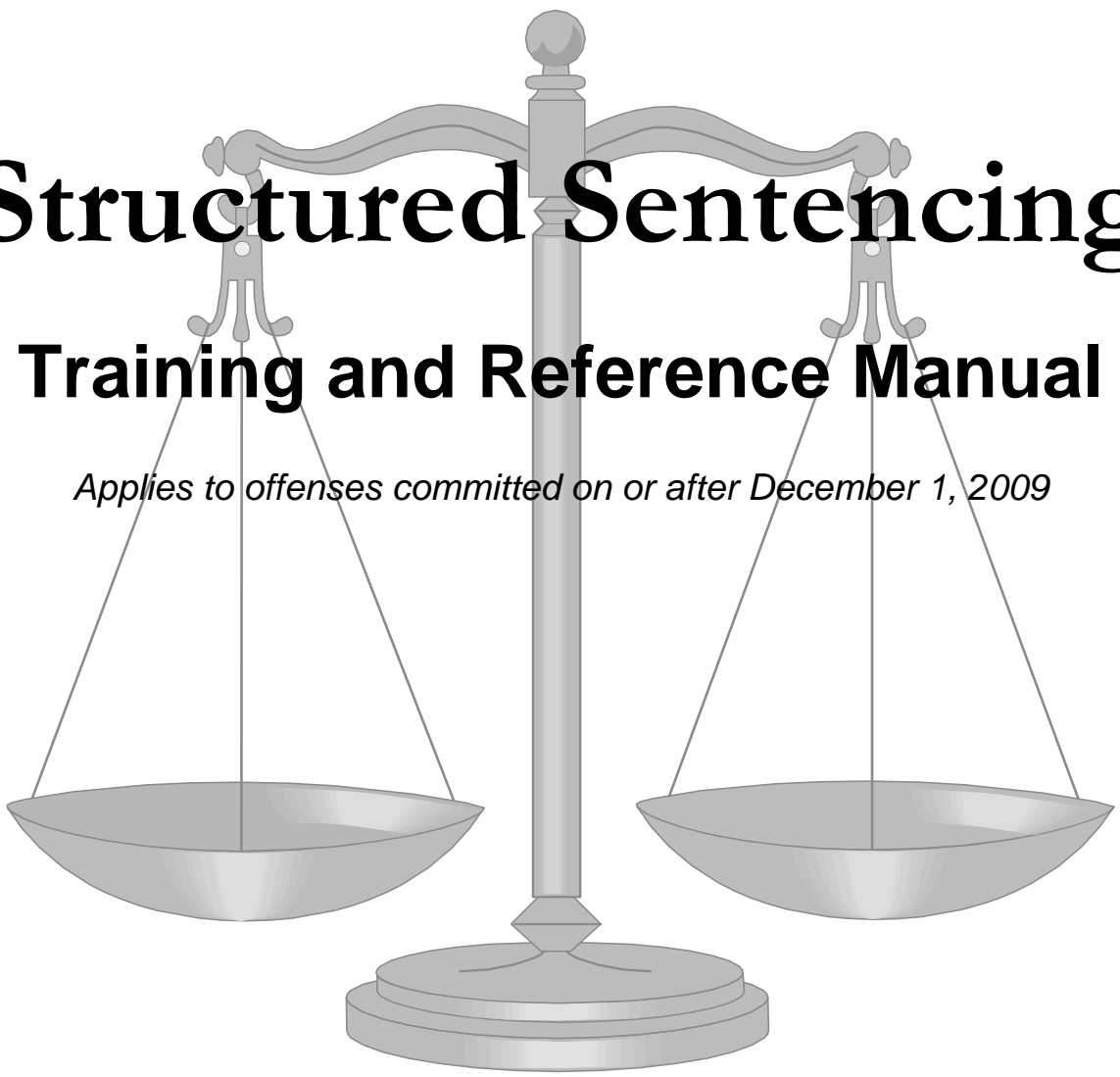


North Carolina
Sentencing and Policy Advisory Commission



Structured Sentencing

Training and Reference Manual

Applies to offenses committed on or after December 1, 2009

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Structured Sentencing Training and Reference Manual

The State's structured sentencing laws went into effect on October 1, 1994, and apply to all felony offenses and all misdemeanor offenses (except for "driving while impaired," "driving while impaired in a commercial vehicle," and "failure to comply with control conditions by persons with communicable diseases") committed on or after that date. This manual replaces the previous training and reference manual. This manual includes changes that are in effect on December 1, 2009, and apply to all felony and misdemeanor offenses committed on or after that date. The laws are codified in Article 81B of Chapter 15A of the North Carolina General Statutes.

The manual is divided into three parts, describing the substance and application of the sentencing laws for felonies and misdemeanors.

- **Part I** describes structured sentencing laws for felonies;
- **Part II** describes structured sentencing laws for misdemeanors; and
- **Part III** describes additional probation provisions.

The manual also contains three punishment charts:

- **Felony Punishment Chart** for offenses committed on or after December 1, 1995, but before December 1, 2009.
- **Felony Punishment Chart** for offenses committed on or after December 1, 2009.
- **Misdemeanor Punishment Chart** for Offenses committed on or after December 1, 1995.

Supplemental materials are available on the North Carolina Sentencing and Policy Advisory Commission website <http://www.nccourts.org/Courts/CRS/Councils/spac/>. These materials include example exercises with answers and commentary, felony and misdemeanor offense classifications under structured sentencing, and a survey of structured sentencing case law.

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Introduction

In 1990, the General Assembly created the North Carolina Sentencing and Policy Advisory Commission. The membership represented a broad spectrum of the criminal justice system including judges, prosecutors, defense attorneys, law enforcement officers and victims, as well as members of the legislature, executive branch agencies, and citizens. The General Assembly charged the Commission with, among other things, recommending structures for use by a sentencing court in determining the most appropriate sentence to be imposed in a criminal case.

Before developing any structures, the Sentencing Commission developed a set of principles to guide its decisions. Structured Sentencing is based on the following principles:

- **Sentencing policies should be truthful:** The time actually served in prison or jail should bear a close and consistent relationship to the sentence imposed by the judge. Early parole release is abolished.
- **Sentencing policies should be consistent:** Offenders convicted of similar offenses, who have similar prior records, should generally receive similar sentences.
- **Sentencing policies should be rational:** The sentence should be proportional to the severity of the crime as measured by the harm to the victim and to the offender's prior record.
- **Sentencing policies should set resource priorities:** The use of prisons and jails should be prioritized first for violent and repeat offenders and community-based programs should be first utilized for nonviolent offenders with little or no prior record.
- **Sentencing policies should be balanced with correctional resources:** Sentencing policies should be supported by adequate prison, jail and community-based resources.

The Sentencing Commission spent three years developing its actual recommendations. First, it developed a system for classifying criminal offenses based on the type and degree of harm that resulted from them. Next it developed a system for classifying offenders by their prior criminal history. These two pieces of information formed the axes for the sentencing structure. The structure indicates the range of sentence lengths and the types of sentences that are authorized for that offense and that offender. Generally, the judge is not allowed to depart from the sentencing options authorized by the structure. However, the judge does have discretion within those options to tailor the actual sentence to fit the facts of the case. The judge has a range of sentence lengths to choose from in every case and, for offenders who commit less serious offenses and have little or no prior record, the judge has the choice of whether to impose probation with conditions or send the offender to prison. This structure provides a rational basis for the sentence, allows the State to predict resource needs of the criminal justice system, and provides integrity to the system as a whole.

In 1993, the General Assembly reviewed, amended and adopted the Commission's recommendations. The primary piece of legislation was called the Structured Sentencing Act and applies to all felony and misdemeanor offenses (except for "driving while impaired," "driving

while impaired in a commercial vehicle,” and “failure to comply with control conditions by persons with communicable diseases”) committed on or after October 1, 1994. A companion piece to Structured Sentencing was the State-County Criminal Justice Partnership Act, which provides the community correction strategy necessary for the implementation of the new sentencing laws.

In 1995, the General Assembly modified some of the sentencing laws. It increased the minimum sentence lengths for some violent offenses (Class B2, C, and D felonies) and it authorized an active sentence for some low level property offenses (Class H, Prior Record Levels I and II). The General Assembly also added a new misdemeanor offense class (Class A1) in order to increase the punishments for certain assaultive misdemeanors. These changes took effect December 1, 1995, and applied to offenses committed on or after that date.

In 2009, the General Assembly again modified some of the sentencing laws. It changed the minimum sentence lengths for Class B1 through G felonies so that the increase between prior record levels was consistent and it changed the prior record level point ranges to shift certain offenders to a higher or lower prior record level. These changes took effect December 1, 2009, and applied to offenses committed on or after that date.

Structured Sentencing laws are based on articulated principles and they provide a structured approach to sentencing changes and adjustments as well as a rational way to prioritize and manage correctional resources. This Manual presents a detailed explanation of Structured Sentencing and its stepwise application in arriving at felony and misdemeanor sentences.

Part I. Structured Sentencing for Felonies

The State's structured sentencing laws went into effect on October 1, 1994, and apply to all felony offenses committed on or after that date. This manual replaces the previous manual and includes changes that are in effect on December 1, 2009, and apply to all felony offenses committed on or after that date. The laws are codified in Article 81B of Chapter 15A of the North Carolina General Statutes. For reference purposes, the felony punishment chart that applies to offenses committed on or after December 1, 1995, but before December 1, 2009, is included at the end of Part I.

This part describes the substance and application of the sentencing laws for felonies.

Figure A

***** Effective for Offenses Committed on or after 12/1/09 *****

**FELONY PUNISHMENT CHART
PRIOR RECORD LEVEL**

		I 0-1 Pt	II 2-5 Pts	III 6-9 Pts	IV 10-13 Pts	V 14-17 Pts	VI 18+ Pts		
OFFENSE CLASS	A	Death or Life Without Parole							
	B1	A	A	A	A	A	A	A	DISPOSITION
		240 - 300	276 - 345	317 - 397	365 - 456	Life Without Parole	Life Without Parole		<i>Aggravated Range</i>
		192 - 240	221 - 276	254 - 317	292 - 365	336 - 420	386 - 483		PRESUMPTIVE RANGE
	144 - 192	166 - 221	190 - 254	219 - 292	252 - 336	290 - 386		<i>Mitigated Range</i>	
	B2	A	A	A	A	A	A		
		157 - 196	180 - 225	207 - 258	238 - 297	273 - 342	314 - 393		
		125 - 157	144 - 180	165 - 207	190 - 238	219 - 273	251 - 314		
	94 - 125	108 - 144	124 - 165	143 - 190	164 - 219	189 - 251			
	C	A	A	A	A	A	A		
73 - 92		83 - 104	96 - 120	110 - 138	127 - 159	146 - 182			
58 - 73		67 - 83	77 - 96	88 - 110	101 - 127	117 - 146			
44 - 58	50 - 67	58 - 77	66 - 88	76 - 101	87 - 117				
D	A	A	A	A	A	A			
	64 - 80	73 - 92	84 - 105	97 - 121	111 - 139	128 - 160			
	51 - 64	59 - 73	67 - 84	78 - 97	89 - 111	103 - 128			
38 - 51	44 - 59	51 - 67	58 - 78	67 - 89	77 - 103				
E	I/A	I/A	A	A	A	A			
	25 - 31	29 - 36	33 - 41	38 - 48	44 - 55	50 - 63			
	20 - 25	23 - 29	26 - 33	30 - 38	35 - 44	40 - 50			
15 - 20	17 - 23	20 - 26	23 - 30	26 - 35	30 - 40				
F	I/A	I/A	I/A	A	A	A			
	16 - 20	19 - 23	21 - 27	25 - 31	28 - 36	33 - 41			
	13 - 16	15 - 19	17 - 21	20 - 25	23 - 28	26 - 33			
10 - 13	11 - 15	13 - 17	15 - 20	17 - 23	20 - 26				
G	I/A	I/A	I/A	I/A	A	A			
	13 - 16	14 - 18	17 - 21	19 - 24	22 - 27	25 - 31			
	10 - 13	12 - 14	13 - 17	15 - 19	17 - 22	20 - 25			
8 - 10	9 - 12	10 - 13	11 - 15	13 - 17	15 - 20				
H	C/I/A	I/A	I/A	I/A	I/A	A			
	6 - 8	8 - 10	10 - 12	11 - 14	15 - 19	20 - 25			
	5 - 6	6 - 8	8 - 10	9 - 11	12 - 15	16 - 20			
4 - 5	4 - 6	6 - 8	7 - 9	9 - 12	12 - 16				
I	C	C/I	I	I/A	I/A	I/A			
	6 - 8	6 - 8	6 - 8	8 - 10	9 - 11	10 - 12			
	4 - 6	4 - 6	5 - 6	6 - 8	7 - 9	8 - 10			
3 - 4	3 - 4	4 - 5	4 - 6	5 - 7	6 - 8				

A – Active Punishment I – Intermediate Punishment C – Community Punishment
Numbers shown are in months and represent the range of minimum sentences

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Figure B
MINIMUM AND MAXIMUM SENTENCES

The corresponding maximum sentence for each minimum sentence is shown in the tables below. In each column, the number to the left of the dash represents the minimum sentence (in months) and the number to the right of the dash represents the corresponding maximum sentence (in months). To calculate a maximum sentence when the minimum sentence is 340 months or more see G.S. 15A-1340.17(e1).

FOR OFFENSE CLASSES BI THROUGH E

15-27	56-77	97-126	138-175	179-224	220-273	261-323	302-372
16-29	57-78	98-127	139-176	180-225	221-275	262-324	303-373
17-30	58-79	99-128	140-177	181-227	222-276	263-325	304-374
18-31	59-80	100-129	141-179	182-228	223-277	264-326	305-375
19-32	60-81	101-131	142-180	183-229	224-278	265-327	306-377
20-33	61-83	102-132	143-181	184-230	225-279	266-329	307-378
21-35	62-84	103-133	144-182	185-231	226-281	267-330	308-379
22-36	63-85	104-134	145-183	186-233	227-282	268-331	309-380
23-37	64-86	105-135	146-185	187-234	228-283	269-332	310-381
24-38	65-87	106-137	147-186	188-235	229-284	270-333	311-383
25-39	66-89	107-138	148-187	189-236	230-285	271-335	312-384
26-41	67-90	108-139	149-188	190-237	231-287	272-336	313-385
27-42	68-91	109-140	150-189	191-239	232-288	273-337	314-386
28-43	69-92	110-141	151-191	192-240	233-289	274-338	315-387
29-44	70-93	111-143	152-192	193-241	234-290	275-339	316-389
30-45	71-95	112-144	153-193	194-242	235-291	276-341	317-390
31-47	72-96	113-145	154-194	195-243	236-293	277-342	318-391
32-48	73-97	114-146	155-195	196-245	237-294	278-343	319-392
33-49	74-98	115-147	156-197	197-246	238-295	279-344	320-393
34-50	75-99	116-149	157-198	198-247	239-296	280-345	321-395
35-51	76-101	117-150	158-199	199-248	240-297	281-347	322-396
36-53	77-102	118-151	159-200	200-249	241-299	282-348	323-397
37-54	78-103	119-152	160-201	201-251	242-300	283-349	324-398
38-55	79-104	120-153	161-203	202-252	243-301	284-350	325-399
39-56	80-105	121-155	162-204	203-253	244-302	285-351	326-401
40-57	81-107	122-156	163-205	204-254	245-303	286-353	327-402
41-59	82-108	123-157	164-206	205-255	246-305	287-354	328-403
42-60	83-109	124-158	165-207	206-257	247-306	288-355	329-404
43-61	84-110	125-159	166-209	207-258	248-307	289-356	330-405
44-62	85-111	126-161	167-210	208-259	249-308	290-357	331-407
45-63	86-113	127-162	168-211	209-260	250-309	291-359	332-408
46-65	87-114	128-163	169-212	210-261	251-311	292-360	333-409
47-66	88-115	129-164	170-213	211-263	252-312	293-361	334-410
48-67	89-116	130-165	171-215	212-264	253-313	294-362	335-411
49-68	90-117	131-167	172-216	213-265	254-314	295-363	336-413
50-69	91-119	132-168	173-217	214-266	255-315	296-365	337-414
51-71	92-120	133-169	174-218	215-267	256-317	297-366	338-415
52-72	93-121	134-170	175-219	216-269	257-318	298-367	339-416
53-73	94-122	135-171	176-221	217-270	258-319	299-368	
54-74	95-123	136-173	177-222	218-271	259-320	300-369	
55-75	96-125	137-174	178-223	219-272	260-371	301-371	

FOR OFFENSE CLASSES F THROUGH I

3-4	9-11	15-18	21-26	27-33	33-40	39-47	45-54
4-5	10-12	16-20	22-27	28-34	34-41	40-48	46-56
5-6	11-14	17-21	23-28	29-35	35-42	41-50	47-57
6-8	12-15	18-22	24-29	30-36	36-44	42-51	48-58
7-9	13-16	19-23	25-30	31-38	37-45	43-52	49-59
8-10	14-17	20-24	26-32	32-39	38-46	44-53	

Section I. Imposing Sentences for Felonies

The sentencing laws use a Felony Punishment Chart which classifies offenders based on the seriousness of their crimes and on the extent and gravity of their prior records (see **Figure A**). Based on this classification, the chart prescribes the types of sentences which may be imposed (active, intermediate or community punishments) and the ranges of minimum sentence lengths which may be selected. Following is a detailed description of the steps required to impose felony sentences under the structured sentencing laws.

1. Determine the offense class for each felony conviction.
2. Determine the prior record level for the offense.
3. Consider aggravating and mitigating factors.
4. Select a minimum sentence from the appropriate minimum sentence range.
5. Determine the maximum sentence.
6. Determine the sentence disposition.
 - a. Impose an active punishment.
 - 1) *Activate the minimum and maximum sentence.*
 - b. Impose an intermediate punishment.
 - 1) *Suspend the minimum and maximum sentence.*
 - 2) *Impose supervised probation.*
 - 3) *Impose one or more intermediate punishments.*
 - 4) *Impose any appropriate community punishments.*
 - c. Impose a community punishment.
 - 1) *Suspend the minimum and maximum sentence.*
 - 2) *Impose probation and/or any other appropriate community punishment.*

Step 1. Determine the Offense Class for Each Felony Conviction

The appropriate offense class must be determined for each felony conviction.

Felony Offense Classes

Offense classes appear in the far left column of the Felony Punishment Chart (**Figure A**). Offenses are assigned to one of ten offense classes by statute: Class A, B1, B2, C, D, E, F, G, H or I. If the offense is a felony for which there is no classification in statute, it is a Class I felony. A sample of felony offenses classified under structured sentencing is shown in **Table 1**.

Case Law

- If the defendant's sentence depends upon the date that the offense occurred (and thus which sentencing law governs), the State bears the burden of proving the date of offense by substantial evidence if it seeks to apply the more severe provision.¹
- If the State elects to charge the defendant with a single offense based upon a series of actions that began before but concluded after October 1, 1994 (the effective date of the Structured Sentencing Act), the defendant is sentenced under Structured Sentencing.²

Conspiracy to Commit a Felony *G.S. 14-2.4*

General Rule

Unless a different classification is expressly stated in statute, a conspiracy to commit a felony is punishable under the next lower classification of the offense which the offender conspired to commit.

