

## Some FAQ about Place of Confinement

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The chart available [here](#) summarizes the rules for the proper place of confinement for felonies, misdemeanors, and impaired driving. But additional questions come up from time to time that don't fit neatly in a chart. Today's post attempts to answer some of them.

**If a person is being sentenced for both felonies and misdemeanors, can the judge order the misdemeanor sentences to be served in prison?** No. No statute allows the judge to depart from the otherwise applicable place-of-confinement rule for a sentence based on the other sentences to which the defendant is subject. Each judgement should stand on its own, with the felonies committed to DAC and the misdemeanors and DWI sentences committed to the local jail or the Statewide Misdemeanor Confinement Program (SMCP) as required by law.

**Does that mean a concurrent misdemeanor sentence won't actually begin until the felony sentences are complete?** No. Just because the place of confinement identified for the misdemeanor is the local jail or the SMCP does not mean that time cannot run off the misdemeanor sentences while the defendant is in prison. If the sentences are set to run concurrently, time will tick off them while the defendant is in prison just as it would if he or she were in the jail. That is true not just as a matter of common sense, but also by statute: under [G.S. 15-6.2](#), a person serving concurrent sentences shall not be required to serve any additional time solely because the sentences are required to be served in different places of confinement.

Many times the misdemeanor sentence will expire before the felony sentence is complete, and so the place of confinement identified in the misdemeanor judgment will never be an issue as a practical matter. If, however, the concurrent misdemeanor sentence is actually longer than the felony (a long DWI sentence, let's say), the defendant should, when the felony is complete, be released to the local jail or the SMCP to serve whatever time *remains* on the misdemeanor. The defendant does not start from scratch on the misdemeanor.

If the misdemeanor sentence is set to run consecutively, then the defendant will be moved from prison to jail when the felony sentence is due for release.

**Can a judge allow a person sentenced in North Carolina to serve the sentence in another jurisdiction?** Yes, if the North Carolina sentence is allowed to run concurrently with the sentence in the other jurisdiction. Under [G.S. 15-6.3](#), a judge may, upon sentencing, "specifically impose a sentence to be concurrently served and direct that such person receive credit against the sentence imposed for all time subsequently served in the jurisdiction possessing physical custody of such person." If the North Carolina sentence is consecutive to the sentence in the other jurisdiction, the defendant would need to seek a transfer under the Interstate Corrections Compact (described [here](#)) in order to serve the North Carolina time elsewhere.

A word of caution if the other sentence is a federal sentence. Some state sentences ordered to run concurrently with federal time will wind up running consecutively as a practical matter—occasionally against everyone's intentions. That issue is sufficiently complicated that it merits its own future blog post.

**Should a judge take consecutive misdemeanor sentences into account when determining whether a sentence**

**meets the 91-day threshold for the Statewide Misdemeanor Confinement Program?** The governing statute ([G.S. 15A-1352\(a\)](#)) doesn't say. It's worded in the singular ("a person sentenced to imprisonment for *a misdemeanor* . . ."), and doesn't mention the possibility of consecutive sentences. But the general intention of the law appears to be that longer periods of confinement for misdemeanors will be in the SMCP. In the absence of any clear direction from the General Statutes, this appears to be a determination within the discretion of the trial judge. The sheriffs would, of course, generally prefer that the court consider the cumulative sentence when determining the proper place of confinement for each judgment. The county receives \$40 per day plus out-of-jail medical expenses for sentences served in the Statewide Misdemeanant Confinement Program, but no reimbursement for shorter sentences served in the local jail.