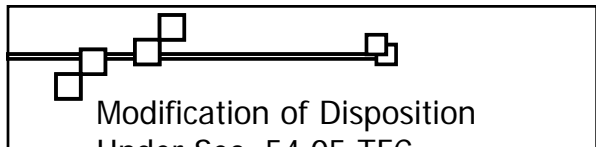


Enforcing and Proving Violations of Conditions of Probation

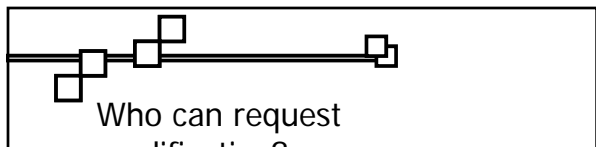
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When Modification of Disposition is Necessary



Modification of Disposition Under Sec. 54.05 TFC

- Any change in disposition which can include:
 - Amending conditions of probation
 - Extending probation
 - Change of custody
 - Change of placement
 - Revocation including TYC commitment



Who can request modification?

- Child and his parent or guardian
- Child's attorney
- The State
- A probation officer
- The court

Petition & notice requirements

- Reasonable notice required to all parties
- Safest procedure is to have hearing at least 10 days after petition served.
- Safest procedure is it have notice served the same as if for adjudication
- Personal service on juvenile
- Must be filed before probation term ends

What must petition say?

- Guidelines similar to adjudication petitions
- Name, age, residence of child
- Name, residence of parent – types
- Facts of adjudication/disposition
- Conditions of probation believed violated
- Specifics of the believed violations
- Request for desired relief

Court can reconsider and amend without written motion

- TFC 54.05(d) allows court to modify
- TRCP 329b(d) allows court to reconsider & modify within 30 days
- No written petition required from court
- Oral notice from court sufficient
- Court can reconsider and modify conditions of probation originally imposed, including placement in a local facility
- Modification not based on violation

Appointment of attorney

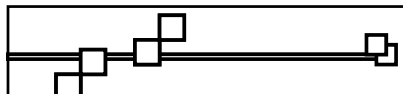
- TFC 51.10(e) requires counsel for child if petition to modify seeks TYC or secure placement
- If found indigent, attorney must be appointed w/in 5 working days after petition is filed

Proving a Probation Violation

- No right to a jury
- Proof is by Preponderance of of the Evidence. TFC 54.05(f) and (j)
- Violation must be of a "reasonable and lawful order of the court"
- Prove child given notice of the terms and conditions of probation TFC 54.04(f)


Proving a Probation Violation (continued):

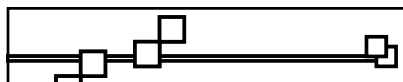
- Modification/Revocation may be based on child's plea of True to the allegations in the motion
- Unless seeking revocation and TYC or modification and secure placement – hearing may be waived by child, parent or attorney TFC 54.05(h)



Problems in Filing Probation Violations


- Prosecutor's ethical dilemma when we don't have proper proof (ie: the drug test that doesn't meet evidentiary requirements)
- Pleading Problems - Filing probation violations without having the proper specificity of information (ie: he's missed 10 days of school, but you don't have exact dates; or all you have is "the ticket" for the class C offense, but no "facts")

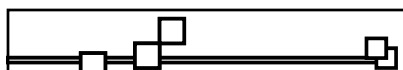




TOP TEN PROBATION VIOLATIONS


THESE ARE THE MOST COMMONLY FILED VOP'S

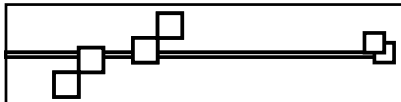




(1) Failure to Attend School


- TFC 54.043 - JPO shall monitor school attendance
- State law requires school attendance – Education Code Sec. 25.085
- To file – need specific dates of missed school
- Attend all periods of instruction/all classes – everyday
- Attendance requirements in TFC 51.03(b)(2) and Ed. Code 25.094 – 10 or more days or parts of days in 6 mos or 3 or more days or parts of days in 4 wks.
- To prove – school business records or live testimony from someone from the school

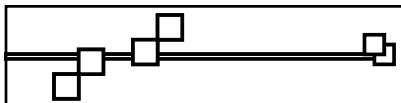




(2) Violations of the Law


- Can include State law and local ordinances
- Includes Class C offenses
- To file – need specific facts of offense – just the “ticket” doesn’t give enough info
- To prove – need proof of facts of offense alleged