Exceptions

- Conspiracy to commit a Class A or Class B1 felony is a Class B2 felony.
- Conspiracy to commit a Class B2 felony is a Class C felony.
- Conspiracy to commit a Class I felony is a Class 1 misdemeanor.

Example: Common law robbery is a Class G felony. However, conspiracy to commit common law robbery is a Class H felony.

Attempt to Commit a Felony *G.S. 14-2.5*

General Rule

Unless a different classification is expressly stated in statute, an attempt to commit a felony is punishable under the next lower classification of the offense which the offender attempted to commit.

¹ *State v. Poston*, 162 N.C. App. 642, 591 S.E. 2d 898 (2004).

² *State v. Mullaney*, 129 N.C. App. 506, 500 S.E. 2d 112 (1998).

Exceptions

- Attempt to commit a Class A or Class B1 felony is a Class B2 felony.
- Attempt to commit a Class B2 felony is a Class C felony.
- Attempt to commit a Class I felony is a Class 1 misdemeanor.

Example: First-degree burglary is a Class D felony. However, an attempt to commit first-degree burglary is a Class E felony.

Solicitation to Commit a Felony *G.S. 14-2.6*

General Rule

Unless a different classification is expressly stated in statute, a person who solicits another person to commit a felony is guilty of a felony that is two classes lower than the felony the person solicited the other to commit.

Exceptions

- Solicitation to commit a Class A or Class B1 felony is a Class C felony.
- Solicitation to commit a Class B2 felony is a Class D felony.
- Solicitation to commit a Class H felony is a Class 1 misdemeanor.
- Solicitation to commit a Class I felony is a Class 2 misdemeanor.

Example: Contaminating a public water supply is a Class C felony. However, solicitation to contaminate a public water supply is a Class E felony.

Accessory After the Fact *G.S. 14-7*

(For offenses committed on or after December 1, 1997)³

General Rule

Unless a different classification is expressly stated by statute, a person who becomes an accessory after the fact to a felony is guilty of a crime that is two classes lower than the felony the principal felon committed.

Exceptions

- Accessory after the fact to a Class A or Class B1 felony is a Class C felony.
- Accessory after the fact to a Class B2 felony is a Class D felony.
- Accessory after the fact to a Class H felony is a Class 1 misdemeanor.
- Accessory after the fact to a Class I felony is a Class 2 misdemeanor.

Example: Voluntary manslaughter is a Class D felony. However, accessory after the fact to voluntary manslaughter is a Class F felony.

³ For offenses committed before December 1, 1997, a person who became an accessory after the fact to a felony was guilty of a Class H felony.

Felony Offense Class Enhancements

If certain additional facts are found, the classification of a felony increases by one class for sentencing purposes.

Bullet-Proof Vest *G.S. 15A-1340.16C*

(For offenses committed on or after December 1, 1999)

A person wears, or has in his or her immediate possession, a bullet-proof vest during the commission of a felony. This section does not apply if the evidence that the defendant had a bullet-proof vest is needed to prove an element of the underlying felony. This section also does not apply to law enforcement officers performing a law enforcement function.

Injury to a Pregnant Woman *G.S. 14-18.2(b)*

(For offenses committed on or after January 1, 1999)

A person who, in the commission of a felony, causes injury to a woman, knowing the woman to be pregnant, and the injury results in a miscarriage or stillbirth by the woman. This section does not apply to acts committed by a pregnant woman which result in a miscarriage or stillbirth by the woman.

Criminal Behavior Prohibited by a Valid Protective Order *G.S. 50B-4.1(d)*

(For offenses committed on or after March 1, 2002)

A person who commits a felony at a time when the person knows the behavior is prohibited by a valid protective order. This section does not apply to a person charged with or convicted of a Class A or B1 felony or to a person charged under G.S. 50B-4.1(f) or (g).

Table 1: Classification of a Sample of Felony Offenses
(Effective 12/1/09)

CLASS A	
First-Degree Murder. (G.S. 14-17)	
CLASS B1	
First-Degree Rape. (G.S. 14-27.2)	First-Degree Sexual Offense. (G.S. 14-27.4)
CLASS B2	
Second-Degree Murder. (G.S. 14-17)	
CLASS C	
Habitual Felon. (G.S. 14-7.6)	Assault W/D/W/I/K/I/S/I. (G.S. 14-32(a))
Second-Degree Rape. (G.S. 14-27.3)	First-Degree Kidnapping. (G.S. 14-39)
Second-Degree Sexual Offense. (G.S. 14-27.5)	Embezzlement (amount involved \$100,000 or more). (G.S. 14-90)
CLASS D	
Voluntary Manslaughter. (G.S. 14-18)	Armed Robbery. (G.S. 14-87)
Malicious Use of Explosive or Incendiary. (G.S. 14-49(a))	Sell or Deliver a Controlled Substance to a Person Under 16 but more than 13 Years of Age. (G.S. 90-95(e)(5))
First-Degree Burglary. (G.S. 14-51)	
First-Degree Arson. (G.S. 14-58)	
CLASS E	
Intercourse and Sexual Offenses with Certain Victims (Substitute Parent/Custodian). (G.S. 14-27.7)	Second-Degree Kidnapping. (G.S. 14-39)
Assault W/D/W/I/S/I. (G.S. 14-32(b))	Child Abuse Inflicting Serious Physical Injury. (G.S. 14-318.4(a))
Assault W/D/W/I/K. (G.S. 14-32(c))	Death by Vehicle. (G.S. 20-141.4(a)(1))
Discharging Weapon Into Occupied Property. (G.S. 14-34.1(a))	Sell or Deliver a Controlled Substance Within 1,000 Feet of a School. (G.S. 90-95(e)(8))
Assault W/Firearm on Law Enforcement Officer. (G.S. 14-34.5)	
CLASS F	
Involuntary Manslaughter. (G.S. 14-18)	Burning of Certain Other Buildings. (G.S. 14-62)
Assault Inflicting Serious Bodily Injury. (G.S. 14-32.4)	Participating in Prostitution of a Minor. (G.S. 14-190.19)
Assault W/D/W on Governmental Officer or Employee. (G.S. 14-34.2)	Taking Indecent Liberties with Children. (G.S. 14-202.1)
Assault I/S/I on a Law Enforcement Officer. (G.S. 14-34.7)	Possess Weapon of Mass Destruction. (G.S. 14-288.8)
Felonious Restraint. (G.S. 14-43.3)	Habitual Impaired Driving. (G.S. 20-138.5)
CLASS G	
Second-Degree Burglary. (G.S. 14-51)	Possession of Firearms, etc., by Felon. (G.S. 14-415.1)
Second-Degree Arson. (G.S. 14-58)	Sale of a Schedule I or II Controlled Substance. (G.S. 90-95(a)(1))
Common Law Robbery. (G.S. 14-87.1)	
CLASS H	
Habitual Misdemeanor Assault. (G.S. 14-33.2)	Obtaining Property by False Pretenses (amount involved less than \$100,000). (G.S. 14-100)
Breaking or Entering Buildings (w/felonious intent). (G.S. 14-54(a))	Intimidating/Interfering with Witnesses. (G.S. 14-226)
Fraudulently Setting Fire to Dwelling Houses. (G.S. 14-65)	Hit and Run (resulting in injury). (G.S. 20-166(a1))
Possessing Stolen Goods. (G.S. 14-71.1)	Sale of a Schedule III, IV, V, or VI Controlled Substance. (G.S. 90-95(a)(1))
Larceny of Property (worth more than \$1,000). (G.S. 14-72)	Possession W/I/M/S/D Cocaine. (G.S. 90-95(a)(1))
Embezzlement (amount involved less than \$100,000). (G.S. 14-90)	Escaping from State Prison System (felon). (G.S. 148-45(b))
CLASS I	
Breaking or Entering Motor Vehicles. (G.S. 14-56)	Possess Cocaine. (G.S. 90-95(a)(3))
Financial Transaction Card Theft. (G.S. 14-113.9)	Maintaining Dwelling or Motor Vehicle for Keeping or Selling a Controlled Substance. (G.S. 90-108(a)(7), (b))
Forgery of Notes, Checks, Securities. (G.S. 14-119(a))	Obtain a Controlled Substance by Fraud. (G.S. 90-108(a)(10), (b))
Uttering Forged Paper or Instrument. (G.S. 14-120)	
Possession W/I/M/S/D Marijuana. (G.S. 90-95(a)(1))	

Step 2. Determine the Prior Record Level for the Offender

Unless the conviction is for a Class A offense or drug trafficking, the appropriate prior record level must be calculated for each felon.

Counting Prior Record Points *G.S. 15A-1340.14(b)* (For offenses committed on or after December 1, 1997)¹

Prior record points are assigned to each prior conviction based on its offense class as follows:

Class A felony	10 points
Class B1 felony	9 points
Class B2, C, and D felony	6 points
Class E, F, and G felony	4 points
Class H and I felony	2 points
Class A1 and 1 misdemeanor, and misdemeanor impaired driving or impaired driving in a commercial vehicle	1 point

Prior convictions for Class 2 and Class 3 misdemeanors do not count, nor do prior misdemeanor traffic offenses under Chapter 20 of the North Carolina General Statutes (except for death by vehicle). Infractions do not count because they are noncriminal violations of law.

The classification of the prior offense is the classification assigned to the offense at the time the present offense was committed (the offense for which the offender is being sentenced).

One additional point is added if all the elements of the present offense are included in any prior offense, whether or not the prior offense was used in determining the prior record level. No more than one additional point can be added for this factor. This factor must be found by the court.

One additional point is added if the offender is on supervised or unsupervised probation, parole, or post-release supervision, serving an active sentence in jail or prison, or is on escape from a correctional institution while serving a sentence of imprisonment at the time the present offense was committed. No more than one additional point can be added for this factor. **(Effective June 24, 2004)** This factor must either be found by the jury beyond a reasonable doubt or admitted by the defendant.

An example work sheet for computing prior record points and determining the prior record level is shown in **Table 2**.

Case Law

- Although a defendant's stipulation to a particular prior record level is sufficient evidence to support sentencing at that level, the stipulation is invalid insofar as it reflects an error of law in the prior record level calculation.²

¹ For offenses committed before December 1, 1997, prior convictions for impaired driving and impaired driving in a commercial vehicle did not count and they were not assigned prior record points.

² *State v. Flint*, ___ N.C. App. ___, 682 S.E.2d 443 (2009).

- A prior finding of criminal contempt does not result in any prior record points.³
- A prior Class H felony for which the defendant was sentenced as a Class C habitual felon is treated as a Class H felony when calculating the defendant's prior record level for a new crime.⁴
- There is no statute of limitation on the use of prior convictions to determine prior record level.⁵
- If a crime that resulted in a prior conviction no longer exists at the time of the defendant's sentencing offense, the "court must find a substantially similar crime for which classification may be assigned" for computing the prior record level.⁶
- A juvenile commitment to a youth development center is not "a sentence of imprisonment" supporting a prior record point under G.S. 15A-1340.14(b)(7).⁷
- If the sentencing offense is committed while the defendant is on probation, a prior record point accrues under G.S. 15A-1340.14(b)(7), regardless of whether the conviction that resulted in the probation is also used to calculate the defendant's prior record level.⁸
- Prior convictions used to establish the defendant's habitual felon status may also be used to show that the defendant was on probation at the time of the sentencing offense under G.S. 15A-1340.14(b)(7), and that all of the elements in the sentencing offense are included in a prior conviction under G.S. 15A-1340.14(b)(6).⁹

Examples: A parolee is convicted of common law robbery and has prior convictions for second-degree burglary (currently Class G), for Class 1 misdemeanor larceny, and for Class 3 misdemeanor gambling. The offender would receive 6 prior record points; 4 for the prior Class G felony, 1 for the prior Class 1 misdemeanor, and 1 for being on parole when the new crime was committed. The offender would not receive any points for the prior Class 3 misdemeanor. The points are based on the classification of the prior crime at the time the current crime was committed.

A probationer is convicted of felony larceny and has prior convictions for impaired driving and Class 1 driving while license revoked. The offender would receive 2 prior record points: 1 for the prior impaired driving and 1 for being on probation when the new

³ *State v. Reaves*, 142 N.C. App. 629, 544 S.E. 2d 253 (2001).

⁴ *State v. Vaughn*, 130 N.C. App. 456, 503 S.E.2d 110 (1998), *aff'd per curiam*, 350 N.C. 88, 511 S.E.2d 638 (1999).

⁵ *State v. Rich*, 130 N.C. App. 113, 502 S.E.2d 49 (1998).

⁶ *State v. Rice*, 129 N.C. App. 715, 501 S.E.2d 665 (1998).

⁷ *State v. Tucker*, 154 N.C. App. 653, 573 S.E.2d 197 (2002).

⁸ *State v. Leopard*, 126 N.C. App. 82, 483 S.E.2d 469 (1997).

⁹ *State v. Bethea*, 122 N.C. App. 623, 471 S.E.2d 430 (1996).

crime was committed. The offender would not receive any points for the prior Class 1 misdemeanor because it is a misdemeanor traffic offense under Chapter 20 of the North Carolina General Statutes (other than death by vehicle).

Calculating the Prior Record Level *G.S. 15A-1340.14(c)*

Prior record levels appear at the top row of the Felony Punishment Chart (**Figure A**). Felons are assigned to one of six prior record levels based on the number of points they accrue as follows:

(For offenses committed before December 1, 2009)

(For offenses committed on or after December 1, 2009)

<u>Points</u>	<u>Points</u>	<u>Level</u>
0	0 to 1	I
1 to 4	2 to 5	II
5 to 8	6 to 9	III
9 to 14	10 to 13	IV
15 to 18	14 to 17	V
19 or more	18 or more	VI

An example work sheet for computing prior record level points and determining the prior record level is shown in **Table 2**.

Example: An offender with 7 prior record points would fall within Prior Record Level III. An offender with 14 prior record points would fall within Prior Record Level V. An offender with 26 prior record points would fall within Prior Record Level VI.

Table 2: Prior Record Level Worksheet
 (For offenses committed on or after December 1, 2009)

I. SCORING PRIOR RECORD/FELONY SENTENCING

NUMBER	TYPE	FACTORS	POINTS
	Prior Felony Class A Conviction	x 10	
	Prior Felony Class B1 Conviction	x 9	
	Prior Felony Class B2 or C or D Conviction	x 6	
	Prior Felony Class E or F or G Conviction	x 4	
	Prior Felony Class H or I Conviction	x 2	
	Prior Misdemeanor Class A1 or 1 Conviction*, Prior Impaired Driving Conviction, or Prior Impaired Driving in a Commercial Vehicle Conviction	x 1	
		SUBTOTAL	
If all the elements of the present offense are included in any prior offense, whether or not the prior offense was used in determining prior record level.		+ 1	
If the offense was committed: (a) while on supervised or unsupervised probation, parole, or post-release supervision; or (b) while serving a sentence of imprisonment; or (c) while on escape.		+ 1	
		TOTAL	

** Class 1 misdemeanor offenses under Chapter 20 are not assigned any points except for misdemeanor death by vehicle [G.S. 20-141.4(a2)]*

II. CLASSIFYING PRIOR RECORD LEVEL

POINTS	LEVEL
0 – 1	I
2 – 5	II
6 – 9	III
10 – 13	IV
14 – 17	V
18+	VI

PRIOR RECORD LEVEL _____

Definition of Prior Conviction *G.S. 15A-1340.11(7)*

An offender has a prior conviction when on the date a criminal judgment has been entered:

1. The offender has been convicted of a crime in District Court and has not given notice of appeal, and the time for appeal has expired; or
2. The offender has been convicted of a crime in Superior Court, regardless of whether the conviction is on appeal to the appellate division; or
3. The offender has been convicted of a crime in the courts of the United States, another state, the armed services of the United States, or any other country, regardless of whether the offense would be a crime if it occurred in North Carolina.

Case Law

- A prior conviction exists if the defendant has been found guilty or has entered a plea of guilty or no contest, despite the court's entry of a prayer for judgment continued.¹⁰
- A guilty plea for which the defendant was still on probation under G.S. 90-96(a) at the time of his sentencing for another offense qualifies as a prior conviction.¹¹
- In calculating a defendant's prior record level at re-sentencing, the court should include convictions that have occurred since the original sentencing proceeding but prior to the entry of judgment at resentencing.¹²

Example: An offender has one previous prior conviction for second-degree rape in Superior Court in 2008. The conviction is on appeal to the appellate division. The offender receives 6 prior record points for the prior conviction which places the offender in Prior Record Level III. The fact that the prior conviction is on appeal to the appellate division does not affect the prior record level.

Considering Multiple Prior Convictions *G.S. 15A-1340.14(d)*

If an offender was convicted of more than one offense in a single Superior Court during one calendar week, only the most serious conviction is counted (the one which carries the highest point total). If an offender is convicted of more than one offense during a single session of District Court, only the most serious conviction is counted.

Case Law

- For purposes of counting multiple prior convictions, a district court conviction which is appealed to superior court is deemed to have occurred on the date of conviction in district court if the appeal is subsequently withdrawn.¹³

¹⁰ *State v. Hatcher*, 136 N.C. App. 524, 524 S.E.2d 815 (2000).

¹¹ *State v. Hasty*, 133 N.C. App. 563, 516 S.E.2d 428 (1999).

¹² *State v. Pritchard*, 186 N.C. App. 128, 649 S.E.2d 917 (2007).

¹³ *State v. Wilkins*, 128 N.C. App. 315, 494 S.E.2d 611 (1998).

- If prior convictions were consolidated for judgment or obtained during the same week of superior court, one conviction may be used to establish habitual felon status, and a second conviction may be used to calculate the defendant's prior record level.¹⁴
- If a defendant sustains convictions in district court and superior court on the same day, one district court conviction and one superior court conviction may be used for prior record points.¹⁵

Example: An offender has three prior convictions in Superior Court: one assault with a deadly weapon with intent to kill (currently Class E) and two for felony larceny (currently Class H). The offender pled guilty to all three prior convictions on the same day of court. Therefore, the offender receives 4 prior record points for the most serious offense (the Class E felony), which places the offender in Prior Record Level II. No points accrue for the two felony larcenies, since the convictions occurred in the same court on the same day.

Proof of Prior Convictions G.S. 15A-1340.14(f)

Prior convictions can be proved by:

1. Stipulation of the parties; or
2. Court records; or
3. Copy of records maintained by the Division of Criminal Information, Division of Motor Vehicles, or the Administrative Office of the Courts; or
4. Any other method the court finds reliable.

The original, or a copy of the court records, or a copy of the records maintained by the DCI, DMV, or the AOC bearing the same name as that by which the offender is charged, is prima facie evidence that the offender named is the same as the offender before the court and that the facts set out in the record are true.

A "copy" includes a paper reproduction of a record maintained electronically on a computer or other data processing equipment and a document produced by a facsimile machine.

Case Law

- A sentencing worksheet unsupported by a stipulation by the defendant or by additional documentation is insufficient to prove the existence of prior convictions.¹⁶
- A written stipulation signed by the prosecutor and defense counsel on the prior record level worksheet is sufficient to prove the prior convictions listed thereon.¹⁷
- Though uncontested, the prosecutor's unsupported statement that a defendant has a certain number of prior record points or a particular prior record level is insufficient to meet the State's burden of proof at sentencing.¹⁸

¹⁴ *State v. McCrae*, 124 N.C. App. 664, 478 S.E.2d 210 (1996); *State v. Truesdale*, 123 N.C. App. 639, 473 S.E.2d 670 (1996).

