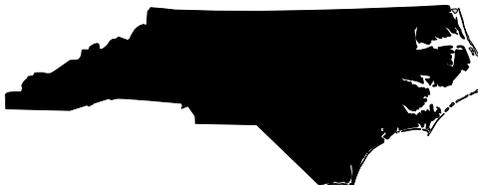


*THIS MANUAL APPLIES TO OFFENSES COMMITTED
ON OR AFTER: DECEMBER 1, 1995
REVISED AUGUST 1, 2004*

STRUCTURED SENTENCING

TRAINING AND REFERENCE MANUAL



NC SENTENCING AND POLICY ADVISORY COMMISSION
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RALEIGH, NC 27602
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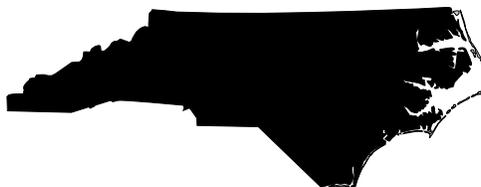
THE HONORABLE W. ERWIN SPAINHOUR
CHAIRMAN

SUSAN KATZENELSON
EXECUTIVE DIRECTOR

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EXECUTIVE DIRECTOR

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 felony and misdemeanor manuals and combines training materials for structured sentencing laws for felonies and misdemeanors into one publication. This manual includes changes that are in effect on August 1, 2004 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.

This manual describes the substance and application of the sentencing laws for felonies and misdemeanors. The manual is divided into four parts:

- **Part I** describes structured sentencing laws for felonies;
- **Part II** describes structured sentencing laws for misdemeanors;
- **Part III** describes additional probation provisions; and
- **Part IV** provides example exercises, answers, and commentary.

The manual also includes three appendices which present felony offense classifications under structured sentencing, misdemeanor offense classifications under structured sentencing, and a survey of structured sentencing case law.

STRUCTURED SENTENCING

TRAINING AND REFERENCE MANUAL

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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 August 1, 2004, 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.

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

FIGURE A

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

FELONY PUNISHMENT CHART

PRIOR RECORD LEVEL

OFFENSE CLASS

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

Note: 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

SECTION I

IMPOSING SENTENCES FOR FELONIES

The sentencing laws use a Felony Punishment Chart which classifies offenders based on the seriousness of their crime and on the extent and gravity of their prior record (see **Figure A**). Based on this classification, the chart then prescribes the types of sentences which may be imposed (active, intermediate or community punishments) and the range 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.

STEPS REQUIRED TO DETERMINE THE SENTENCE FOR FELONIES

1. DETERMINE THE OFFENSE CLASS FOR EACH FELONY CONVICTION		
9		
2. DETERMINE THE PRIOR RECORD LEVEL FOR THE OFFENDER		
9		
3. CONSIDER AGGRAVATING AND MITIGATING FACTORS		
9		
4. SELECT A MINIMUM SENTENCE FROM THE APPROPRIATE MINIMUM SENTENCE RANGE		
9		
5. DETERMINE THE MAXIMUM SENTENCE		
9		
6. DETERMINE THE SENTENCE DISPOSITION:		
9	9	9
6A. IMPOSE AN ACTIVE PUNISHMENT	6B. IMPOSE AN INTERMEDIATE PUNISHMENT	6C. IMPOSE A COMMUNITY PUNISHMENT
9	9	9
<ol style="list-style-type: none"> 1. <i>Activate the minimum and maximum sentence</i> 	<ol style="list-style-type: none"> 1. <i>Suspend the minimum and maximum sentence</i> 2. <i>Impose supervised probation</i> 3. <i>Impose one or more intermediate punishments</i> 4. <i>Impose any appropriate community punishments</i> 	<ol style="list-style-type: none"> 1. <i>Suspend the minimum and maximum sentence</i> 2. <i>Impose probation and/or any other appropriate community punishment</i>

**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 sentencing grid. 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. **Appendix A** lists the felony offense classifications under structured sentencing.

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.

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

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.

