet the child's needs and best interests. The court will consider the following before including the comprehensive plan in its order:

- additional testing or evaluation that may be needed;
- economic services such as employment services, job training, food stamps, and aid to families with dependent children;
- counseling services such as marital counseling, parenting skills, and substance abuse counseling; and
- any other programs or services appropriate to the child's and family's needs.

If a child younger than 12 is adjudicated delinquent for an offense listed in § 23-3-430(C) (sex offender registry offenses) the court is authorized by § 63-19-1410(6) to require that the child be given appropriate psychiatric or psychological treatment to address the circumstances of the adjudicated offense.

Probation

As a condition of probation, the court is authorized by § 63-19-1410 to order the child to:

- participate in a community mentor program;
- pay monetary restitution;
- participate in supervised work or perform community service; and/or

- pay a fine of up to \$200 if the offense carries a fine in adult court.

Commitment

The court may "commit the child to the custody or to the guardianship of a public or private institution or agency authorized to care for children or to place them in family homes or under the guardianship of a suitable person." § 63-19-1410(A)(5).

Driver's License

The court is authorized by § 63-19-1420 to suspend or restrict the child's driver's license until the child's:

- 17th birthday, if the child is adjudicated delinquent for a status offense or is found in violation of a court order relating to a status offense.
- 18th birthday, if the child is adjudicated delinquent for violation of a criminal offense or is found in violation of a court order relating to a criminal offense or is found in violation of a condition of probation.

If the court restricts the child's driver's license, the court may restrict the child's driving privileges to driving only to and from school or to and from work or as the court considers appropriate.