¹⁵ *State v. Fuller*, 179 N.C. App. 61, 632 S.E.2d 509 (2006).

¹⁶ *State v. Smith*, 155 N.C. App. 500, 573 S.E.2d 618 (2002).

¹⁷ *State v. Hussey*, ___ N.C. App. ___, 669 S.E.2d 864 (2008).

¹⁸ *State v. Bartley*, 156 N.C. App. 490, 577 S.E.2d 319 (2003).

- Where the prosecutor tenders a sentencing worksheet listing the defendant's prior convictions, defense counsel's statement that he has no objections may be reasonably construed as a stipulation.¹⁹

Burden and Standard of Proof *G.S. 15A-1340.14(f)*

The State bears the burden of proving, by a preponderance of the evidence, that a prior conviction exists and that the offender before the court is the same person as the offender named in the prior conviction. The prosecutor must make all feasible efforts to obtain and present to the court the offender's full prior record.

Prior Record from Other Jurisdictions *G.S. 15A-1340.14(e)*

General Rule

A conviction from a jurisdiction other than North Carolina is classified as a Class I felony if the jurisdiction in which the offense occurred classifies the offense as a felony, and is classified as a Class 3 misdemeanor if the other jurisdiction classifies the offense as a misdemeanor.

Exceptions

- If the offender proves by a preponderance of the evidence that an offense classified as a felony in the other jurisdiction is substantially similar to an offense that is classified as a misdemeanor in North Carolina, the conviction is treated as that class of misdemeanor.
- If the State proves by a preponderance of the evidence that an offense classified as either a misdemeanor or a felony in the other jurisdiction is substantially similar to an offense that is classified as a Class I or higher felony in North Carolina, the conviction is treated as the higher class of felony.
- If the State proves by a preponderance of the evidence that an offense classified as a misdemeanor in the other jurisdiction is substantially similar to an offense classified as a Class A1 or Class 1 misdemeanor in North Carolina, the conviction is treated as a Class A1 or Class 1 misdemeanor.

Case Law

- The defendant may stipulate to the existence of an out-of-state conviction and to its classification as a felony or misdemeanor in that jurisdiction, but may not stipulate that the conviction is substantially similar to a particular North Carolina offense.²⁰

¹⁹ *State v. Eubanks*, 151 N.C. App. 499, 565 S.E.2d 738 (2002).

²⁰ *State v. Bohler*, ___ N.C. App. ___, 681 S.E.2d 801 (2009); *State v. Chappelle*, 193 N.C. App. 313, 667 S.E.2d 327 (2008) (Substantial similarity under G.S. 15A-1340.14(e) is a question of law.).

- Unless the State seeks to assign an out-of-state felony conviction a more serious classification than the default Class I, the State is not obliged to prove substantial similarity to a North Carolina offense under G.S. 15A-1340.14(e).²¹
- The court may establish the substantial similarity of out-of-state and North Carolina offenses by comparing the relevant statutes.²²
- An out-of-state conviction need not be identical to a North Carolina offense to meet the substantial similarity standard in G.S. 15A-1340.14(e).²³

Example: An offender has a previous conviction for “arson endangering persons” and misdemeanor “disorderly conduct” in another state. Unless the State can prove otherwise, the offender would receive 2 prior record points for the arson conviction, since it is treated as a Class I felony. If, however, the State were able to prove by a preponderance of the evidence that the prior conviction was substantially similar to first-degree arson (currently Class D) in North Carolina, the offender would receive 6 prior record points. No points would accrue for the misdemeanor disorderly conduct conviction unless the State were able to prove, by a preponderance of the evidence, that the offense was substantially similar to a Class 1 misdemeanor offense in North Carolina or substantially similar to a felony offense in North Carolina.

Suppression of Prior Record *G.S. 15A-1340.14(f)*

Pursuant to G.S. 15A-980, a defendant may move to suppress use of a certain prior conviction (or convictions) that was obtained in violation of his right to counsel for purposes of calculating the defendant’s prior record level. If such a motion is made, the court may grant a continuance of the sentencing hearing.

Provision of Prior Record Information *G.S. 15A-1340.14(f)*

If asked by the defendant in compliance with G.S. 15A-903, the prosecutor shall furnish the defendant’s prior criminal record to the defendant within a reasonable time sufficient to allow the defendant to determine if the record available to the prosecutor is accurate.

Step 3. Consider Aggravating and Mitigating Factors

The court must consider evidence of aggravating or mitigating factors, but the decision to impose a minimum sentence from either the aggravated or mitigated range is in the discretion of the court.

²¹ *State v. Hinton*, ___ N.C. App. ___, 675 S.E.2d 672 (2009).

²² *State v. Rich*, 130 N.C. App. 113, 502 S.E.2d 49 (1998).

²³ *State v. Sapp*, 190 N.C. App. 698, 661 S.E.2d 304 (2008).

Finding Aggravating or Mitigating Factors *G.S. 15A-1340.16(a) to (a6)*

Prior to June 24, 2004, the State bore the burden of proving by a preponderance of the evidence that an aggravating factor existed. The court determined whether the factor was present.

Effective June 24, 2004, the State bears the burden of proving beyond a reasonable doubt that an aggravating factor exists. The jury determines whether an aggravating factor is present in an offense, except that the court determines whether the factors in G.S. 15A-1340.16(d)(12a) and (18a) are present.¹ The offender may also admit to the existence of an aggravating factor.

The offender bears the burden of proving by a preponderance of the evidence that a mitigating factor exists. The court determines whether a mitigating factor is present.

Case Law

- Whether to hold separate proceedings to determine the defendant's guilt or innocence, and determine the existence of any aggravating factors is left to the trial court's discretion under G.S. 15A-1340.16(a1).²
- Under the Sixth Amendment and Blakely v. Washington, 542 U.S. 296, 159 L. Ed. 2d 403 (2004), any fact, other than a prior conviction, which is used to impose a sentence above the presumptive range must be either admitted by the defendant or found by the jury beyond a reasonable doubt.³

Aggravated or Mitigated Sentences *G.S. 15A-1340.16(b)*

If aggravating factors are present and the court determines they are sufficient to outweigh any mitigating factors that are present, it may impose a sentence from the aggravated range. If the court finds that mitigating factors are present and are sufficient to outweigh any aggravating factors that are present, it may impose a sentence from the mitigated range. However, the decision to depart from the presumptive range is in the court's discretion.

Case Law

- The court has the discretion to enter a presumptive sentence, even if it finds mitigating factors and finds that they outweigh any factors in aggravation.⁴

¹ It is unclear whether a prior adjudication of juvenile delinquency (G.S. 15A-1340.16(d)(18a)) is considered a "conviction" which may be found by the court rather than the jury for purposes of Blakely v. Washington, 542 US 296, 159 L. Ed. 2d 403 (2004). See State v. Boyce, 175 N.C. App. 663, 669, 625 S.E.2d 553, 557 (2006) (no jury finding required), *aff'd in part*, 361 N.C. 670, 651 S.E.2d 879 (2007); *but see State v. Yarrell*, 172 N.C. App. 135, 142, 616 S.E.2d 258, 263 (2005) (Under G.S. 7B-2412, an adjudication of juvenile delinquency is not a criminal conviction. Therefore, it may not be used to aggravate a defendant's sentence unless it is found by a jury beyond a reasonable doubt).

² State v. Anderson, ___ N.C. App. ___, 684 S.E.2d 450 (2009).

³ State v. Allen, 359 N.C. 425, 615 S.E.2d 256 (2005), *withdrawn on other grounds*, 360 N.C. 569, 635 S.E.2d 899 (2006).

⁴ State v. Bivens, 155 N.C. App. 645, 573 S.E.2d 259 (2002).

Requirement to Provide Written Reasons *G.S. 15A-1340.16(c)*

If the court selects a minimum sentence from the aggravated or mitigated range, the court must provide written findings. This requirement applies regardless of whether an active sentence or a suspended sentence is imposed. However, if the court selects a minimum sentence from the presumptive range, no written findings are required.

Case Law

- Although the court need not make written findings when it sentences within the presumptive range, it must consider the parties' evidence of mitigating and aggravating circumstances.⁵
- If the court makes findings of aggravating factors, it must also find any mitigating factor that is supported by uncontradicted, substantial, and credible evidence.⁶
- Unlike Fair Sentencing, Structured Sentencing requires written findings to support an aggravated sentence, even if the sentence is prescribed by a plea agreement.⁷

Aggravating and Mitigating Factors *G.S. 15A-1340.16(d) and (e)*

Statutorily prescribed aggravating factors are shown in **Table 3** and statutorily prescribed mitigating factors are shown in **Table 4**. The presence or absence of prior convictions is not an aggravating or mitigating factor since prior record is always considered when determining the prior record level.

Case Law

- The fact that the defendant was on probation at the time of the offense may be used both to assign a prior record point under G.S. 15A-1340.17(b)(7), and as a non-statutory aggravating factor pursuant to G.S. 15A-1340.16(d)(20).⁸
- A sentence may be aggravated based on evidence necessary to prove elements of contemporaneous convictions, provided it is not needed to prove an element of the sentencing offense.⁹
- If multiple offenses of the same classification are consolidated for judgment, the sentence may be aggravated even if the aggravating factor is based on evidence necessary to prove an element of one, but not all, of the offenses.¹⁰
- The bar in G.S. 15A-1340.16(d) against the use of "the same item of evidence" to establish more than one aggravating factor refers to a single evidentiary fact, rather than a single physical source of evidence. Therefore, one document may support two factually distinct aggravators.¹¹

⁵ *State v. Knott*, 164 N.C. App. 212, 595 S.E.2d 172 (2004).

⁶ *State v. Hilbert*, 145 N.C. App. 440, 549 S.E.2d 882 (2001); see also *State v. Hughes*, 136 N.C. App. 92, 524 S.E. 2d 63 (1999) (A court is not required to find a mitigating factor absent "substantial, uncontradicted, and manifestly credible" evidence.).

⁷ *State v. Bright*, 135 N.C. App. 381, 520 S.E.2d 138 (1999).

⁸ *State v. Moore*, 188 N.C. App. 416, 656 S.E.2d 287 (2008).

⁹ *State v. Demos*, 148 N.C. App. 343, 559 S.E.2d 17 (2002).

¹⁰ *State v. Harrison*, 164 N.C. App. 693, 596 S.E.2d 834 (2004).

¹¹ *State v. Beck*, 359 N.C. 611, 614 S.E.2d 274 (2005).

Table 3: Aggravating Factors

1. The defendant induced others to participate in the commission of the offense or occupied a position of leadership or dominance of other participants.
2. The defendant joined with more than one other person in committing the offense and was not charged with committing a conspiracy.
- 2a. **(For offenses committed on or after December 1, 1997)** The offense was committed for the benefit of, or at the direction of, any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, and the defendant was not charged with committing a conspiracy. A “criminal street gang” means any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of felony or violent misdemeanor offenses, or delinquent acts that would be felonies or violent misdemeanors if committed by an adult, and having a common name or common identifying sign, colors, or symbols.
3. The offense was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody.
4. The defendant was hired or paid to commit the offense.
5. The offense was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws.
6. **(Added “serious injury” for offenses committed on or after December 1, 1997; added “social worker” for offenses committed on or after December 1, 2005)** The offense was committed against or proximately caused serious injury to a present or former law enforcement officer, employee of the Department of Correction, jailer, fireman, emergency medical technician, ambulance attendant, social worker, justice or judge, clerk or assistant or deputy clerk of court, magistrate, prosecutor, juror, or witness against the defendant, while engaged in the performance of that person's official duties or because of the exercise of that person's official duties.
- 6a. **(Offenses committed on or after December 1, 2007; added “search and rescue animal” for offenses committed on or after December 1, 2009)** The offense was committed against or proximately caused serious harm as defined in G.S. 14-163.1 or death to a law enforcement agency animal, an assistance animal, or a search and rescue animal as defined in G.S. 14-163.1, while engaged in the performance of the animal's official duties.
7. The offense was especially heinous, atrocious, or cruel.
8. The defendant knowingly created a great risk of death to more than one person by means of a weapon or device which would normally be hazardous to the lives of more than one person.
9. The defendant held public office at the time of the offense and the offense related to the conduct of the office.
10. The defendant was armed with or used a deadly weapon at the time of the crime.
11. The victim was very young, or very old, or mentally or physically infirm, or handicapped.
12. The defendant committed the offense while on pretrial release on another charge.
- 12a. **(Offenses committed on or after December 1, 2008)** The defendant has, during the 10-year period prior to the commission of the offense for which the defendant is being sentenced, been found by a court of this State to be in willful violation of the conditions of probation imposed pursuant to a suspended sentence or been found by the Post-Release Supervision and Parole Commission to be in willful violation of a condition of parole or post-release supervision imposed pursuant to release from incarceration.
13. The defendant involved a person under the age of 16 in the commission of the crime.

14. The offense involved an attempted or actual taking of property of great monetary value or damage causing great monetary loss, or the offense involved an unusually large quantity of contraband.
15. The defendant took advantage of a position of trust or confidence, including a domestic relationship, to commit the offense.
16. The offense involved the sale or delivery of a controlled substance to a minor.
- 16a. **(For offenses committed on or after December 1, 2004)** The offense is the manufacture of methamphetamine and was committed where a person under the age of 18 lives, was present, or was otherwise endangered by exposure to the drug, its ingredients, its by-products, or its waste.
- 16b. **(For offenses committed on or after January 15, 2006)** The offense is the manufacture of methamphetamine and was committed in a dwelling that is one of four or more contiguous dwellings.
17. The offense for which the defendant stands convicted was committed against a victim because of the victim's race, color, religion, nationality, or country of origin.
18. The defendant does not support the defendant's family.
- 18a. The defendant has previously been adjudicated delinquent for an offense that would be a Class A, B1, B2, C, D or E felony if committed by an adult.
19. The serious injury inflicted upon the victim is permanent and debilitating.
20. Any other aggravating factor reasonably related to the purposes of sentencing. **(Effective June 24, 2004** – This factor must be alleged in the indictment or other charging instrument.)

Table 4: Mitigating Factors

1. The defendant committed the offense under duress, coercion, threat, or compulsion that was insufficient to constitute a defense but significantly reduced the defendant's culpability.
2. The defendant was a passive participant or played a minor role in the commission of the offense.
3. The defendant was suffering from a mental or physical condition that was insufficient to constitute a defense but significantly reduced the defendant's culpability for the offense.
4. The defendant's age, immaturity, or limited mental capacity at the time of commission of the offense significantly reduced the defendant's culpability for the offense.
5. The defendant has made substantial or full restitution to the victim.
6. The victim was more than 16 years of age and was a voluntary participant in the defendant's conduct or consented to it.
7. The defendant aided in the apprehension of another felon or testified truthfully on behalf of the prosecution in another prosecution of a felony.
8. The defendant acted under strong provocation, or the relationship between the defendant and the victim was otherwise extenuating.
9. The defendant could not reasonably foresee that the defendant's conduct would cause or threaten serious bodily harm or fear, or the defendant exercised caution to avoid such consequences.
10. The defendant reasonably believed that the defendant's conduct was legal.
11. Prior to arrest or at an early stage of the criminal process, the defendant voluntarily acknowledged wrongdoing in connection with the offense to a law enforcement officer.
12. The defendant has been a person of good character or has had a good reputation in the community in which the defendant lives.
13. The defendant is a minor and has reliable supervision available.
14. The defendant has been honorably discharged from the United States armed services.
15. The defendant has accepted responsibility for the defendant's criminal conduct.
16. The defendant has entered and is currently involved in or has successfully completed a drug treatment program or an alcohol treatment program subsequent to arrest and prior to trial.
17. The defendant supports the defendant's family.
18. The defendant has a support system in the community.
19. The defendant has a positive employment history or is gainfully employed.
20. The defendant has a good treatment prognosis, and a workable treatment plan is available.
21. Any other mitigating factor reasonably related to the purposes of sentencing.

Step 4. Select a Minimum Sentence from the Appropriate Sentence Range

The judgment of the court must contain a minimum term of imprisonment that is consistent with the class of the offense for which the offender is being sentenced and with the prior record level of the offender. The minimum sentence is selected from either the presumptive sentence range, the aggravated sentence range, or the mitigated sentence range.

Minimum Sentence Ranges *G.S. 15A-1340.17(c)*

Three ranges of minimum sentences (in months) are provided on the Felony Punishment Chart (**Figure A**) for each combination of offense class and prior record level. The Felony Punishment Chart prescribes only the minimum sentence.

Enlargement of the grid cell for a Class D offender in Prior Record Level IV.

	IV 10 – 13 Points	
D	A 97-121	Aggravated Minimum Sentence Range
	78-97	Presumptive Minimum Sentence Range
	58-78	Mitigated Minimum Sentence Range

Presumptive Minimum Sentence Range

The court must select a minimum sentence from within the presumptive minimum sentence range, unless the court finds that an aggravated or mitigated sentence is appropriate. The presumptive range is the middle range on the Felony Punishment Chart for each combination of offense class and prior record level.

Aggravated Minimum Sentence Range

The court may select any minimum sentence from within the aggravated minimum sentence range if the jury finds that aggravating factors are present, or the court finds the factors in G.S. 15A-1340.16(d)(12a) and (18a) are present, and the court finds that they are sufficient to outweigh any mitigating factors that are present. The aggravated range is the upper range on the Felony Punishment Chart for each combination of offense class and prior record level.

Mitigated Minimum Sentence Range

The court may select any minimum sentence from within the mitigated minimum sentence range if the court finds that mitigating factors are present and are sufficient to outweigh any aggravating factors that are present. The mitigated range is the lower range on the Felony Punishment Chart for each combination of offense class and prior record level.

Example: For an offender convicted of a Class F offense with a Prior Record Level of II, there are three sentence ranges: a presumptive minimum sentence range from 15-19 months; an aggravated minimum sentence range from 19-23 months; and a mitigated minimum sentence range from 11-15 months. For example, if the court made no finding of aggravation or mitigation, the court could impose a minimum sentence of 15, 16, 17, 18, or 19 months.

For an offender convicted of a Class D offense with Prior Record Level of IV, the presumptive range is 78-97 months; the aggravated range is 97-121 months; and the mitigated range is 58-78 months. For example, if the court made a finding of aggravation, the court could impose a minimum sentence of 97 months, 121 months, or any number of months in between.

Minimum Sentence Enhancements

If certain additional facts are alleged in the indictment and found by the jury beyond a reasonable doubt, the court shall increase the minimum sentence by a set number of months. The maximum sentence and the sentence disposition are determined according to **Steps 5** and **6** of this manual.

Firearm or Deadly Weapon *G.S. 15A-1340.16A*

If the offender used, displayed, or threatened to use or display a firearm or deadly weapon during the commission of a Class A, B1, B2, C, D, or E felony, and the offender actually possessed the firearm or deadly weapon, the court shall increase the minimum term of imprisonment by 60 months. This enhancement does not apply if the court sentences the offender to an intermediate punishment.¹ Evidence necessary to establish the enhancement may not be used to prove any factor in aggravation.