ATTEMPT TO COMMIT A FELONY G.S. §14-2.5

General Rule:

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

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

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.

SOLICITATION TO COMMIT A FELONY *G.S. §14-2.6*

General Rule:

Unless a different classification is expressly stated by 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.

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

Exceptions:

Solicitation to commit a Class A or 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.

ACCESSORY AFTER THE FACT *G.S. §14-7*

(For offenses committed before December 1, 1997) A person who becomes an accessory after the fact to a felony is guilty of a Class H felony.

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

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.

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

Exceptions:

Accessory after the fact to a Class A or 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.

BULLET-PROOF VEST ENHANCEMENT *G.S. §15A-1340.16C*

(For offenses committed on or after December 1, 1999) If a jury finds that a person wore, or had in his or her immediate possession, a bullet-proof vest during the commission of a felony, he or she is guilty of a felony that is one class higher than the actual felony committed. 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.

Example: Armed robbery is a Class D felony. However, a person who commits armed robbery while wearing a bullet-proof vest is guilty of a Class C felony.

**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 before December 1, 1997) 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	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 impaired driving in a commercial vehicle and death by vehicle).

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

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.

One additional point is added if the offender is on probation, parole, or post-release supervision, serving an active sentence in jail or prison, or is an escapee at the time of arrest for the current conviction. No more than one additional point can be added for this factor.

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

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

An example work sheet for computing prior record points and determining the prior record level is shown on **Table 1**.

Examples: A parolee is convicted of common law robbery and has prior convictions for second-degree burglary (now 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 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 sentencing grid. Felons are assigned to one of six prior record levels based on the number of points they accrue as follows:

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

An example work sheet for computing prior record points and determining the prior record level is shown in **Table 1**.

Example: An offender with 7 prior record points would fall within Prior Record Level III. An offender with 9 prior record points would fall within Prior Record Level IV. An offender with 26 prior record points would fall within Prior Record Level VI.

TABLE 1
(For offenses committed before December 1, 1997)

I. SCORING PRIOR RECORD/FELONY SENTENCING

NUMBER	TYPE		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*	x 1	
		SUBTOTAL	
If all the elements of the present offense are included in the prior offense		+ 1	
If the offense was committed: (a) while on 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(a)(2)]

II. CLASSIFYING PRIOR RECORD LEVEL

POINTS	LEVEL
0	I
1 - 4	II
5 - 8	III
9 - 14	IV
15 - 18	V
19+	VI

PRIOR RECORD LEVEL _____

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

I. SCORING PRIOR RECORD/FELONY SENTENCING

NUMBER	TYPE		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 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(a)(2)]

II. CLASSIFYING PRIOR RECORD LEVEL

POINTS	LEVEL
0	I
1 - 4	II
5 - 8	III
9 - 14	IV
15 - 18	V
19+	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.

Example: An offender has one previous prior conviction for second-degree rape in Superior Court in 1998. 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.

Example: An offender has three prior convictions in Superior Court: one for 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.

BURDEN 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:

1. 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.
2. 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.
3. 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.

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) for purposes of calculating his 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.

BURDEN AND STANDARD OF PROOF G.S. §15A-1340.16(a)

The State bears the burden of proving by a preponderance of the evidence that an aggravating factor exists, and the offender bears the burden of proving by a preponderance of the evidence that a mitigating factor exists.

AGGRAVATING AND MITIGATING FACTORS G.S. §15A-1340.16(d) and (e)

Statutorily prescribed aggravating factors are shown in **Table 2** and statutorily prescribed mitigating factors are shown in **Table 3**. 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.

REQUIREMENT TO PROVIDE WRITTEN REASONS G.S. §15A-1340.16(c)

If the court selects a minimum sentence from the aggravated or mitigated sentence 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 sentence range, no written findings are required.

See Blakely v. Washington, 542 U.S. ____ (June 24, 2004).

TABLE 2

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. 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.
3. The defendant was hired or paid to commit the offense.
4. The offense was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws.
2. 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, 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.
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.
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 to commit the offense.
16. The offense involved the sale or delivery of a controlled substance to a minor.
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.

