

## Extending Probation After Expiration

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If a judge extends a defendant's probation after probation has already expired, when does the extension begin?

Under [G.S. 15A-1344\(f\)](#), a trial court may act on a probation violation even after the defendant's probation has expired, so long as the probation officer filed the probation violation report before expiration. Before 2008, a judge's only options at a violation hearing held after expiration were to revoke probation or to let the case end without sanction. For probation violation hearings held on or after December 1, 2008, the law was amended to expand the judge's authority in after-expiration hearings, allowing him or her to *extend*, *modify*, or *revoke*. [S.L. 2008-129](#).

The authority to extend probation after it has already expired is a little strange. It allows the court to breathe new life into a previously expired case, returning a defendant to supervision when supervision has already ended once. (A probationer is not *on probation* during the pendency of a hearing held pursuant to G.S. 15A-1344(f). That subsection gives the court continued jurisdiction to hold a hearing on the case, but it does not give the probation officer continued authority to supervise.) Sometimes the delay between expiration and a violation hearing can be pretty long, making it all the more strange when an offender is returned to supervision.

To return to the question I asked at the outset, if a judge extends a person's probation after that probation has expired, when does the extension kick in? Does the remaining extended period run from the date of the modification order extending the probation? Or does the extension somehow relate back to the original date of expiration—on the theory that an “extension” implies some sort of continuous term.

It seems to me that time probably begins running on the extension as of the day it is entered. For example, if, at a violation hearing held 6 months after expiration, the judge enters a modification order stating that “The defendant's term of probation is extended for a period of 24 months,” then I think the defendant would be on probation for 24 more months—not 18 months, which is what it would be if the extension order were given retroactive effect back to the date of first expiration.

Note that extension after expiration is permissible only if the defendant had not already been on probation for 60 months. G.S. 15A-1344(f)(4) (“If the court opts to extend the period of probation, the court may extend the period of probation up to the maximum allowed under [G.S. 15A-1342\(a\)](#) [five years].” That makes sense when you consider that the only authority to extend a period of probation beyond 60 months is through a “special purpose” extension under G.S. 15A-1342 or [-1343.2](#) (background [here](#), and whiteboard video [here](#)), and that type of extension may be entered only in the last six months of a defendant's probation. If probation has already *expired*, it is clearly too late to enter a special purpose extension.

If, however, the defendant had only been on probation for, say, 24 months when probation initially expired, I think the court could enter an “ordinary” extension of up to 36 months. And barring any specific explanatory language from the judge, it seems like the clock would start running on the extended term from the date the modification order is entered. If you have run into the issue, I would be interested to hear how it played out in practice.