Case Law

- The court may not enhance a sentence pursuant to G.S. 15A-1340.16A if the evidence conclusively shows that the object displayed by the defendant was not a gun, even though the victim believed it was a gun.²

Manufacturing Methamphetamine *G.S. 15A-1340.16D*

(For offenses committed on or after December 1, 2004)

If an offender is convicted of manufacturing methamphetamine (G.S. 90-95(b)(1a)) and a law enforcement officer, probation officer, parole officer, emergency medical services employee, or a firefighter suffered serious injury while discharging or attempting to

¹ An intermediate punishment is authorized only for Class E felonies in Prior Record Levels I and II, or upon a finding of extraordinary mitigation pursuant to G.S. 15A-1340.13(g).

² *State v. Williams*, 127 N.C. App. 464, 490 S.E.2d 583 (1997).

discharge his or her official duties and that the injury was directly caused by one of the hazards associated with the manufacture of methamphetamine, the court shall increase the minimum term of imprisonment by 24 months. This enhancement does not apply if the offense is packaging or repackaging methamphetamine, or labeling or relabeling the methamphetamine container.

Step 5. Determine the Maximum Sentence

The judgment of the court must also contain a maximum term of imprisonment. The maximum term is set by statute based on the minimum term imposed.

Maximum Sentences for Class F through I Felonies *G.S. 15A-1340.17(d)*

The maximum sentence corresponding with each minimum sentence in Classes F through I is shown in the bottom portion of the table of maximum sentences (**Figure B**). For offense classes F through I, the maximum sentence length is set at 120% of the minimum sentence length rounded to the next highest month.

*Enlargement of a section from the Maximum Sentences table
for offense classes F through I*

6-8	11-14	16-20	21-26	26-32	31-38	36-44	41-50
7-9	12-15	17-21	22-27	27-33	32-39	37-45	

Case Law

- Although Structured Sentencing provides the court with discretion in choosing the minimum sentence from within the applicable range, the court must impose the corresponding maximum sentence prescribed by G.S. 15A-1340.17.¹

Example: Assume an offender convicted of a Class F offense with a Prior Record Level of II receives a minimum of 17 months from the presumptive range. Since this is a Class F felony, the corresponding maximum sentence is automatically set at 21 months. The maximum sentence is equivalent to 120% of the minimum (rounded to the next highest month).

Maximum Sentences for Class B1 through E Felonies *G.S. 15A-1340.17(e) and (e1)*

The maximum sentence corresponding with each minimum sentence in Classes B1 through E is shown in the top portion of the table of maximum sentences (**Figure B**). For offense classes B1 through E, the maximum term is set at 120% of the minimum term rounded to the next highest month plus an additional nine months for post-release supervision. (See **Part I, Section III, Provisions Relating to Post-Release Supervision**).

¹ *State v. Parker*, 143 N.C. App. 680, 550 S.E.2d 174 (2001).

*Enlargement of a section from the Maximum Sentences table
for offense classes B1 through E*

37-54	78-103	119-152	160-201	201-251	242-300	283-349	324-398
38-55	79-104	120-153	161-203	202-252	243-301	284-350	325-399

Examples: Assume an offender convicted of a Class D offense with a Prior Record Level of IV receives a minimum sentence of 120 months from the aggravated range. Since this is a Class D offense, the corresponding maximum sentence is automatically set at 153 months. The maximum sentence is equivalent to 120% of the minimum (rounded to the next highest month) plus an additional nine months for post-release supervision.

Assume an offender convicted of a Class B1 offense with a Prior Record Level of V receives a minimum sentence of 420 months from the presumptive range. For minimum sentences of 340 months and longer, the formula specified in G.S. 15A-1340.17(e1) must be applied: the maximum sentence is equal to the sum of the minimum sentence, plus 20% of the minimum sentence rounded to the next highest month, plus nine months for post-release supervision. If the minimum sentence is 420 months, then the maximum sentence is 513 months.

Step 6. Select the Sentence Disposition

A sentence disposition must be imposed for each felony offense.

Sentence Dispositions on Felony Punishment Chart *G.S. 15A-1340.17 (c)*

Sentence dispositions are prescribed on the Felony Punishment Chart (**Figure A**) for each combination of offense class and prior record level. “C” on the chart indicates that a community punishment is authorized, “I” indicated that an intermediate punishment is authorized, and “A” indicates that an active punishment is authorized.

If the disposition is an “A,” then the sentence must be activated. If the disposition is a “C” or an “I,” then the sentence must be suspended. For some combinations of offense class and prior record level, the punishment chart prescribes more than one possible disposition (separated by a slash “/”). In such cases, the court has discretion to impose any of the dispositions authorized.

Enlargement of the row for Class H offenses and Prior Record Levels I through VI.

	I 0-1 Pt.	II 2-5 Pts.	III 6-9 Pts.	IV 10-13 Pts.	V 14-17 Pts.	VI 18+ Pts
H	C/I/A	I/A	I/A	I/A	I/A	A

Example: An offender is convicted of a Class H felony and has a Prior Record Level of VI. The authorized disposition is “A,” so the court must impose an active sentence. If the same offender had no prior record points (Prior Record Level I), the authorized disposition is “C/I/A” and the court may, in its discretion, either impose an active sentence or suspend the active sentence and, again in its discretion, impose either an intermediate or community punishment.

Active Punishment *G.S. 15A-1340.11(1)*

An active punishment requires that the offender be sentenced to the custody of the Department of Correction to serve the minimum and up to the maximum sentence imposed by the court.

Intermediate Punishment *G.S. 15A-1340.11(6)*

An intermediate punishment requires a sentence of supervised probation with at least one of the following conditions:

1. Special Probation. Defined in G.S. 15A-1351(a), special probation includes a period of active confinement followed by a period of probation. (This is sometimes referred to as a split sentence.)
2. Residential Program. Assignment that requires the offender to reside in a facility for a specified period of time and to participate in activities such as counseling, treatment, social skills training, or employment training at the residential facility or other specified locations.
3. House Arrest with Electronic Monitoring. Assignment that requires the offender to remain at his or her residence unless the court or probation officer authorizes the offender to leave, and in which the offender shall wear a device which permits the supervising agency to monitor the offender's compliance with the condition.
4. Intensive Supervision. Assignment that requires the offender to submit to rules adopted by the Division of Community Corrections for intensive supervision.
5. Day Reporting Center. Assignment that requires the offender to report on a daily or other regular basis at specified times for a specified length of time to participate in activities such as counseling, treatment, social skills training, or employment training.
6. Drug Treatment Court Program (Effective July 26, 2004). Assignment that requires the offender to comply with the rules adopted for the program pursuant to Article 62 of Chapter 7A of the General Statutes and to report on a regular basis for a specified time to participate in court supervision, drug screening or testing, and drug or alcohol treatment programs.

An intermediate punishment may also include a fine, restitution, or any other conditions of probation which are considered community punishments.

For community penalties plans requested prior to January 1, 2000, a sentence imposed pursuant to a community penalties plan as defined in G.S. 7A-771(2) is an intermediate punishment providing it is accepted by the court. The plan does not have to include any of the above intermediate conditions. After January 1, 2000, community penalties plans are no longer considered intermediate punishments.

Example: If the authorized disposition includes an "I," the court could place the offender on supervised probation for a specific term and require the offender to submit to house arrest with electronic monitoring. The offender could also be required to pay a fine, pay restitution, receive outpatient drug treatment, and perform community service.

Community Punishment *G.S. 15A-1340.11(2)*

A community punishment is any authorized sentence that does not include an active punishment or an intermediate punishment. A community punishment may consist of a fine only or a term of supervised or unsupervised probation which may include, but is not limited to, one or more of the following:

1. Any authorized condition of probation (except those defined as intermediate punishments).
2. Outpatient drug/alcohol treatment.
3. Community service.
4. Referral to T.A.S.C. (Treatment Accountability for Safer Communities).
5. Restitution.
6. Fines.

Example: If the authorized disposition includes a “C,” the court may place an offender on supervised or unsupervised probation for a specific term. In addition, the court may require the offender to pay a fine, pay restitution, receive outpatient drug treatment and perform community service. The court could not, however, require the offender to submit to any program defined above as an intermediate punishment.

Extraordinary Mitigation *G.S. 15A-1340.13(g) and (h)*

In limited instances, the court may impose an intermediate punishment when only an active punishment is authorized. To do so, the court must find that:

1. extraordinary mitigating factors of a kind significantly greater than the normal case are present, and
2. such factors substantially outweigh any factors in aggravation, and
3. imposition of an active sentence would be a “manifest injustice.”

Extraordinary mitigation is not authorized for Class A offenses, Class B1 offenses, drug trafficking offenses, drug trafficking conspiracy offenses, or for felons with five or more prior record points. As discussed in **Part I, Section II**, the State can appeal a finding of extraordinary mitigation.

Case Law

- A court cannot use extraordinary mitigation to depart from the Structured Sentencing grid, or to run an habitual felon sentence concurrent to an existing sentence in violation of G.S. 14-7.6.¹
- “The sheer number of mitigating factors cannot in and of itself support a finding of extraordinary mitigation” under G.S. 15A-1340.13(g).²

¹ *State v. Watkins*, 189 N.C. App. 784, 659 S.E.2d 58 (2008).

² *State v. Melvin*, 188 N.C. App. 827, 656 S.E.2d 701 (2008).

- Extraordinary mitigation may be found upon the same facts that would support a statutory mitigating factor, provided there are “additional facts present, over and above the facts required to support a normal statutory mitigation factor.”³
- The decision to find extraordinary mitigation and impose an intermediate punishment is left to the trial court’s discretion.⁴

Example: If an offender is convicted of first-degree burglary (Class D offense) and has no prior record (Prior Record Level I), the only authorized disposition is an active sentence of imprisonment (“A”). However, if the court makes a finding of extraordinary mitigation, the court may suspend the active sentence and impose an intermediate punishment.

Exception for Drug Trafficking Convictions *G.S. 90-95(h)*

An offender convicted of a drug trafficking offense must receive an active punishment, unless the court finds that the offender provided substantial assistance in the identification, arrest, or conviction of any accomplices, accessories, co-conspirators or principals. If the court finds “substantial assistance,” the sentencing judge may impose a prison term less than the applicable minimum prison term provided for drug trafficking offenses, or suspend the prison term and impose an intermediate punishment or a community punishment. The trial court’s discretion in departing from minimum sentencing pursuant to the drug trafficking statute is not limited by minimum sentencing requirements under structured sentencing.

Fines *G.S. 15A-1340.17(b)*

A fine may be imposed in combination with any disposition. Unless otherwise provided by statute, the amount of the fine is in the discretion of the court. If a community punishment is authorized, the judgment may consist of a fine only. Additionally, when the defendant is other than an individual, the judgment may consist of a fine only.

Step 6a. Impose an Active Punishment

If the court imposes an active sentence, the minimum and maximum sentences are activated.

Amount of Active Time to Be Served *G.S. 15A-1340.13(d)*

An offender sentenced to an active punishment must serve the entire minimum sentence imposed. The maximum sentence may be reduced to, but not below, the minimum term by earned time credits awarded to an offender by the Department of Correction or the custodian of a local confinement facility. Parole is eliminated.

Example: An offender with a Prior Record Level of III is convicted of a Class F offense and is given a minimum of 20 months and a maximum of 24 months. The offender must serve at least 20 months and could serve up to 24 months if no earned time credits are awarded.

³ *State v. Melvin*, 188 N.C. App. 827, 656 S.E.2d 701 (2008).

⁴ *State v. Ray*, 125 N.C. App. 721, 482 S.E.2d 755 (1997).

Earned Time *G.S. 148-13(a1)*

Good time and gain time are eliminated for offenders sentenced under structured sentencing. The Secretary of Correction is responsible for adopting rules to specify the rates at and circumstances under which earned time may be earned or forfeited. In no instance may the awarding of earned time reduce the minimum sentence to be served.

Multiple Convictions *G.S. 15A-1340.15*

In the event of multiple convictions, the court may, in its discretion, run sentences concurrently, run sentences consecutively, or consolidate the offenses for judgment.

Concurrent Sentences

If an offender is convicted of more than one offense, the court may impose a sentence for each of the offenses and run the sentences concurrently. The minimum and maximum sentence lengths will be the longest of the individual minimum and maximum terms. Unless otherwise specified by the court, all sentences of imprisonment are presumed to run concurrently with any other sentences of imprisonment.

Example: An offender, with a Prior Record Level of II, is convicted of a Class D felony and a Class E felony. If the court elects to run the sentences concurrently, the court must impose a separate judgment for each offense. For example, the longest possible sentence the court could impose from the presumptive range for the Class D felony would be a minimum of 73 months and a maximum of 97 months. The longest possible sentence the court could impose from the presumptive range for the Class E felony would be a minimum of 29 months and a maximum of 44 months. The offender would serve a minimum of 73 months and a maximum of 97 months.

Consecutive Sentences

If an offender is convicted of more than one offense, the court may impose sentences for each of the offenses and run the sentences consecutively. The minimum sentence length imposed for consecutive sentences is the sum of all active minimum terms imposed in the court's judgment. The offender cannot serve less than the sum of all the active minimum sentences imposed consecutively. The maximum term of imprisonment for sentences run consecutively is the sum of all active maximum terms imposed by the court, less nine months¹ for each second and subsequent sentence imposed for a Class B1, B2, C, D, or E felony.

Case Law

- If the sentencing judge is silent on the issue when announcing judgment in open court, multiple sentences are concurrent by default under G.S. 15A-1340.15(a). The court may not alter the sentences to run consecutively on the written judgments without providing the defendant an opportunity to be heard.²

¹ See Part I, Section III, Provisions Relating to Post-Release Supervision.

² *State v. Crumbley*, 135 N.C. App. 59, 519 S.E.2d 94 (1999).

Example: An offender, with a Prior Record Level of II, is convicted of a Class D offense and a Class E offense. If the court elects to impose consecutive sentences, the court must impose a separate judgment for each offense. For example, if the court sentences from the presumptive range, the court could impose a minimum of 73 months (and a maximum of 97 months) for the Class D offense and impose a minimum of 29 months (and a maximum of 44 months) for the Class E offense. If these sentences were run consecutively, the total minimum sentence which must be served would be 102 months (the sum of the two minimum sentences) and the maximum would be 132 months (the sum of the two maximum sentences less nine months).

Consolidated Offenses

If an offender is convicted of more than one offense, the court may consolidate the offenses for judgment and impose a single judgment for the consolidated offenses. The judgment must contain a sentence disposition specified for the class of offense and prior record level of the most serious offense and a minimum sentence length which is within the ranges specified for that class of offense and prior record level.

Case Law

- An offense governed by the Fair Sentencing Act may not be consolidated for sentencing with an offense governed by the Structured Sentencing Act.³

Example: An offender, with a Prior Record Level of II, is convicted of a Class D felony and a Class E felony. If the court elects to consolidate the offenses for judgment, the sentence imposed must conform to the sentence disposition and the sentence ranges prescribed for the most serious offense (the Class D felony). For example, if the court sentences from the presumptive range, the longest possible sentence the court could impose would be a minimum of 73 months and a maximum of 97 months.

Post-Release Supervision *G.S. 15A-1368 to 15A-1368.6*

Offenders convicted of Class B1, B2, C, D, and E felonies will be released from prison nine months before the expiration of their maximum sentence, less earned time credits, and will be placed on post-release supervision. No such offender, however, will be released before serving the entire minimum sentence. An offender violating the conditions of post-release supervision can be returned to prison for up to the maximum sentence. A further explanation of post-release supervision is provided in **Part I, Section III**.

Example: An offender with a Prior Record Level of I is convicted of a Class E offense and is given a minimum of 20 months and a maximum of 33 months. Since this is a Class E offense, the offender will be released when he is within nine months of completing his maximum sentence less earned time credits. If the offender is awarded all possible earned time credits (four months or 20% of the minimum sentence) the earliest the offender can be released is after serving 20 months. If the offender is awarded no earned time credits, the latest the offender can be released is after serving 24 months.

³ *State v. Branch*, 134 N.C. App. 637, 518 S.E.2d 213 (1999).

Minimum and Maximum Sentences for Drug Trafficking *G.S. 90-95(h)*

Unless the court finds that the offender provided substantial assistance in the identification, arrest or conviction of any accomplices, accessories, co-conspirators or principals, the offender convicted for drug trafficking must receive the following minimum and maximum sentence regardless of the prior record level.

Class C Drug Trafficking: Minimum 225 months; maximum 279 months.

Class D Drug Trafficking: Minimum 175 months; maximum 219 months.

Class E Drug Trafficking: Minimum 90 months; maximum 117 months.

Class F Drug Trafficking: Minimum 70 months; maximum 84 months.

Class G Drug Trafficking: Minimum 35 months; maximum 42 months.

Class H Drug Trafficking: Minimum 25 months; maximum 30 months.

If the court finds “substantial assistance,” the court may impose any lesser minimum and corresponding maximum sentence, or suspend the sentence and enter any sentence within the court’s discretion.

Example: An offender is convicted of selling 50 grams of cocaine (a Class G felony). Since this is a drug trafficking offense under G.S. 90-95(h), the minimum sentence is mandated by statute to be 35 months, and the maximum sentence is mandated by statute to be 42 months. For this offense, there is no requirement to determine the prior record level or to refer to the Felony Punishment Chart. If the court finds “substantial assistance,” however, the court could suspend the sentence or could impose a shorter minimum and maximum sentence (for example, a minimum of 12 months and a maximum of 15 months).

Step 6b. Impose an Intermediate Punishment

If the court imposes an intermediate punishment, the minimum and maximum sentences must be suspended and the court must impose a period of supervised probation.

Imposing a Term of Supervised Probation *G.S. 15A-1342 and 15A-1343.2(d)*

Unless the court makes a specific finding that a longer or shorter period of probation is necessary, the court shall impose a single period of probation which is not less than 18 months and not more than 36 months. In no instance, however, can the length of probation exceed five years. The court may also delegate certain powers to the Division of Community Corrections as described in **Part III**.

Selecting Intermediate Punishments/Setting Lengths *G.S. 15A-1340.11(6)*

For an intermediate punishment, one or more of the following conditions of probation must be imposed:

1. Special Probation. (For offenses committed on or after December 1, 2003)¹. The active portion of special probation cannot exceed one-fourth the maximum sentence imposed for the offense. Following release from the active portion of the sentence, the offender must serve the remaining period of probation. (This is sometimes referred to as a split sentence.)
2. Residential Program. The length of assignment to a residential program is in the discretion of the court. The length can be less than, but not greater than, the total term of probation imposed. The current average stay in a residential program is from 10 months to two years depending on the specific program. Following release from the residential program, the offender must continue to serve any remaining period of probation.²
3. House Arrest with Electronic Monitoring. The length of assignment to house arrest with electronic monitoring is in the discretion of the court. The length can be less than, but not greater than, the total term of probation imposed. The current average length of house arrest with electronic monitoring is 3.4 months. Following completion of house arrest with electronic monitoring, the offender must continue to serve any remaining period of probation.
4. Intensive Supervision. The length of intensive supervision is in the discretion of the court. The length can be less than, but not greater than, the total term of probation imposed. The current average length of intensive supervision is from six to nine months. Following completion of intensive supervision, the offender must continue to serve any remaining period of probation.
5. Day Reporting Center. The length of assignment to a day reporting center is in the discretion of the court. The length can be less than, but not greater than, the total term of probation imposed. Following completion of the assignment to the day reporting center, the offender must continue to serve any remaining period of probation.
6. Drug Treatment Court Program. (Effective July 26, 2004). The length of assignment to a drug treatment court program is approximately one year. To graduate, the offender must successfully complete all phases of clinical treatment, receive clean drug screens during the prior 4 to 6 months, be employed, be paying regularly towards his/her legal obligations, and be nominated for graduation by the drug treatment court team. Following completion of the assignment to the drug treatment court program, the offender must continue to serve any remaining period of probation.