TABLE 3

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 sentences.

**STEP 4: SELECT A MINIMUM SENTENCE FROM
THE 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 9-14 Points	
D	A 117-146	• Aggravated Minimum Sentence Range
	94-117	• Presumptive Minimum Sentence Range
	71-94	• 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 court finds that aggravating factors are present and 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 which 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 19-24 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 a Prior Record Level of IV, the presumptive range is 94-117 months, the aggravated range is 117-146 months, and the mitigated range is 71-94 months. For example, if the court made a finding of aggravation, the court could impose a minimum sentence of 117 months, 146 months, or any number of months in between.

FIREARM ENHANCEMENT G.S. §15A-1340.16A

If the jury finds that an offender used, displayed, or threatened to use or display a firearm during the commission of a Class A, B1, B2, C, D, or E felony and that the person actually possessed the firearm, the court shall increase the minimum term of imprisonment by 60 months. This enhancement does not apply if evidence of the use, display, or threatened use or display of a firearm is needed to prove an element of the underlying Class A, B1, B2, C, D, or E felony. The enhancement does not apply if the court sentences the offender to an intermediate punishment.¹ Evidence necessary to establish the firearm enhancement may not be used to prove any factor in aggravation. The determination of the maximum sentence and the sentence disposition is described in the following sections of this manual.

Example: An offender is convicted of a Class C offense with a Prior Record Level of II. The presumptive range for this offender is from 80 to 100 months, and the court chooses a minimum sentence of 96 months for the underlying offense. The jury found that the offender displayed a firearm during the commission of the offense, and the display of a firearm is not an element of the offense. The court must increase the minimum sentence by a term of 60 months. Consequently, the total minimum sentence which must be served by the offender is 156 months (96 months for the Class C felony and 60 months for the firearm enhancement).

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).

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 G.S. §15A-1340.17(d) and (e)

The maximum sentence corresponding with each minimum sentence is shown on **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. 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.)

*Examples: Assume an offender convicted of a Class F offense with a Prior Record Level of II receives a minimum sentence 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 found in **Figure B** and is equivalent to 120% of the minimum (rounded to the next highest month).*

*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 sentence range. Since this is a Class D offense, the corresponding maximum sentence is automatically set at 153 months. The maximum sentence is found in **Figure B** and 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 sentence range. **Figure B** lists only the maximum sentence for minimum sentences up to 339 months. For minimum sentences of 340 months and longer, the formula specified in G.S. §15A-1340.17(e1) must be applied. If the minimum sentence is 420 months, then the maximum sentence is 513 months (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).*

FIGURE B: 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).

)))))))))QFOR 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	

)))))))))QFOR 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	

STEP 6: DETERMINE 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" indicates 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 Pts.	II 1-4 Pts.	III 5-8 Pts.	IV 9-14 Pts.	V 15-18 Pts.	VI 19+ 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 PUNISHMENTS 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 PUNISHMENTS G.S. §15A-1340.11(6)

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

- a. Special Probation as defined in G.S. §15A-1351(a) which includes a period of active confinement followed by a period of probation. (This sanction is sometimes referred to as a split sentence.)
- b. 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.

- c. 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 conditions electronically.
- d. Intensive Probation assignment that requires the offender to submit to supervision by officers assigned to the Intensive Supervision Program established pursuant to G.S. §143B-262(c) and to comply with the rules adopted for that program.
- e. 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.
- c. Drug Treatment Court Program 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. **(Effective July 26, 2004)**

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 PUNISHMENTS G.S. §15A-1340.11(2)

A community punishment is any authorized sentence that does not include an active punishment or an intermediate punishment. Community punishments may include, but are not limited to, one or more of the following:

1. Supervised or unsupervised probation
2. Any authorized condition of probation (except those defined as intermediate punishments)
3. Outpatient drug/alcohol treatment
4. Community service
5. Referral to T.A.S.C. (Treatment Alternatives to Street Crime)
6. Restitution
7. 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 exist, and
3. such factors substantially outweigh any factors in aggravation, and
4. 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 (Prior Record Level III and above). As discussed in **Part I, Section II**, the State can appeal a finding of extraordinary mitigation.