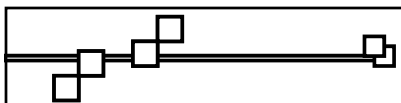




(3) Failure to Report to JPO


- Also report to JPO any change of address, school, or employment
- Probation officers tell me this is most troubling to them – they are required to work with the child – but when he’s not reporting they don’t know where he is or what he’s doing
- JPO’s can’t supervise as required by court if there is no contact
- To file and to prove – need exact dates and specific info from the probation officer





(4) Leaving Court Placement

- May require runaway report
- May require sworn affidavit from parent–types
- Failing to return to placement from home visit – held to be a violation
- Being discharged “unsuccessfully” from program – held to be a violation



(5) Failure to Attend Court-Ordered Services

- Many types of services such as:
 - Counseling – sex offender, anger mgmt, individual and family
 - Perform Community service
 - Attend workshops – peer pressure, weapons, anti-theft, gang
 - Attend educational assessments, attend tutoring
 - To file and to prove in court – need specific information from the program regarding dates and lack of attendance and testimony from someone in the program regarding failure to attend. Business records might be used here.

(6) Curfew violations

- Usually need affidavit and testimony from parent-types
- JPO can make visits where child is not in court placement after curfew time and be the affiant and testify
- Police apprehend them out after local curfew hour and give them a ticket

(7) Failed Drug Test

- Prosecutor needs to know drug test is sufficient for court
- Need testimony from someone competent in drug testing
- Business records regarding drug test
- Juvenile “admits” drug use – perhaps “admission” could be used against him

(8) Special Type Rules


- Don't operate a motor vehicle
- Don't go to Walmart
- Letter of apology
- Remain in treatment with Dr. and take all prescribed medications
- Rules of no-contact – with co defendants, complainant, witnesses, gang members
- Ability to file VOP and prevail varies with facts

(9) Obey rules of court placement

- Might depend on the placement
- Violating the rules of placement – can be a violation – need to plead rules violated & prove he knew the rules & violated them
- Difficult to prove “violation” of rules in a “home” placement because no written rules – just mom's say-so
- To file and prove – need information and testimony from person at the placement. Business records for written rules.


(10) Fail to pay

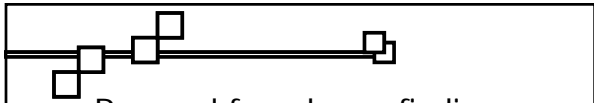
- Includes restitution, court costs and supervisory fees
- Revocation only if ordered to pay- had ability to pay and deliberately refused to do so – but who has the burden of proof?
- Affirmative defense – didn't have ability to pay
- TRY TO LOOK AT INABILITY TO PAY – BEFORE YOU FILE
- Probation officers tell me this one is really hard



Juvenile court's choices


- Court can EXTEND rather than REVOKE probation
- Court can choose not to revoke despite proof of violation
- Can hear a VOP *filed before* probation ended, but *after it had expired* , if the hearing is within a "reasonable time"
See 687S.W.2d774(1985) & 106S.W.3rd334(2003)
- Lacks jurisdiction to hear VOP not timely filed
- See TFC 51.0412 giving court jurisdiction of over-18's when timely filed and state can show due diligence.

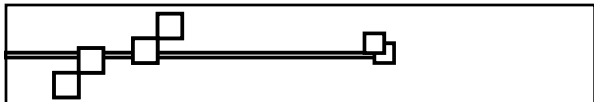




Removal from home findings not required in a modification


- In a disposition, 3 findings required to remove a child from home
 - Best interest
 - Reasonable efforts made to prevent removal
 - Home cannot provide care needed for prob.
- Findings not required in modification, See 136S.W.3rd629(Tex.2004) for Texas Supreme court ruling on issue.





Some Final Tips

- Know your local policy and procedure
 - Memo to the judge
 - Review by judge
 - Juvenile board guidelines
- Be sure you have specific info and documentation
- Be sure you have specific proof



Troubling dilemmas

- The kid is about to age-out of the system
- School problems
- The GED situation
- Restitution when the family can't pay
- Positive drug tests – VOP or refer to drug treatment ?

The BIGGEST PROBLEM

- The problem is not the kid – it's the PARENT
- Lack of parental support
- Parents who "enable" their child
- Parents aren't truthful
- Dysfunction in the family
- Parents have no control
- Won't participate in services
- Lack of effective sanctions on the parents