An intermediate punishment can include any regular condition of probation and may include fines, restitution, community service, outpatient treatment, or any other statutorily authorized sanction or condition of probation.

¹ For offenses committed before December 1, 2003, the active portion of special probation could not exceed six months or one-fourth the maximum sentence imposed for the offense, whichever was less.

² The IMPACT program (boot camp) was originally a form of special probation; the length of the active sentence was normally 90 days and could not exceed 120 days. The IMPACT program became a residential program effective December 1, 1998. The IMPACT program was closed effective August 15, 2002.

Intermediate Conditions *G.S. 15A-1343(b4)*
(For offenses committed on or after December 1, 2009)

If an offender is sentenced to any intermediate punishment, the following conditions of probation apply:

1. If required in the discretion of the offender's probation officer, the offender must perform community service under the supervision of the Division of Community Corrections and pay the fee required by G.S. 143B-262.
2. The offender must not use, possess, or control alcohol.
3. The offender must remain within the county of residence unless granted written permission to leave by the court or the offender's probation officer.
4. The offender must participate in any evaluation, counseling, treatment, or educational program as directed by the probation officer, keeping all appointments and abiding by the rules, regulations, and direction of each program.

These conditions apply to each offender subject to intermediate punishment unless the court specifically exempts the offender from one or more of the conditions in its judgment or order. It is not necessary for the presiding judge to state each of these conditions in open court, but the conditions must be set forth in the judgment or order of the court.

Step 6c. Impose a Community Punishment

If the court imposes a community punishment, the minimum and maximum sentences must be suspended and either a supervised or unsupervised term of probation imposed, or a fine only may be imposed.

Selecting the Community Punishment *G.S. 15A-1340.11(2)*

For community punishments, a term of supervised probation or unsupervised probation may be imposed at the discretion of the court and consistent with statute. The court may also impose a fine only. A community punishment can include any regular condition of probation and may include fines, restitution, community service, outpatient treatment, or any other statutorily authorized sanction or condition of probation which is not defined as an intermediate punishment. The court may impose house arrest with electronic monitoring on an offender sentenced to a community punishment if the presiding judge determines that the case involved domestic violence (G.S. 15A-1382.1).

Case Law

- In imposing community service reparations or restitution, the court must consider the defendant's resources, ability to earn, support obligations, and any other factors

affecting ability to pay. The amount of restitution must also be supported by the record. However, written findings are not required.¹

- Restitution may not include compensation for pain and suffering; it “is limited to quantifiable costs, income, and values of the kind set out in [G.S.] 15A-1340.35.”²

Imposing a Term of Probation *G.S. 15A-1342 and 15A-1343.2(d)*

Unless the court makes a specific finding that a longer or shorter period of probation is necessary, or unless the court determines that no period of probation is necessary, the court shall impose a single period of probation which is not less than 12 months and not more than 30 months. In no instance, however, can the length of probation exceed five years. The court may also delegate certain powers to the Division of Community Corrections as described in **Part III**.

Case Law

- Under G.S. 15A-1346, multiple sentences of probation must run concurrently.³
- Although the court may not impose consecutive periods of probation, it may order suspended sentences to run consecutively.⁴

¹ *State v. Mucci*, 163 N.C. App. 615, 594 S.E.2d 411 (2004).

² *State v. Wilson*, 158 N.C. App. 235, 580 S.E.2d 386 (2003).

³ *State v. Canady*, 153 N.C. App. 455, 570 S.E.2d 262 (2002).

⁴ *State v. Cousar*, 190 N.C. App. 750, 660 S.E.2d 902 (2008).

Section II. Additional Sentencing Provisions Relating to Felonies

Life Without Parole

Class A felonies are punishable by death or life imprisonment without parole. Offenders convicted of first-degree rape or sexual assault (Class B1) in Prior Record Levels V and VI may be sentenced to life imprisonment without parole if the court sentences from the aggravated sentence range. Certain offenders convicted of second or subsequent Class B1 felonies are punishable by life imprisonment without parole. Felons sentenced under the violent habitual felon provisions are punishable by life imprisonment without parole. Offenders sentenced to life imprisonment without parole are not eligible for parole. Only the Governor has the authority to commute the sentence. See *G.S. 15A-1340.17(c)(1)*, *15A-1368.1*, *15A-1370.1*, and *15A-2002*.

Case Law

- Structured Sentencing's provision for life imprisonment without parole is a punishment authorized by the North Carolina Constitution, is within the General Assembly's constitutional authority to prescribe the minimum and maximum punishments for an offense, and does not infringe on the Governor's clemency powers.¹

Second or Subsequent Conviction for a Class B1 Felony

(For offenses committed on or after December 1, 1998)

An offender convicted of a Class B1 felony shall be sentenced to life imprisonment without parole if a jury finds that: (1) the victim was 13 years old or younger at the time of the offense, and (2) the offender has one or more prior convictions for a Class B1 felony. This section does not apply if the court finds that there are mitigating factors present. In that case, the offender is sentenced according to the Felony Punishment Chart. See *G.S. 15A-1340.16B*.

Egregious Aggravation for Certain Class B1 Felony Sex Offenses Against Children

(For offenses committed on or after December 1, 2008)

An offender convicted of rape of a child by an adult offender (*G.S. 14-27.2A*) or sexual offense with a child by an adult offender (*G.S. 14-27.4A*) may receive an active sentence longer than that authorized by the Felony Punishment Chart, up to and including life imprisonment without parole, if the court found that the nature of the offense and the harm inflicted are of such brutality, duration, severity, degree, or scope beyond that normally committed in such crimes, or considered in basic aggravation of those crimes, so as to require a longer sentence. Egregious aggravation can include further consideration of existing aggravating factors where the conduct of the defendant falls outside the heartland of cases even the aggravating factors were designed to cover. Egregious aggravation may also be considered based on the extraordinarily young age of the victim, the depraved torture or mutilation of the victim, or extraordinary physical pain inflicted on the victim. If the court sentences the offender to a longer sentence, it must make

¹ *State v. Allen*, 346 N.C. 731, 488 S.E.2d 188 (1997).

findings of fact supporting its decision, including matters it considered as egregious aggravation. See G.S. 14-27.2A and 14-27.4A.

Violent Habitual Felons

An offender convicted as a violent habitual felon (third conviction for a Class A, B1, B2, C, D, or E felony) must be sentenced to life without parole. Procedures for determining violent habitual felon status are similar to procedures for establishing habitual felon status. See G.S. 14-7.7 to 14-7.12.

Case Law

- If a defendant is found not guilty of violent habitual felon status, the State may not charge the defendant as a violent habitual felon in a subsequent prosecution based on the same two prior convictions.²

Habitual Felons

An offender convicted as an habitual felon (fourth conviction for a felony) is sentenced as a Class C felon. Prior felony convictions used to establish habitual felon status cannot also be used in the calculation of the prior record level. See G.S. 14-7.1 to 14-7.6.

Case Law

- Once a defendant pleads guilty to, or is found guilty of, habitual felon status, the trial court must sentence the defendant as an habitual felon.³
- The prosecutor may “withdraw an habitual felon indictment as to some or all of the underlying felony charges pending against a defendant, up until the time that the jury returns a verdict of guilty that defendant had attained the status of an habitual felon.”⁴
- A finding of extraordinary mitigation under G.S. 15A-1340.13 may not be used to avoid the requirement in G.S. 14-7.6 that an habitual felon sentence “run consecutively with and shall commence at the expiration of any sentence being served” by the defendant.⁵
- There is no time limitation for the use of a prior conviction in an habitual felon indictment.⁶
- If prior convictions were consolidated for judgment or obtained during the same week of superior court, one conviction may be used to establish habitual felon status, and a second conviction may be used to calculate the defendant’s prior record level.⁷

² *State v. Safrit*, 145 N.C. App. 541, 551 S.E.2d 516 (2001).

³ *State v. Wells*, ___ N.C. App. ___, 675 S.E.2d 85 (2009).

⁴ *State v. Murphy*, 193 N.C. App. 236, 666 S.E.2d 880 (2008).

⁵ *State v. Watkins*, 189 N.C. App. 784, 659 S.E.2d 58 (2008).

⁶ *State v. Hensley*, 156 N.C. App. 634, 577 S.E.2d 417 (2003).

⁷ *State v. McCrae*, 124 N.C. App. 664, 478 S.E.2d 210 (1996); *State v. Truesdale*, 123 N.C. App. 639, 473 S.E.2d 670 (1996).

- The State bears the burden of proving that an out-of-state conviction alleged in an habitual felon indictment is, in fact, a felony.⁸
- The State may use a defendant's less serious felony convictions to establish his habitual felon status and use his more serious felonies to confer prior record points.⁹
- An habitual felon indictment returned in a pending felony prosecution may be used to establish habitual felon status as to a subsequent felony charge that is tried during the same session of court by the same jury.¹⁰
- Habitual felon status attaches at the time of the defendant's conviction of the third qualifying felony.¹¹
- To be effective, a defendant's stipulation or admission to habitual felon status must be accompanied by the formal procedures used for a guilty plea under G.S. 15A-1022(a).¹²

Committed Youthful Offenders

Committed Youthful Offender Status is eliminated. However, the age of the defendant can be used as a mitigating factor.

Parole

Discretionary parole release is eliminated for all offenses committed on or after October 1, 1994, except Driving While Impaired, Driving While Impaired in a Commercial Vehicle, and Failure to Comply with Control Conditions. The Parole Commission is renamed the Post-Release Supervision and Parole Commission. See G.S. 15A-1370.1 to 15A-1376.

Appellate Review

Both the defendant and the State may appeal if the sentence results from an incorrect finding of the defendant's prior record level or contains a sentence disposition or sentence length not authorized by the structured sentencing law. The defense may appeal whether a sentence imposed outside the presumptive range (within the aggravated range) is supported by the evidence. The State may appeal whether a finding of "extraordinary mitigation" is supported by the evidence or is sufficient as a matter of law to support the dispositional deviation. See G.S. 15A-1415(b), 15A-1441, 15A-1444, and 15A-1445.

⁸ *State v. Carpenter*, 155 N.C. App. 35, 573 S.E.2d 668 (2002).

⁹ *State v. Cates*, 154 N.C. App. 737, 573 S.E.2d 208 (2002).

¹⁰ *State v. Murray*, 154 N.C. App. 631, 572 S.E.2d 845 (2002).

¹¹ *State v. Brown*, 146 N.C. App. 590, 553 S.E.2d 428 (2001).

¹² *State v. Gilmore*, 142 N.C. App. 465, 542 S.E.2d 694 (2001).

Section III. Provisions Relating to Post-Release Supervision

Eligibility and Procedures *G.S. 15A-1368.2*

A Class B1 through E felon is released from prison and placed on post-release supervision on the date equivalent to the maximum prison sentence, less nine months, less any earned time awarded by the Department of Correction or the custodian of a local confinement facility. The prisoner may not refuse post-release supervision.

Term of Post-Release Supervision *G.S. 15A-1368.2 and 15A-1368.3*

Generally, the period of post-release supervision is nine months. (Effective December 1, 1996). If an offender is convicted of a Class B1 through E offense for which registration is required as a sex offender, the period of post-release supervision is five years. The period may be reduced while the supervisee is under supervision by earned time awarded by the Department of Correction. An offender is eligible to receive earned credits toward the period of supervision for compliance with reintegrative conditions of supervision. When the offender completes the period of post-release supervision, the sentence(s) for which the offender was placed on post-release supervision is terminated.

Conditions of Post-Release Supervision *G.S. 15A-1368.4*

The conditions of post-release supervision may be reintegrative or designed to control the supervisee's behavior and to enforce compliance with law or judicial order. A supervisee may have his or her supervision period revoked for any violation of a controlling condition or for repeated violation of a reintegrative condition. A supervisee may be entitled to earned time credits for complying with reintegrative conditions.

Violations of Post-Release Supervision *G.S. 15A-1368.3*

Post-release supervision is conditional and subject to revocation. The Post-Release Supervision and Parole Commission may for good cause shown modify the conditions of post-release supervision at any time before the termination of the supervision period. If the supervisee violates a condition, the Commission may continue the supervisee on existing supervision, may modify the conditions of supervision, or may revoke post-release supervision. If revoked, the offender will be reimprisoned for up to the time remaining on the maximum sentence. The offender will not receive any credit for the time on post-release supervision, but will be eligible to receive earned time credit against the maximum prison term for time served in prison following revocation, and will be awarded credit against any period of imprisonment while in custody as a result of revocation proceedings.

An offender who has been reimprisoned prior to completing post-release supervision may again be released on post-release supervision subject to the provisions which govern initial release.

**** Effective for Offenses Committed on or after 12/1/95 Through 11/30/09 ****

**FELONY PUNISHMENT CHART
PRIOR RECORD LEVEL**

	I	II	III	IV	V	VI	
	0 Points	1-4 Points	5-8 Points	9-14 Points	15-18 Points	19+ Points	
A	Death or Life Without Parole						
B1	A	A	A	A	A	A	DISPOSITION
	<i>240 - 300</i>	<i>288 - 360</i>	<i>336 - 420</i>	<i>384 - 480</i>	<i>Life Without Parole</i>	<i>Life Without Parole</i>	<i>Aggravated Range</i>
	192 - 240	230 - 288	269 - 336	307 - 384	346 - 433	384 - 480	PRESUMPTIVE RANGE
	<i>144 - 192</i>	<i>173 - 230</i>	<i>202 - 269</i>	<i>230 - 307</i>	<i>260 - 346</i>	<i>288 - 384</i>	<i>Mitigated Range</i>
B2	A	A	A	A	A	A	
	<i>157 - 196</i>	<i>189 - 237</i>	<i>220 - 276</i>	<i>251 - 313</i>	<i>282 - 353</i>	<i>313 - 392</i>	
	125 - 157	151 - 189	176 - 220	201 - 251	225 - 282	251 - 313	
	<i>94 - 125</i>	<i>114 - 151</i>	<i>132 - 176</i>	<i>151 - 201</i>	<i>169 - 225</i>	<i>188 - 251</i>	
C	A	A	A	A	A	A	
	<i>73 - 92</i>	<i>100 - 125</i>	<i>116 - 145</i>	<i>133 - 167</i>	<i>151 - 188</i>	<i>168 - 210</i>	
	58 - 73	80 - 100	93 - 116	107 - 133	121 - 151	135 - 168	
	<i>44 - 58</i>	<i>60 - 80</i>	<i>70 - 93</i>	<i>80 - 107</i>	<i>90 - 121</i>	<i>101 - 135</i>	
D	A	A	A	A	A	A	
	<i>64 - 80</i>	<i>77 - 95</i>	<i>103 - 129</i>	<i>117 - 146</i>	<i>133 - 167</i>	<i>146 - 183</i>	
	51 - 64	61 - 77	82 - 103	94 - 117	107 - 133	117 - 146	
	<i>38 - 51</i>	<i>46 - 61</i>	<i>61 - 82</i>	<i>71 - 94</i>	<i>80 - 107</i>	<i>88 - 117</i>	
E	I/A	I/A	A	A	A	A	
	<i>25 - 31</i>	<i>29 - 36</i>	<i>34 - 42</i>	<i>46 - 58</i>	<i>53 - 66</i>	<i>59 - 74</i>	
	20 - 25	23 - 29	27 - 34	37 - 46	42 - 53	47 - 59	
	<i>15 - 20</i>	<i>17 - 23</i>	<i>20 - 27</i>	<i>28 - 37</i>	<i>32 - 42</i>	<i>35 - 47</i>	
F	I/A	I/A	I/A	A	A	A	
	<i>16 - 20</i>	<i>19 - 24</i>	<i>21 - 26</i>	<i>25 - 31</i>	<i>34 - 42</i>	<i>39 - 49</i>	
	13 - 16	15 - 19	17 - 21	20 - 25	27 - 34	31 - 39	
	<i>10 - 13</i>	<i>11 - 15</i>	<i>13 - 17</i>	<i>15 - 20</i>	<i>20 - 27</i>	<i>23 - 31</i>	
G	I/A	I/A	I/A	I/A	A	A	
	<i>13 - 16</i>	<i>15 - 19</i>	<i>16 - 20</i>	<i>20 - 25</i>	<i>21 - 26</i>	<i>29 - 36</i>	
	10 - 13	12 - 15	13 - 16	16 - 20	17 - 21	23 - 29	
	<i>8 - 10</i>	<i>9 - 12</i>	<i>10 - 13</i>	<i>12 - 16</i>	<i>13 - 17</i>	<i>17 - 23</i>	
H	C/I/A	I/A	I/A	I/A	I/A	A	
	<i>6 - 8</i>	<i>8 - 10</i>	<i>10 - 12</i>	<i>11 - 14</i>	<i>15 - 19</i>	<i>20 - 25</i>	
	5 - 6	6 - 8	8 - 10	9 - 11	12 - 15	16 - 20	
	<i>4 - 5</i>	<i>4 - 6</i>	<i>6 - 8</i>	<i>7 - 9</i>	<i>9 - 12</i>	<i>12 - 16</i>	
I	C	C/I	I	I/A	I/A	I/A	
	<i>6 - 8</i>	<i>6 - 8</i>	<i>6 - 8</i>	<i>8 - 10</i>	<i>9 - 11</i>	<i>10 - 12</i>	
	4 - 6	4 - 6	5 - 6	6 - 8	7 - 9	8 - 10	
	<i>3 - 4</i>	<i>3 - 4</i>	<i>4 - 5</i>	<i>4 - 6</i>	<i>5 - 7</i>	<i>6 - 8</i>	

A – Active Punishment I – Intermediate Punishment C – Community Punishment
 Numbers shown are in months and represent the range of minimum sentences

Revised: 08-04-95

MINIMUM AND MAXIMUM SENTENCES

The corresponding maximum sentence for each minimum sentence is shown in the tables below. In each column, the number to the left of the dash represents the minimum sentence (in months) and the number to the right of the dash represents the corresponding maximum sentence (in months). To calculate a maximum sentence when the minimum sentence is 340 months or more, see G.S. 15A-1340.17(e1).

