

When Probation Begins

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When a defendant is convicted of more than one crime, there are decisions to be made about how the sentences for those convictions will fit together. Generally speaking, they may be consolidated for judgment, allowed to run concurrently, or set to run consecutively. If at least one of those judgments suspends a sentence and places the defendant on probation, the judge has an additional decision to make regarding when probation begins.

By default, a probation period begins on the day it is imposed and runs concurrently with any other period of probation, parole, or imprisonment to which the defendant is subject. [G.S. 15A-1346\(a\)](#).

If all of the defendant's sentences are probationary, the probation periods must run concurrently with one another. In other words, probation periods cannot be stacked. It would be improper, for example, to "boxcar" two 5-year probation periods so that the defendant faced 10 years of supervision. *State v. Canady*, 153 N.C. App. 455 (2002).

If a defendant being placed on probation is also being sentenced to an active sentence, or if he or she is already subject to an undischarged term of incarceration, the court may run the period of probation either concurrently with or consecutively to the term of imprisonment. G.S. 15A-1346(b). Probation officers refer to such an arrangement as a "contingent" case (that is, the exact date on which it begins for them is contingent on the defendant's release from jail or prison). A contingent sentence does not arise by default; unless otherwise specified a probation period starts immediately and runs concurrently with defendant's term of imprisonment. *Id.*

To impose a contingent sentence, the court should check box 3 in the Suspension of Sentence block on the suspended sentence judgment form ([AOC-CR-603](#) for a felony, or [AOC-CR-604](#) for a misdemeanor), and enter the necessary details about the term of imprisonment the probation will follow.

SUSPENSION OF SENTENCE				
Subject to the conditions set out below, the execution of this sentence is suspended and the defendant is placed on <input type="checkbox"/> supervised <input type="checkbox"/> unsupervised probation for _____ months.				
<input type="checkbox"/> 1. The Court finds that a <input type="checkbox"/> longer <input type="checkbox"/> shorter period of probation is necessary than that which is specified in G.S. 15A-1343.2(d).				
<input type="checkbox"/> 2. The Court finds that it is NOT appropriate to delegate to the Section of Community Corrections the authority to impose any of the requirements in G.S. 15A-1343.2(e) for community punishment or G.S. 15A-1343.2(f) for intermediate punishment.				
<input type="checkbox"/> 3. This period of probation shall begin <input type="checkbox"/> when the defendant is released from incarceration <input type="checkbox"/> at the expiration of the sentence in the case below.				
File No.	Offense	County	Court	Date
<input type="checkbox"/> 4. The defendant shall comply with the conditions set forth in file number _____.				
<input type="checkbox"/> 5. The defendant shall provide a DNA sample pursuant to G.S. 15A-266.4. (AOC-CR-319 required)				

The judge should also indicate whether the probation period will begin immediately upon the defendant's release from incarceration or "at the expiration of the sentence," which I take to mean at the conclusion of any period of post-release supervision that might follow the term of incarceration. For reasons I discussed in [a prior post](#), I think the first option is generally the correct one.

Note that the *other* consecutive/concurrent check-box on the suspended sentence judgment form—the one indicating whether a suspended term of imprisonment will run at the expiration of another sentence in the event of revocation—has

no bearing on when the probation period itself begins.

Let me wrap up with a quick example to show what can happen when box 3 is left unchecked. Suppose a defendant is convicted of several crimes and receives an active sentence in all but one of them. The judge imposes a 60-month term of probation in the last sentence, intending to give the defendant ample time to pay a lot of restitution. If the judge does not check box 3, the probation period begins immediately by default, running concurrently with the active sentences. I have seen many restitution awards disappear because the probationary sentence to which they were attached expired before the defendant ever reported to a probation officer.