FOR OFFENSE CLASSES B1 THROUGH E

15-27	56-77	97-126	138-175	179-224	220-273	261-323	302-372
16-29	57-78	98-127	139-176	180-225	221-275	262-324	303-373
17-30	58-79	99-128	140-177	181-227	222-276	263-325	304-374
18-31	59-80	100-129	141-179	182-228	223-277	264-326	305-375
19-32	60-81	101-131	142-180	183-229	224-278	265-327	306-377
20-33	61-83	102-132	143-181	184-230	225-279	266-329	307-378
21-35	62-84	103-133	144-182	185-231	226-281	267-330	308-379
22-36	63-85	104-134	145-183	186-233	227-282	268-331	309-380
23-37	64-86	105-135	146-185	187-234	228-283	269-332	310-381
24-38	65-87	106-137	147-186	188-235	229-284	270-333	311-383
25-39	66-89	107-138	148-187	189-236	230-285	271-335	312-384
26-41	67-90	108-139	149-188	190-237	231-287	272-336	313-385
27-42	68-91	109-140	150-189	191-239	232-288	273-337	314-386
28-43	69-92	110-141	151-191	192-240	233-289	274-338	315-387
29-44	70-93	111-143	152-192	193-241	234-290	275-339	316-389
30-45	71-95	112-144	153-193	194-242	235-291	276-341	317-390
31-47	72-96	113-145	154-194	195-243	236-293	277-342	318-391
32-48	73-97	114-146	155-195	196-245	237-294	278-343	319-392
33-49	74-98	115-147	156-197	197-246	238-295	279-344	320-393
34-50	75-99	116-149	157-198	198-247	239-296	280-345	321-395
35-51	76-101	117-150	158-199	199-248	240-297	281-347	322-396
36-53	77-102	118-151	159-200	200-249	241-299	282-348	323-397
37-54	78-103	119-152	160-201	201-251	242-300	283-349	324-398
38-55	79-104	120-153	161-203	202-252	243-301	284-350	325-399
39-56	80-105	121-155	162-204	203-253	244-302	285-351	326-401
40-57	81-107	122-156	163-205	204-254	245-303	286-353	327-402
41-59	82-108	123-157	164-206	205-255	246-305	287-354	328-403
42-60	83-109	124-158	165-207	206-257	247-306	288-355	329-404
43-61	84-110	125-159	166-209	207-258	248-307	289-356	330-405
44-62	85-111	126-161	167-210	208-259	249-308	290-357	331-407
45-63	86-113	127-162	168-211	209-260	250-309	291-359	332-408
46-65	87-114	128-163	169-212	210-261	251-311	292-360	333-409
47-66	88-115	129-164	170-213	211-263	252-312	293-361	334-410
48-67	89-116	130-165	171-215	212-264	253-313	294-362	335-411
49-68	90-117	131-167	172-216	213-265	254-314	295-363	336-413
50-69	91-119	132-168	173-217	214-266	255-315	296-365	337-414
51-71	92-120	133-169	174-218	215-267	256-317	297-366	338-415
52-72	93-121	134-170	175-219	216-269	257-318	298-367	339-416
53-73	94-122	135-171	176-221	217-270	258-319	299-368	
54-74	95-123	136-173	177-222	218-271	259-320	300-369	
55-75	96-125	137-174	178-223	219-272	260-321	301-371	

FOR OFFENSE CLASSES F THROUGH I

3-4	9-11	15-18	21-26	27-33	33-40	39-47	45-54
4-5	10-12	16-20	22-27	28-34	34-41	40-48	46-56
5-6	11-14	17-21	23-28	29-35	35-42	41-50	47-57
6-8	12-15	18-22	24-29	30-36	36-44	42-51	48-59
7-9	13-16	19-23	25-30	31-38	37-45	43-52	49-59
8-10	14-17	20-24	26-32	32-39	38-46	44-53	

Part II. Structured Sentencing for Misdemeanors

The State's structured sentencing laws went into effect on October 1, 1994, and apply to all misdemeanor offenses committed on or after that date (except for "driving while impaired," "driving while impaired in a commercial vehicle," and "failure to comply with control conditions by persons with communicable diseases"). This manual replaces the previous manual, and includes changes that are in effect on December 1, 2009, and apply to all misdemeanor offenses committed on or after that date. The laws are codified in Article 81B of Chapter 15A of the North Carolina General Statutes.

This part describes the substance and application of the sentencing laws for misdemeanors.

Figure C

*****Effective for Offenses Committed on or after 12/1/95*****

MISDEMEANOR PUNISHMENT CHART

CLASS	PRIOR CONVICTION LEVEL		
	I	II	III
	No Prior Convictions	One to Four Prior Convictions	Five or More Prior Convictions
A1	C/I/A 1 - 60 days	C/I/A 1 - 75 days	C/I/A 1 - 150 days
1	C 1 - 45 days	C/I/A 1 - 45 days	C/I/A 1 - 120 days
2	C 1 - 30 days	C/I 1 - 45 days	C/I/A 1 - 60 days
3	C 1 - 10 days	C/I 1 - 15 days	C/I/A 1 - 20 days

A – Active Punishment I – Intermediate Punishment C – Community Punishment

Cells with slash allow either disposition at the discretion of the judge

Revised: 08-04-95

Imposing Sentences for Misdemeanors

The sentencing laws use a Misdemeanor Punishment Chart which classifies offenders based on the seriousness of their crimes and on the number of their prior convictions (see **Figure C**). Based on this classification, the chart prescribes the types of sentence which may be imposed (active, intermediate, or community punishments) and the sentence lengths which may be selected. Following is a detailed description of the steps required to impose misdemeanor sentences under the structured sentencing laws.

1. Determine the offense class for each misdemeanor conviction.
2. Determine the prior conviction level for the offender.
3. Select a sentence length from the appropriate sentence range.
4. Select a sentence disposition from those authorized.
 - a. Impose an active punishment.
 - 1) *Activate the sentence length.*
 - b. Impose an intermediate punishment.
 - 1) *Suspend the sentence length.*
 - 2) *Impose supervised probation.*
 - 3) *Impose one or more intermediate punishment.*
 - 4) *Impose any appropriate community punishments.*
 - c. Impose a community punishment.
 - 1) *Suspend the sentence length.*
 - 2) *Impose probation and/or any other appropriate community punishment.*

This description does not apply to the following misdemeanors: Driving While Impaired, Driving While Impaired in a Commercial Vehicle, and Failure to Comply with Control Conditions.

Step 1. Determine the Misdemeanor Class

The appropriate misdemeanor class must be determined for each misdemeanor conviction.

Misdemeanor Offense Classes

Offense classes appear in the far left column of the Misdemeanor Punishment Chart (**Figure C**). Each misdemeanor offense is assigned by statute to one of four classes: Class A1, 1, 2, or 3. Generally, the misdemeanor classes are based on maximum punishment prescribed under previous law (prior to structured sentencing) as shown below:

<u>Misdemeanor Class</u>	<u>Law before structure sentencing</u>
Class 1	Punishable by more than six months up to two years
Class 2	Punishable by more than 30 days up to six months
Class 3	Punishable by 30 days or less

Class A1 is an exception to this general rule. It was created for certain assaultive offenses. A sample of the misdemeanor offense classifications under structured sentencing is shown in **Table 5**.

Case Law

- If the defendant's sentence depends upon the date that the offense occurred (and thus which sentencing law governs), the State bears the burden of proving the date of offense by substantial evidence if it seeks to apply the more severe provision.¹
- If the State elects to charge the defendant with a single offense based upon a series of actions that began before but concluded after October 1, 1994 (the effective date of the Structured Sentencing Act), the defendant is sentenced under Structured Sentencing.²

Conspiracy to Commit a Misdemeanor *G.S. 14-2.4*

General Rule

Unless a different classification is expressly stated in statute, a conspiracy to commit a misdemeanor is punishable under the next lower classification of the offense which the offender conspired to commit.

Exception

Conspiracy to commit a Class 3 misdemeanor is a Class 3 misdemeanor.

Example: Communicating threats is a Class 1 misdemeanor. However, conspiracy to communicate threats is a Class 2 misdemeanor.

¹ *State v. Poston*, 162 N.C. App. 642, 591 S.E.2d 898 (2004).

² *State v. Mullaney*, 129 N.C. App. 506, 500 S.E.2d 112 (1998).

Attempt to Commit a Misdemeanor *G.S. 14-2.5*

General Rule

Unless a different classification is expressly stated in statute, an attempt to commit a misdemeanor is punishable under the next lower classification of the offense which the offender attempted to commit.

Exception

Attempt to commit a Class 3 misdemeanor is a Class 3 misdemeanor.

Example: Simple assault is a Class 2 misdemeanor. However, an attempt to commit simple assault is a Class 3 misdemeanor.

Solicitation to Commit a Misdemeanor *G.S. 14-2.6*

General Rule

Unless a different classification is expressly stated in statute, a person who solicits another person to commit any misdemeanor is guilty of a Class 3 misdemeanor.

Example: Assault by pointing a gun is a Class A1 misdemeanor. However, solicitation to assault by pointing a gun is a Class 3 misdemeanor.

Misdemeanor Offense Class Enhancements

Ethnic Animosity *G.S. 14-3(c)*

A person who commits a Class 2 or 3 misdemeanor because of the victim's race, color, religion, nationality, or country of origin, is guilty of a Class 1 misdemeanor. A person who commits a Class A1 or 1 misdemeanor because of the victim's race, color, religion, nationality, or country of origin, is guilty of a Class H felony.

Injury to a Pregnant Woman *G.S. 14-18.2(c)*

(For offenses committed on or after January 1, 1999)

A person who, in the commission of a misdemeanor that is an act of domestic violence (as defined in Chapter 50B), causes injury to a woman, knowing the woman to be pregnant, and the injury results in a miscarriage or stillbirth by the woman is guilty of a misdemeanor that is one class higher than the misdemeanor committed. If the offense committed is a Class A1 misdemeanor, the person is guilty of a Class I felony. This section does not apply to acts committed by a pregnant woman which result in a miscarriage or stillbirth by the woman.

Criminal Gang Activity *G.S. 14-50.22*

(For offenses committed on or after December 1, 2008)

A person, age 15 or older, who commits a misdemeanor offense for the benefit of, at the direction of, or in association with, any criminal street gang is guilty of a misdemeanor that is

one class higher than the misdemeanor committed. If the offense committed is a Class A1 misdemeanor, the person is guilty of a Class I felony.

Table 5: Classification of a Sample of Misdemeanor Offenses
(Effective 12/1/09)

CLASS A1	
Assault Inflicting Serious Injury or Using a Deadly Weapon. (G.S. 14-33(c)(1))	Assault on a State Officer or Employee. (G.S. 14-33(c)(4))
Assault on a Female. (G.S. 14-33(c)(2))	Assault by Pointing a Gun. (G.S. 14-34)
Assault on a Child Under 12 Years of Age. (G.S. 14-33(c)(3))	Violation of a Valid Protective Order. (G.S. 50B-4.1(a))
CLASS 1	
Breaking or Entering Buildings. (G.S. 14-54(b))	Willful and Wanton Injury to Real Property. (G.S. 14-127)
Larceny of Property (worth \$1,000 or less). (G.S. 14-72)	Communicating Threats. (G.S. 14-277.1)
Unauthorized Use of a Motor Vehicle. (G.S. 14-72.2)	Possession of Drug Paraphernalia. (G.S. 90-113.22)
Worthless Checks for \$2,000 or Less (closed account). (G.S. 14-107(d)(4))	Misrepresentation to Obtain Employment Security Benefits. (G.S. 96-18(a))
CLASS 2	
Simple Assault/Assault and Battery. (G.S. 14-33(a))	Failure to Return Rental Property. (G.S. 14-167)
Obtaining Property in Return for Worthless Check. (G.S. 14-106)	Using Profane, Indecent or Threatening Language to Any Person Over Telephone. (G.S. 14-196)
Worthless Check for \$2,000 or Less. (G.S. 14-107(d)(1))	Resisting Officers. (G.S. 14-223)
First-Degree Trespass. (G.S. 14-159.12)	Carrying Concealed Weapons. (G.S. 14-269(a), (a1)/first offense)
Willful and Wanton Injury to Personal Property. (G.S. 14-160(a))	Disorderly Conduct. (G.S. 14-288.4)
CLASS 3	
Concealment of merchandise in mercantile establishments (first conviction). (G.S. 14-72.1)	Operate Motorboat Without Lifesaving Device. (G.S. 75A-6)
Second-Degree Trespass. (G.S. 14-159.13)	Possess Marijuana (1/2 ounce or less). (G.S. 90-95(a)(3))
Intoxicated and Disruptive in Public. (G.S. 14-444)	Hunting Without a License. (G.S. 113-270.2)
Unsealed Wine/Liquor in Passenger Area. (G.S. 18B-401)	Fishing Without a License. (G.S. 113-271)

Step 2. Determine the Prior Conviction Level

The appropriate prior conviction level must be determined for each misdemeanor.

Determining the Prior Conviction Level *G.S. 15A-1340.21(b)*

Prior conviction levels appear in the top row of the Misdemeanor Punishment Chart (**Figure C**). For misdemeanants, there are three prior conviction levels. To determine the prior conviction level, calculate the offender's total number of prior felony and misdemeanor convictions. Prior conviction levels are assigned as follows:

Number of Prior Convictions

No prior convictions
1 to 4 prior convictions
5 or more prior convictions

Prior Conviction Level

I
II
III

In determining the prior conviction level, a prior offense may be included if it is either a felony or a misdemeanor at the time the offense for which the offender is being sentenced is committed.

Infractions do not count in determining the prior conviction level. Infractions are noncriminal violations of law.

Case Law

- A prior finding of criminal contempt is not a prior conviction.¹
- There is no statute of limitation on the use of prior convictions to determine prior conviction level.²

Example: An offender has two prior felony convictions, two prior misdemeanor convictions, and two prior infractions. All of the convictions occurred in separate years. Only the prior felonies and misdemeanors count. Consequently, the offender has four prior convictions.

Definition of Prior Conviction G.S. 15A-1340.11(7)

An offender has a prior conviction when on the date a criminal judgment has been entered:

1. The offender has been convicted of a crime in District Court and has not given notice of appeal, and the time for appeal has expired; or
2. The offender has been convicted of a crime in Superior Court, regardless of whether the conviction is on appeal to the appellate division; or
3. The offender has been convicted of a crime in the courts of the United States, another state, the armed services of the United States, or any other country, regardless of whether the offense would be a crime if it occurred in North Carolina.

Case Law

- A prior conviction exists if the defendant has been found guilty or has entered a plea of guilty or no contest, despite the court's entry of a prayer for judgment continued.³
- A guilty plea for which the defendant was still on probation under G.S. 90-96(a) at the time of his sentencing for another offense qualifies as a prior conviction.⁴

¹ *State v. Reaves*, 142 N.C. App. 629, 544 S.E. 2d 253 (2001).

² *State v. Rich*, 130 N.C. App. 113, 502 S.E.2d 49 (1998).

³ *State v. Hatcher*, 136 N.C. App. 524, 524 S.E.2d 815 (2000).

⁴ *State v. Hasty*, 133 N.C. App. 563, 516 S.E.2d 428 (1999).

- In calculating a defendant's prior conviction level at re-sentencing, the court should include convictions that have occurred since the original sentencing proceeding but prior to the entry of judgment at resentencing.⁵

Example: An offender has a previous conviction in Superior Court for second-degree rape in 2008. The conviction is on appeal to the appellate division. This would count as one prior conviction. In this case, the fact that the prior conviction is on appeal to the appellate division does not affect the prior conviction level.

Considering Multiple Prior Convictions *G.S. 15A-1340.21(d)*

If an offender has been convicted of more than one offense in a single session of District Court, only one of the convictions counts when determining the prior conviction level. If an offender has been convicted of more than one offense in a single calendar week of a single Superior Court, only one of the convictions counts when determining the prior conviction level.

Case Law

- For purposes of counting multiple prior convictions, a district court conviction which is appealed to superior court is deemed to have occurred on the date of conviction in district court if the appeal is subsequently withdrawn.⁶
- If a defendant sustains convictions in district court and superior court on the same day, one district court conviction and one superior court conviction may be used.⁷

Example: An offender has two prior convictions (occurring during the same week of Superior Court) and two prior misdemeanor convictions (occurring during the same session of District Court). For purposes of calculating prior conviction level, the offender has two prior convictions (one for the week of Superior Court and one for the session of District Court).

Proof of Prior Convictions *G.S. 15A-1340.21(c)*

Prior convictions can be proved by:

1. Stipulation of the parties; or
2. Court records; or
3. Copy of records maintained by the Division of Criminal Information, Division of Motor Vehicles, or the Administrative Office of the Courts; or
4. Any other method the court finds reliable.

The original, or a copy of the court records, or a copy of the records maintained by the DCI, DMV, or the AOC bearing the same name as that by which the offender is charged, is prima facie evidence that the offender named is the same as the offender before the court and that the facts set out in the record are true.

⁵ *State v. Pritchard*, 186 N.C. App. 128, 649 S.E.2d 917 (2007).

⁶ *State v. Wilkins*, 128 N.C. App. 315, 494 S.E.2d 611 (1998).

⁷ *State v. Fuller*, 179 N.C. App. 61, 632 S.E.2d 509 (2006).

A “copy” includes a paper reproduction of a record maintained electronically on a computer or other data processing equipment and a document produced by a facsimile machine.

Case Law

- A sentencing worksheet unsupported by a stipulation by the defendant or by additional documentation is insufficient to prove the existence of prior convictions.⁸
- A written stipulation signed by the prosecutor and defense counsel on the sentencing worksheet is sufficient to prove the prior convictions listed thereon.⁹
- Though uncontested, the prosecutor’s unsupported statement about a defendant’s prior conviction level is insufficient to meet the State’s burden of proof at sentencing.¹⁰
- Where the prosecutor tenders a sentencing worksheet listing the defendant’s prior convictions, defense counsel’s statement that he has no objections may be reasonably construed as a stipulation.¹¹

Burden of Proof *G.S. 15A-1340.21(c)*

The State bears the burden of proving, by a preponderance of the evidence, that a prior conviction exists and that the offender before the court is the same person as the offender named in the prior conviction. Unlike felony sentencing, there is no statutory language directing the prosecutor to make all feasible efforts to obtain and present to the court the offender’s full prior record for misdemeanants.

Suppression of Prior Record *G.S. 15A-1340.21(c)*

Pursuant to G.S. 15A-980, a defendant may move to suppress use of a certain prior conviction (or convictions) that was obtained in violation of his right to counsel for purposes of calculating the defendant’s prior conviction level. If such a motion is made, the court may grant a continuance of the sentencing hearing.

Step 3. Select the Sentence Length from the Sentence Range

The judgment of the court must contain a sentence length that is consistent with the misdemeanor class and the prior conviction level for the offender. The sentence length is selected from the sentence range.

⁸ *State v. Smith*, 155 N.C. App. 500, 573 S.E.2d 618 (2002).

⁹ *State v. Hussey*, ___ N.C. App. ___, 669 S.E.2d 864 (2008).

¹⁰ *State v. Bartley*, 156 N.C. App. 490, 577 S.E.2d 319 (2003).

¹¹ *State v. Eubanks*, 151 N.C. App. 499, 565 S.E.2d 738 (2002).

Sentence Ranges *G.S. 15A-1340.23(c)*

A single sentence range (in days) is prescribed on the Misdemeanor Punishment Chart (**Figure C**) for each combination of misdemeanor class and prior conviction level. The court may select any single sentence length from within the range.

Enlargement of the row for Class 1 misdemeanors and Prior Conviction Levels I, II and III.

CLASS	PRIOR CONVICTION LEVELS		
	I	II	III
	No Prior Convictions	One to Four Prior Convictions	Five or More Prior Convictions
1	1 – 45 days C	1 – 45 days C//A	1 – 120 days C//A

Example: For an offender convicted of a Class 1 misdemeanor with a Prior Conviction Level of II, the court may impose any sentence length within the range (from 1 day to 45 days). For example, the court may impose 10 days, 30 days, 38 days, or 45 days.

Step 4. Select the Sentence Disposition

A sentence disposition must be imposed for each misdemeanor offense.

Sentence Disposition on Punishment Chart *G.S. 15A-1340.23(c)*

Sentence dispositions are prescribed on the Misdemeanor Punishment Chart (**Figure C**) for each combination of misdemeanor class and prior conviction level. A “C” on the chart indicates that a community punishment is authorized, an “I” indicates that an intermediate punishment is authorized, and an “A” indicates that an active punishment is authorized.

If the disposition chosen is an “A,” then the sentence must be activated. If the disposition chosen is a “C” or an “I,” then the sentence must be suspended. For some combinations of misdemeanor class and prior conviction level, the punishment chart authorizes more than one disposition (separated by a slash “/”). In such cases, the court has the discretion to impose any of the authorized dispositions.

Enlargement of the row for Class 2 misdemeanors and Prior Conviction Levels I, II and III.

CLASS	PRIOR CONVICTION LEVELS		
	I	II	III
	No Prior Convictions	One to Four Prior Convictions	Five or More Prior Convictions
2	C	C/I	C//A

Example: An offender is convicted of a Class 2 misdemeanor and has no prior convictions. The court may impose only a community punishment (“C”). If, however, the offender has five or more prior convictions, the court, in its discretion, is authorized to impose either an active punishment (“A”), an intermediate punishment (“I”), or a community punishment (“C”).

Active Punishment *G.S. 15A-1340.11(1)*

An active punishment requires the offender to serve the specified term of imprisonment in a local confinement facility (jail) or in a state prison. Misdemeanants receiving active punishments of 90 days or less must serve their sentence in local confinement facilities.¹

Intermediate Punishment *G.S. 15A-1340.11(6)*

An intermediate punishment requires a sentence of supervised probation with at least one of the following conditions:

1. Special Probation. Defined in G.S. 15A-1351(a), special probation includes a period of active confinement followed by a period of probation. (This is sometimes referred to as a split sentence.)
2. Residential Program. Assignment that requires the offender to reside in a facility for a specified period of time and to participate in activities such as counseling, treatment, social skills training, or employment training at the residential facility or other specified locations.
3. House Arrest with Electronic Monitoring. Assignment that requires the offender to remain at his or her residence unless the court or probation officer authorizes the offender to leave, and in which the offender shall wear a device which permits the supervising agency to monitor the offender’s compliance with the condition.
4. Intensive Supervision. Assignment that requires the offender to submit to rules adopted by the Division of Community Corrections for intensive supervision.
5. Day Reporting Center. Assignment that requires the offender to report on a daily or other regular basis at specified times for a specified length of time to participate in activities such as counseling, treatment, social skills training, or employment training.
6. Drug Treatment Court Program. (Effective July 26, 2004). Assignment that requires the offender to comply with the rules adopted for the program pursuant to Article 62 or Chapter 7A of the General Statutes and to report on a regular basis for a specified time to participate in court supervision, drug screening or testing, and drug or alcohol treatment programs.

An intermediate punishment may also include a fine, restitution, or any other conditions of probation which are considered community punishments.

For community penalties plans requested prior to January, 1, 2000, a sentence imposed pursuant to a community penalties plan as defined in G.S. 7A-771(2) is an intermediate

¹ Except as provided in G.S. 148-32.1(b).

punishment providing it is accepted by the court. The plan does not have to include any of the above intermediate conditions. After January 1, 2000, community penalties plans are no longer considered intermediate punishments.

Community Punishment *G.S. 15A-1340.11(2)*

A community punishment is any authorized sentence that does not include an active punishment or an intermediate punishment. A community punishment may consist of a fine only or a term of supervised or unsupervised probation which may include, but is not limited to, one or more of the following:

1. Any authorized condition of probation (except those defined as intermediate punishments)
2. Outpatient drug/alcohol treatment
3. Community service
4. Referral to T.A.S.C. (Treatment Accountability for Safer Communities)
5. Restitution
6. Fines

Example: If the authorized disposition includes a "C", the court could place an offender on supervised or unsupervised probation for a specific term. In addition, the court may require the offender to pay a fine, pay restitution, receive outpatient drug treatment, perform community service, or abide by any other authorized condition of probation except those specifically defined as intermediate punishments. The court could also impose a fine only.

Fines *G.S. 15A-1340.23(b)*

A fine may be imposed in combination with any disposition. Unless otherwise provided by statute, the amount of the fine is as follows:

- Misdemeanor Class A1 – Amount in the discretion of the court
- Misdemeanor Class 1 – Amount in the discretion of the court
- Misdemeanor Class 2 – Not more than \$1,000
- Misdemeanor Class 3 – Not more than \$200

If a community punishment is authorized, the judgment may consist of a fine only. Additionally, when the defendant is other than an individual, the judgment may consist of a fine only.

Active Punishment for Time Served Awaiting Trial *G.S. 15A-1340.20(c1)* (For offenses committed on or after May 22, 1997)

The court may impose an active punishment for a misdemeanor conviction in an offense class and prior conviction level that does not otherwise authorize an active punishment if the term of imprisonment is equal to or less than the total amount of time the offender has already spent committed to or in confinement in any State or local correctional, mental, or other institution as a result of the charge that culminated in the sentence.

Step 4a. Imposing an Active Punishment

If the court activates the sentence length, the sentence must be served in prison or jail.

Amount of Time to Be Served *G.S. 15A-1340.20(b)*

A misdemeanor sentenced to an active punishment must serve the term of imprisonment imposed (the sentence length), less up to 4 days per month “earned time.” Parole is eliminated.

Example: An offender with five prior convictions is given an active sentence of 90 days for a Class 1 misdemeanor. The offender will serve 90 days if no earned time credits are awarded. If all possible earned time credits are awarded, the offender will serve 78 days (90 days minus 4 days earned time credits for each month served).

Earned Time *G.S. 15A-1340.20(d)*

Good time and gain time are eliminated for offenders sentenced under structured sentencing. The Secretary of Correction is responsible for adopting rules to specify the rates at, and circumstances under, which earned time may be earned or forfeited. Earned time may also be awarded under G.S. 162-60 (reduction in sentence allowed for work). However, under structured sentencing, the total amount of earned time awarded cannot exceed 4 days per month.

Multiple Convictions *G.S. 15A-1340.22*

In the event of multiple convictions, the court may, in its discretion, run sentences concurrently, consecutively subject to certain limitations, or consolidate the offenses for judgment.

Concurrent Sentences

If an offender is convicted of more than one offense, the court may impose sentences for each of the offenses and run the sentences concurrently. Thus, the length of imprisonment will not exceed the longest of the individual sentences. Unless otherwise specified by the court, all sentences of imprisonment are presumed to run concurrently with any other sentences of imprisonment.

Example: An offender is convicted of three misdemeanor offenses (Class 1, Class 2, and Class 3) and the court finds that the offender has six prior convictions, which places the offender in Prior Conviction Level III. If the court elects to run the sentences concurrently, the court must impose a separate sentence for each offense. For example, the court could impose 120 days for the Class 1 misdemeanor, 60 days for the Class 2 misdemeanor, and 20 days for the Class 3 misdemeanor. The length of imprisonment will not exceed 120 days.

Consecutive Sentences

If an offender is convicted of more than one offense, the court may impose sentences for each of the offenses and run the sentences consecutively. If the court elects to impose consecutive sentences for two or more misdemeanors and the most serious misdemeanor is a Class A1, Class 1, or Class 2 misdemeanor, the cumulative length of imprisonment cannot

exceed twice the longest term of imprisonment authorized for the most serious misdemeanor offense at the offender's prior conviction level. Consecutive sentences cannot be imposed if all convictions are for Class 3 misdemeanors.

Case Law

- Consecutive sentences for Class A1, Class 1, or Class 2 misdemeanors may not exceed twice the maximum sentence authorized for the most serious offense even if the sentences are suspended.¹
- If the sentencing judge is silent on the issue when announcing judgment in open court, multiple sentences are concurrent by default under G.S. 15A-1340.15(a). The court may not alter the sentences to run consecutively on the written judgments without providing the defendant an opportunity to be heard.²

Example: An offender is convicted of three misdemeanor offenses (Class 1, Class 2, and Class 3) and the court finds that the offender has six prior convictions, which places the offender in Prior Conviction Level III. If the court elects to impose consecutive sentences, the cumulative length of imprisonment cannot exceed 240 days (twice the longest possible term for the most serious misdemeanor at the offender's prior conviction level). In this case, however, the longest sentence which could be imposed would be 200 days (120 days for the Class 1 misdemeanor, 60 days for the Class 2 misdemeanor, and 20 days for the Class 3 misdemeanor).

Consolidated Offenses

If an offender is convicted of more than one offense, the court may consolidate the offenses for judgment and impose a single sentence for the consolidated offenses. The judgment must contain a sentence disposition specified for the misdemeanor class and prior conviction level of the most serious misdemeanor, and the sentence of imprisonment must be within the range specified for that misdemeanor class and prior conviction level.

Example: An offender is convicted of three misdemeanor offenses (Class 1, Class 2, and Class 3) and the court finds that the offender has six prior convictions, which places the offender in Prior Conviction Level III. If the court elects to consolidate the offenses, the sentence imposed must conform to the sentence disposition and the sentence range prescribed for the most serious misdemeanor (the Class 1 misdemeanor) at the offender's prior conviction level. For example, the longest consolidated imprisonment sentence the court could impose would be 120 days.

Step 4b. Imposing an Intermediate Punishment

If the court imposes an intermediate punishment, the term of imprisonment must be suspended and the court must impose a period of supervised probation which includes at least one condition of probation which is defined as an intermediate punishment.

¹ *State v. Wheeler*, __ N.C. App. __, __ S.E.2d __ (Jan. 19, 2010).

² *State v. Crumbley*, 135 N.C. App. 59, 519 S.E.2d 94 (1999).

Imposing a Term of Supervised Probation *G.S. 15A-1342 and 15A-1343.2(d)*

Unless the court makes a specific finding that a longer or shorter term of probation is necessary, the court shall impose a term of supervised probation which is not less than 12 months and not more than 24 months. In no instance, however, can the length of probation exceed five years. The court may also delegate certain powers to the Division of Community Corrections as described in **Part III**.

Selecting Intermediate Punishments/Setting Lengths *G.S. 15A-1340.11(6)*

For an intermediate punishment, at least one of the following conditions of probation must be imposed:

1. Special Probation. The active portion of special probation cannot exceed one-fourth of the term of imprisonment imposed for the misdemeanor offense. Following release from the active portion of the sentence, the offender must serve the remaining period of probation. (This is sometimes referred to as a split sentence.)
2. Residential Program. The length of assignment to a residential program is in the discretion of the court. The length can be less than, but not greater than, the total term of probation imposed. The current average stay in a residential program is from 10 months to two years depending on the specific program. Following release from the residential program, the offender must continue to serve any remaining period of probation.¹
3. House Arrest with Electronic Monitoring. The length of assignment to house arrest with electronic monitoring is in the discretion of the court. The length can be less than, but not greater than, the total term of probation imposed. The current average length of house arrest with electronic monitoring is 3.4 months. Following completion of house arrest with electronic monitoring, the offender must continue to serve any remaining period of probation.
4. Intensive Supervision. The length of intensive supervision is in the discretion of the court. The length can be less than, but not greater than, the total term of probation imposed. The current average length of intensive supervision is from six to nine months. Following completion of intensive supervision, the offender must continue to serve any remaining period of probation.
5. Day Reporting Center. The length of assignment to a day reporting center is in the discretion of the court. The length can be less than, but not greater than, the total term of probation imposed. Following completion of the assignment to the day reporting center, the offender must continue to serve any remaining period of probation.
6. Drug Treatment Court Program. (Effective July 26, 2004). The length of assignment to a drug treatment court program is approximately one year. To graduate, the offender must successfully complete all phases of clinical treatment, receive clean drug screens during the prior 4 to 6 months, be employed, be paying regularly towards his/her legal

¹ The IMPACT program (boot camp) was originally a form of special probation; the length of the active sentence was normally 90 days and could not exceed 120 days. The IMPACT program became a residential program effective December 1, 1998. The IMPACT program was closed effective August 15, 2002.

obligations, and be nominated for graduation by the drug treatment court team. Following completion of the assignment to the drug treatment court program, the offender must continue to serve any remaining period of probation.

An intermediate punishment can include any regular condition of probation and may include fines, restitution, community service, outpatient treatment, or any other statutorily authorized sanction or condition of probation.

Example: An offender is convicted of a Class 2 misdemeanor and the court finds the offender has one prior conviction which places the offender in Prior Conviction Level II. Since an Intermediate Punishment "I" is authorized, the court may impose special probation. However, the term of confinement for the special probation cannot be greater than 11 days (one-quarter of the longest term of imprisonment which could be imposed which is 45 days).

Intermediate Conditions *G.S. 15A-1343(b4)* (For offenses committed on or after December 1, 2009)

If an offender is sentenced to any intermediate punishment, the following conditions of probation apply:

1. If required in the discretion of the offender's probation officer, the offender must perform community service under the supervision of the Division of Community Corrections and pay the fee required by G.S. 143B-262.
2. The offender must not use, possess, or control alcohol.
3. The offender must remain within the county of residence unless granted written permission to leave by the court or the offender's probation officer.
4. The offender must participate in any evaluation, counseling, treatment, or educational program as directed by the probation officer, keeping all appointments and abiding by the rules, regulations, and direction of each program.

These conditions apply to each offender subject to intermediate punishment unless the court specifically exempts the offender from one or more of the conditions in its judgment or order. It is not necessary for the presiding judge to state each of these conditions in open court, but the conditions must be set forth in the judgment or order of the court.

Step 4c. Imposing a Community Punishment

If the court imposes a community punishment, the term of imprisonment must be suspended and either a supervised or unsupervised term of probation imposed, or a fine only may be imposed.

Selecting the Community Punishment *G.S. 15A-1340.11(2)*

For community punishments, a term of supervised probation or unsupervised probation may be imposed at the discretion of the court and consistent with statute. The court may also impose a fine only. A community punishment can include any regular condition of probation and may include fines, restitution, community service, outpatient treatment, or any other statutorily authorized sanction or condition which is not defined as an intermediate punishment. The court may impose house arrest with electronic monitoring on an offender sentenced to a community

punishment if the presiding judge determines that the case involved domestic violence (G.S. 15A-1382.1).

Case Law

- In imposing community service reparations or restitution, the court must consider the defendant's resources, ability to earn, support obligations, and any other factors affecting ability to pay. The amount of restitution must also be supported by the record. However, written findings are not required.¹
- Restitution may not include compensation for pain and suffering; it "is limited to quantifiable costs, income, and values of the kind set out in [G.S] 15A-1340.35."²

Setting the Length of Probation *G.S. 15A-1342 and 15A-1343.2(d)*

Unless the court makes a specific finding that a longer or shorter term of probation necessary, the court shall impose a single term of supervised or unsupervised probation which is not less than 6 months and not more than 18 months. In no instance, however, can the length of probation exceed five years. The court may also delegate certain powers to the Division of Community Corrections as described in **Part III**.

Case Law

- Under G.S. 15A-1346, multiple sentences of probation must run concurrently.³
- Although the court may not impose consecutive periods of probation, it may order suspended sentences to run consecutively.⁴

¹ *State v. Mucci*, 163 N.C. App. 615, 594 S.E.2d 411 (2004).

² *State v. Wilson*, 158 N.C. App. 235, 580 S.E.2d 386 (2003).

³ *State v. Canady*, 153 N.C. App. 455, 570 S.E.2d 262 (2002).

⁴ *State v. Cousar*, 190 N.C. App. 750, 660 S.E.2d 902 (2008).

Part III. Additional Provisions Relating to Probation

The following provisions apply to felony offenses and misdemeanor offenses (except for “driving while impaired,” “driving while impaired in a commercial vehicle,” and “failure to comply with control conditions”) committed on or after October 1, 1994.

Delegation of Authority

Delegation of Authority to Division of Community Corrections G.S. 15A-1343.2(e) and (f) **(For offenses committed on or after December 1, 1997)¹**

If the court imposes a community punishment, it delegates to the Division of Community Corrections the authority to require an offender to:

1. Perform up to 20 hours of community service and pay the fee prescribed for this supervision;
2. Report to the offender's probation officer on a frequency to be determined by the officer; or
3. Submit to substance abuse assessment, monitoring or treatment.

If an intermediate punishment is imposed, the court delegates to the Division of Community Corrections the authority to require an offender to:

1. Perform up to 50 hours of community service and pay the fee prescribed for this supervision;
2. Submit to a curfew with electronic monitoring;
3. Submit to substance abuse assessment, monitoring or treatment;
4. Participate in an educational or vocational skills development program; or
5. Submit to satellite-based monitoring if the offender is a sex offender who meets the criteria set out in G.S. 14-208.40(a)(2).

The delegation occurs unless the court specifically finds that delegation is not appropriate.

The Division may exercise the above authority only if it first determines that the offender has failed to comply with one or more conditions of probation imposed by the court. If the Division imposes any of the above requirements, then it may subsequently reduce or remove those same requirements.

If the probation officer exercises the above authority, the offender may file a motion with the court to review the action taken. The offender must be given notice of the right to seek such review.

¹ For offenses committed before December 1, 1997, the court was authorized to delegate the authority to the Division of Community Corrections in each case if it found that delegation was appropriate.

Extension of Probation

Extend the Original Period of Probation G.S. 15A-1344(d) and (f)

The court may after notice and hearing and for good cause shown extend the period of probation. The extension may occur at any time prior to the expiration or termination of the probation period or after the expiration of the period if specified conditions are met. The total period of probation shall not exceed the maximum of five years.

Extend Beyond the Original Period of Probation G.S. 15A-1342(a)

The court, with the consent of the defendant, may extend the period of probation beyond the original period for the purpose of allowing the defendant to complete a period of restitution or to continue medical or psychiatric treatment ordered as a condition of probation. The court may order the extension only in the last six months of the original period of probation and the extension may be for a period of up to three years.

Court Responses to Violations of Probation

If the court finds that the offender has failed to abide by the conditions of probation, the court may:

- Alter probation, or
- Find the offender in criminal contempt of court, or
- Revoke probation and impose an active sentence.

Alter Probation G.S. 15A-1344(a) through (d) and (e2)

Probation may be reduced, terminated, continued, extended or modified if the court finds that an offender has violated probation. Upon a finding that an offender sentenced to community punishment has violated one or more conditions of probation, the court's authority to modify probation includes the authority to require the offender to comply with conditions of probation which otherwise make the sentence an intermediate punishment (including the imposition of special probation). If the court extends probation for an offender who is a sex offender as specified in G.S. 14-208.40(a)(1) or (a)(2), the court must impose satellite-based monitoring as a condition of the extended probation.

Find Offender in Criminal Contempt of Court G.S. 15A-1344(e1)

If an offender sentenced to an intermediate or community punishment willfully fails to comply with a condition of probation, the court may hold the offender in criminal contempt as provided by Article 1 of Chapter 5A of the General Statutes. An offender punished under this subsection may be imprisoned for up to 30 days and/or fined up to \$500, but no other punishment may be imposed. Furthermore, the conduct resulting in contempt may not also be the basis for revoking probation.

Revoke Probation G.S. 15A-1344(a) through (c)

For felonies: If the court revokes probation, the suspended term of imprisonment or a reduced term of imprisonment must be activated. If a reduced term of imprisonment is activated, it must be within the initial sentence range used to determine the original sentence. If the initial sentence was within the presumptive range, the reduced sentence must be within the presumptive range. If the initial sentence was within the aggravated range, the reduced sentence must be within the aggravated range. If the initial sentence was within the mitigated range, the reduced sentence must be within the mitigated range.

Example: An offender convicted of a Class F offense with a Prior Record level of II was originally sentenced to a minimum sentence of 18 months, selected from the presumptive minimum sentence range of 15 to 19 months. Upon revocation, the court must either activate the minimum length of 18 months or activate a reduced length of either 15, 16, or 17 months. In this case, the court has no authority to activate a minimum length of less than 15 months or more than 18 months.

For misdemeanors: If the court revokes probation, the suspended term of imprisonment must be activated or a modified term of imprisonment may be imposed. If a modified term of imprisonment is imposed, the term cannot be greater than the suspended term.

Tolling the Period of Probation G.S. 15A-1344(g)

If there are pending criminal charges against an offender on probation, which, upon conviction, could result in revocation proceedings against the offender for violation of the terms of this probation, the probation period is tolled until all pending criminal charges are resolved. The offender remains subject to the conditions of probation, including supervision fees, during the tolled period. If the offender is acquitted or if the new charge is dismissed, the time spent on probation during the tolled period is credited against the period of probation.

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Notes

**** Effective for Offenses Committed on or after 12/1/95 Through 11/30/09 ****

**FELONY PUNISHMENT CHART
PRIOR RECORD LEVEL**

	I 0 Pts	II 1-4 Pts	III 5-8 Pts	IV 9-14 Pts	V 15-18 Pts	VI 19+ Pts	
A	Death or Life Without Parole						
B1	A	A	A	A	A	A	DISPOSITION
	<i>240 - 300</i>	<i>288 - 360</i>	<i>336 - 420</i>	<i>384 - 480</i>	<i>Life Without Parole</i>	<i>Life Without Parole</i>	<i>Aggravated Range</i>
	192 - 240	230 - 288	269 - 336	307 - 384	346 - 433	384 - 480	PRESUMPTIVE RANGE
	<i>144 - 192</i>	<i>173 - 230</i>	<i>202 - 269</i>	<i>230 - 307</i>	<i>260 - 346</i>	<i>288 - 384</i>	<i>Mitigated Range</i>
B2	A	A	A	A	A	A	
	<i>157 - 196</i>	<i>189 - 237</i>	<i>220 - 276</i>	<i>251 - 313</i>	<i>282 - 353</i>	<i>313 - 392</i>	
	125 - 157	151 - 189	176 - 220	201 - 251	225 - 282	251 - 313	
	<i>94 - 125</i>	<i>114 - 151</i>	<i>132 - 176</i>	<i>151 - 201</i>	<i>169 - 225</i>	<i>188 - 251</i>	
C	A	A	A	A	A	A	
	<i>73 - 92</i>	<i>100 - 125</i>	<i>116 - 145</i>	<i>133 - 167</i>	<i>151 - 188</i>	<i>168 - 210</i>	
	58 - 73	80 - 100	93 - 116	107 - 133	121 - 151	135 - 168	
	<i>44 - 58</i>	<i>60 - 80</i>	<i>70 - 93</i>	<i>80 - 107</i>	<i>90 - 121</i>	<i>101 - 135</i>	
D	A	A	A	A	A	A	
	<i>64 - 80</i>	<i>77 - 95</i>	<i>103 - 129</i>	<i>117 - 146</i>	<i>133 - 167</i>	<i>146 - 183</i>	
	51 - 64	61 - 77	82 - 103	94 - 117	107 - 133	117 - 146	
	<i>38 - 51</i>	<i>46 - 61</i>	<i>61 - 82</i>	<i>71 - 94</i>	<i>80 - 107</i>	<i>88 - 117</i>	
E	I/A	I/A	A	A	A	A	
	<i>25 - 31</i>	<i>29 - 36</i>	<i>34 - 42</i>	<i>46 - 58</i>	<i>53 - 66</i>	<i>59 - 74</i>	
	20 - 25	23 - 29	27 - 34	37 - 46	42 - 53	47 - 59	
	<i>15 - 20</i>	<i>17 - 23</i>	<i>20 - 27</i>	<i>28 - 37</i>	<i>32 - 42</i>	<i>35 - 47</i>	
F	I/A	I/A	I/A	A	A	A	
	<i>16 - 20</i>	<i>19 - 24</i>	<i>21 - 26</i>	<i>25 - 31</i>	<i>34 - 42</i>	<i>39 - 49</i>	
	13 - 16	15 - 19	17 - 21	20 - 25	27 - 34	31 - 39	
	<i>10 - 13</i>	<i>11 - 15</i>	<i>13 - 17</i>	<i>15 - 20</i>	<i>20 - 27</i>	<i>23 - 31</i>	
G	I/A	I/A	I/A	I/A	A	A	
	<i>13 - 16</i>	<i>15 - 19</i>	<i>16 - 20</i>	<i>20 - 25</i>	<i>21 - 26</i>	<i>29 - 36</i>	
	10 - 13	12 - 15	13 - 16	16 - 20	17 - 21	23 - 29	
	<i>8 - 10</i>	<i>9 - 12</i>	<i>10 - 13</i>	<i>12 - 16</i>	<i>13 - 17</i>	<i>17 - 23</i>	
H	C/I/A	I/A	I/A	I/A	I/A	A	
	<i>6 - 8</i>	<i>8 - 10</i>	<i>10 - 12</i>	<i>11 - 14</i>	<i>15 - 19</i>	<i>20 - 25</i>	
	5 - 6	6 - 8	8 - 10	9 - 11	12 - 15	16 - 20	
	<i>4 - 5</i>	<i>4 - 6</i>	<i>6 - 8</i>	<i>7 - 9</i>	<i>9 - 12</i>	<i>12 - 16</i>	
I	C	C/I	I	I/A	I/A	I/A	
	<i>6 - 8</i>	<i>6 - 8</i>	<i>6 - 8</i>	<i>8 - 10</i>	<i>9 - 11</i>	<i>10 - 12</i>	
	4 - 6	4 - 6	5 - 6	6 - 8	7 - 9	8 - 10	
	<i>3 - 4</i>	<i>3 - 4</i>	<i>4 - 5</i>	<i>4 - 6</i>	<i>5 - 7</i>	<i>6 - 8</i>	

A – Active Punishment I – Intermediate Punishment C – Community Punishment
 Numbers shown are in months and represent the range of minimum sentences
 Revised: 08-04-95

MINIMUM AND MAXIMUM SENTENCES

The corresponding maximum sentence for each minimum sentence is shown in the tables below. In each column, the number to the left of the dash represents the minimum sentence (in months) and the number to the right of the dash represents the corresponding maximum sentence (in months). To calculate a maximum sentence when the minimum sentence is 340 months or more, see G.S. 15A-1340.17(e1).

FOR OFFENSE CLASSES B1 THROUGH E

15-27	56-77	97-126	138-175	179-224	220-273	261-323	302-372
16-29	57-78	98-127	139-176	180-225	221-275	262-324	303-373
17-30	58-79	99-128	140-177	181-227	222-276	263-325	304-374
18-31	59-80	100-129	141-179	182-228	223-277	264-326	305-375
19-32	60-81	101-131	142-180	183-229	224-278	265-327	306-377
20-33	61-83	102-132	143-181	184-230	225-279	266-329	307-378
21-35	62-84	103-133	144-182	185-231	226-281	267-330	308-379
22-36	63-85	104-134	145-183	186-233	227-282	268-331	309-380
23-37	64-86	105-135	146-185	187-234	228-283	269-332	310-381
24-38	65-87	106-137	147-186	188-235	229-284	270-333	311-383
25-39	66-89	107-138	148-187	189-236	230-285	271-335	312-384
26-41	67-90	108-139	149-188	190-237	231-287	272-336	313-385
27-42	68-91	109-140	150-189	191-239	232-288	273-337	314-386
28-43	69-92	110-141	151-191	192-240	233-289	274-338	315-387
29-44	70-93	111-143	152-192	193-241	234-290	275-339	316-389
30-45	71-95	112-144	153-193	194-242	235-291	276-341	317-390
31-47	72-96	113-145	154-194	195-243	236-293	277-342	318-391
32-48	73-97	114-146	155-195	196-245	237-294	278-343	319-392
33-49	74-98	115-147	156-197	197-246	238-295	279-344	320-393
34-50	75-99	116-149	157-198	198-247	239-296	280-345	321-395
35-51	76-101	117-150	158-199	199-248	240-297	281-347	322-396
36-53	77-102	118-151	159-200	200-249	241-299	282-348	323-397
37-54	78-103	119-152	160-201	201-251	242-300	283-349	324-398
38-55	79-104	120-153	161-203	202-252	243-301	284-350	325-399
39-56	80-105	121-155	162-204	203-253	244-302	285-351	326-401
40-57	81-107	122-156	163-205	204-254	245-303	286-353	327-402
41-59	82-108	123-157	164-206	205-255	246-305	287-354	328-403
42-60	83-109	124-158	165-207	206-257	247-306	288-355	329-404
43-61	84-110	125-159	166-209	207-258	248-307	289-356	330-405
44-62	85-111	126-161	167-210	208-259	249-308	290-357	331-407
45-63	86-113	127-162	168-211	209-260	250-309	291-359	332-408
46-65	87-114	128-163	169-212	210-261	251-311	292-360	333-409
47-66	88-115	129-164	170-213	211-263	252-312	293-361	334-410
48-67	89-116	130-165	171-215	212-264	253-313	294-362	335-411
49-68	90-117	131-167	172-216	213-265	254-314	295-363	336-413
50-69	91-119	132-168	173-217	214-266	255-315	296-365	337-414
51-71	92-120	133-169	174-218	215-267	256-317	297-366	338-415
52-72	93-121	134-170	175-219	216-269	257-318	298-367	339-416
53-73	94-122	135-171	176-221	217-270	258-319	299-368	
54-74	95-123	136-173	177-222	218-271	259-320	300-369	
55-75	96-125	137-174	178-223	219-272	260-321	301-371	

FOR OFFENSE CLASSES F THROUGH I

3-4	9-11	15-18	21-26	27-33	33-40	39-47	45-54
4-5	10-12	16-20	22-27	28-34	34-41	40-48	46-56
5-6	11-14	17-21	23-28	29-35	35-42	41-50	47-57
6-8	12-15	18-22	24-29	30-36	36-44	42-51	48-59
7-9	13-16	19-23	25-30	31-38	37-45	43-52	49-59
8-10	14-17	20-24	26-32	32-39	38-46	44-53	

***** Effective for Offenses Committed on or after 12/1/09 *****

**FELONY PUNISHMENT CHART
PRIOR RECORD LEVEL**

OFFENSE CLASS	I	II	III	IV	V	VI	DISPOSITION Aggravated Range PRESUMPTIVE RANGE Mitigated Range	
	0-1 Pt	2-5 Pts	6-9 Pts	10-13 Pts	14-17 Pts	18+ Pts		
	A	Death or Life Without Parole						
	B1	A 240 - 300	A 276 - 345	A 317 - 397	A 365 - 456	A <i>Life Without Parole</i> 336 - 420		A <i>Life Without Parole</i> 386 - 483
		192 - 240	221 - 276	254 - 317	292 - 365	336 - 420		386 - 483
		144 - 192	166 - 221	190 - 254	219 - 292	252 - 336		290 - 386
	B2	A 157 - 196	A 180 - 225	A 207 - 258	A 238 - 297	A 273 - 342		A 314 - 393
		125 - 157	144 - 180	165 - 207	190 - 238	219 - 273		251 - 314
		94 - 125	108 - 144	124 - 165	143 - 190	164 - 219		189 - 251
	C	A 73 - 92	A 83 - 104	A 96 - 120	A 110 - 138	A 127 - 159		A 146 - 182
	58 - 73	67 - 83	77 - 96	88 - 110	101 - 127	117 - 146		
	44 - 58	50 - 67	58 - 77	66 - 88	76 - 101	87 - 117		
D	A 64 - 80	A 73 - 92	A 84 - 105	A 97 - 121	A 111 - 139	A 128 - 160		
	51 - 64	59 - 73	67 - 84	78 - 97	89 - 111	103 - 128		
	38 - 51	44 - 59	51 - 67	58 - 78	67 - 89	77 - 103		
E	I/A 25 - 31	I/A 29 - 36	A 33 - 41	A 38 - 48	A 44 - 55	A 50 - 63		
	20 - 25	23 - 29	26 - 33	30 - 38	35 - 44	40 - 50		
	15 - 20	17 - 23	20 - 26	23 - 30	26 - 35	30 - 40		
F	I/A 16 - 20	I/A 19 - 23	I/A 21 - 27	A 25 - 31	A 28 - 36	A 33 - 41		
	13 - 16	15 - 19	17 - 21	20 - 25	23 - 28	26 - 33		
	10 - 13	11 - 15	13 - 17	15 - 20	17 - 23	20 - 26		
G	I/A 13 - 16	I/A 14 - 18	I/A 17 - 21	I/A 19 - 24	A 22 - 27	A 25 - 31		
	10 - 13	12 - 14	13 - 17	15 - 19	17 - 22	20 - 25		
	8 - 10	9 - 12	10 - 13	11 - 15	13 - 17	15 - 20		
H	C/I/A 6 - 8	I/A 8 - 10	I/A 10 - 12	I/A 11 - 14	I/A 15 - 19	A 20 - 25		
	5 - 6	6 - 8	8 - 10	9 - 11	12 - 15	16 - 20		
	4 - 5	4 - 6	6 - 8	7 - 9	9 - 12	12 - 16		
I	C 6 - 8	C/I 6 - 8	I 6 - 8	I/A 8 - 10	I/A 9 - 11	I/A 10 - 12		
	4 - 6	4 - 6	5 - 6	6 - 8	7 - 9	8 - 10		
	3 - 4	3 - 4	4 - 5	4 - 6	5 - 7	6 - 8		

A – Active Punishment I – Intermediate Punishment C – Community Punishment
Numbers shown are in months and represent the range of minimum sentences

MINIMUM AND MAXIMUM SENTENCES

The corresponding maximum sentence for each minimum sentence is shown in the tables below. In each column, the number to the left of the dash represents the minimum sentence (in months) and the number to the right of the dash represents the corresponding maximum sentence (in months). To calculate a maximum sentence when the minimum sentence is 340 months or more see G.S. 15A-1340.17(e1).

FOR OFFENSE CLASSES B1 THROUGH E

15-27	56-77	97-126	138-175	179-224	220-273	261-323	302-372
16-29	57-78	98-127	139-176	180-225	221-275	262-324	303-373
17-30	58-79	99-128	140-177	181-227	222-276	263-325	304-374
18-31	59-80	100-129	141-179	182-228	223-277	264-326	305-375
19-32	60-81	101-131	142-180	183-229	224-278	265-327	306-377
20-33	61-83	102-132	143-181	184-230	225-279	266-329	307-378
21-35	62-84	103-133	144-182	185-231	226-281	267-330	308-379
22-36	63-85	104-134	145-183	186-233	227-282	268-331	309-380
23-37	64-86	105-135	146-185	187-234	228-283	269-332	310-381
24-38	65-87	106-137	147-186	188-235	229-284	270-333	311-383
25-39	66-89	107-138	148-187	189-236	230-285	271-335	312-384
26-41	67-90	108-139	149-188	190-237	231-287	272-336	313-385
27-42	68-91	109-140	150-189	191-239	232-288	273-337	314-386
28-43	69-92	110-141	151-191	192-240	233-289	274-338	315-387
29-44	70-93	111-143	152-192	193-241	234-290	275-339	316-389
30-45	71-95	112-144	153-193	194-242	235-291	276-341	317-390
31-47	72-96	113-145	154-194	195-243	236-293	277-342	318-391
32-48	73-97	114-146	155-195	196-245	237-294	278-343	319-392
33-49	74-98	115-147	156-197	197-246	238-295	279-344	320-393
34-50	75-99	116-149	157-198	198-247	239-296	280-345	321-395
35-51	76-101	117-150	158-199	199-248	240-297	281-347	322-396
36-53	77-102	118-151	159-200	200-249	241-299	282-348	323-397
37-54	78-103	119-152	160-201	201-251	242-300	283-349	324-398
38-55	79-104	120-153	161-203	202-252	243-301	284-350	325-399
39-56	80-105	121-155	162-204	203-253	244-302	285-351	326-401
40-57	81-107	122-156	163-205	204-254	245-303	286-353	327-402
41-59	82-108	123-157	164-206	205-255	246-305	287-354	328-403
42-60	83-109	124-158	165-207	206-257	247-306	288-355	329-404
43-61	84-110	125-159	166-209	207-258	248-307	289-356	330-405
44-62	85-111	126-161	167-210	208-259	249-308	290-357	331-407
45-63	86-113	127-162	168-211	209-260	250-309	291-359	332-408
46-65	87-114	128-163	169-212	210-261	251-311	292-360	333-409
47-66	88-115	129-164	170-213	211-263	252-312	293-361	334-410
48-67	89-116	130-165	171-215	212-264	253-313	294-362	335-411
49-68	90-117	131-167	172-216	213-265	254-314	295-363	336-413
50-69	91-119	132-168	173-217	214-266	255-315	296-365	337-414
51-71	92-120	133-169	174-218	215-267	256-317	297-366	338-415
52-72	93-121	134-170	175-219	216-269	257-318	298-367	339-416
53-73	94-122	135-171	176-221	217-270	258-319	299-368	
54-74	95-123	136-173	177-222	218-271	259-320	300-369	
55-75	96-125	137-174	178-223	219-272	260-321	301-371	

FOR OFFENSE CLASSES F THROUGH I

3-4	8-10	13-16	18-22	23-28	28-34	33-40	38-46
4-5	9-11	14-17	19-23	24-29	29-35	34-41	39-47
5-6	10-12	15-18	20-24	25-30	30-36	35-42	40-48
6-8	11-14	16-20	21-26	26-32	31-38	36-44	41-50
7-9	12-15	17-21	22-27	27-33	32-39	37-45	

*****Effective for Offenses Committed on or after 12/1/95*****

MISDEMEANOR PUNISHMENT CHART

CLASS	PRIOR CONVICTION LEVEL		
	I	II	III
	No Prior Convictions	One to Four Prior Convictions	Five or More Prior Convictions
A1	C/I/A 1 - 60 days	C/I/A 1 - 75 days	C/I/A 1 - 150 days
1	C 1 - 45 days	C/I/A 1 - 45 days	C/I/A 1 - 120 days
2	C 1 - 30 days	C/I 1 - 45 days	C/I/A 1 - 60 days
3	C 1 - 10 days	C/I 1 - 15 days	C/I/A 1 - 20 days

A – Active Punishment I – Intermediate Punishment C – Community Punishment
Cells with slash allow either disposition at the discretion of the judge.

Revised: 08-04-95