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)

Offenders convicted of drug trafficking 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.

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 offenses.

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 77 months and a maximum of 102 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 77 months and a maximum of 102 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.

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 77 months (and a maximum of 102 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 106 months (the sum of the two minimum sentences) and the maximum would be 137 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.

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 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 77 months and a maximum of 102 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.

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

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, offenders 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, with the consent of the defendant, may extend the original period of probation up to three years 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 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:

- a. Special Probation (split sentence). **(For offenses committed before December 1, 2003)** The active portion of special probation cannot exceed six months or one-fourth the maximum sentence imposed for the offense, whichever is less. Following release from the active portion of the sentence, the offender must serve the remaining period of probation.

(For offenses committed on or after December 1, 2003) 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.

(For offenses committed before December 1, 1998) For offenders sentenced to the IMPACT program (boot camp), the active portion of special probation cannot exceed six months or one-half the maximum sentence imposed for the offense, whichever is less. If the offender is sentenced to the IMPACT program as part of special probation, the length of the active sentence is normally 90 days and cannot exceed 120 days.

- b. 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.

(For offenses committed on or after December 1, 1998) The IMPACT program (boot camp) is a residential program. *The IMPACT program was closed effective August 15, 2002.*

- c. 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 90 days or less. Following completion of house arrest with electronic monitoring, the offender must continue to serve any remaining period of probation.
- d. Intensive Probation. 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.
- e. 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.
- f. Drug Treatment Court Program. 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. **(Effective July 26, 2004)**

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.

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 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.

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, with the consent of the defendant, may extend the original period of probation up to three years 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 also delegate certain powers to the Division of Community Corrections as described in **Part III**.

SECTION II

ADDITIONAL SENTENCING PROVISIONS RELATING TO FELONIES

LIFE WITHOUT PAROLE

Class A felonies are punishable by death or life imprisonment without parole. Felons sentenced under the "three strikes and you're in" provisions are punishable by life imprisonment without parole. Certain offenders convicted of second or subsequent Class B1 felonies are punishable by life imprisonment without parole (see below). Offenders convicted of first-degree rape or sexual assault in Prior Record Levels V and VI may be sentenced to life imprisonment without parole if the court sentences from the aggravated sentence range. Offenders sentenced to life imprisonment without parole are not eligible for parole. Only the Governor has authority to commute the sentence. See *G.S. §§15A-1380.5 and 15A-2002*.

VIOLENT HABITUAL FELONS (THREE STRIKES AND YOU'RE IN)

Offenders convicted as violent habitual felons (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*.

SECOND OR SUBSEQUENT CONVICTION OF 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, then the offender is sentenced according to the Felony Punishment Chart. See *G.S. §15A-1340.16B*.

HABITUAL FELONS

An habitual felon is sentenced as a Class C felony. 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*.

COMMITTED YOUTHFUL OFFENDERS

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

PAROLE RELEASE

Discretionary parole release is eliminated for all offenses committed 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*.

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 center. 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. If an offender is convicted of Class B1 through E sex offenses 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-1368.3 and 15A-1368.4*

Post-Release Supervision is conditional and subject to modification. The Post-Release Supervision and Parole Commission may for good cause shown modify the conditions of post-release supervision at any time. Conditions of post-release supervision may be reintegrative or controlling.

VIOLATIONS OF POST-RELEASE SUPERVISION *G.S. § 15A-1368.3*

For any violation of a controlling condition or for repeated violation of a reintegrative 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 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.

SECTION IV

FELONY PLEAS IN DISTRICT COURT

(For crimes committed on or after December 1, 1996) With the consent of the presiding district court judge, the prosecutor, and the defendant, district court judges may accept defendants' guilty or no contest pleas for Class H and Class I felonies. The laws governing sentencing for felonies in superior court apply. See *G.S. §7A-272(c)*.

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 August 1, 2004 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 LEVELS		
	I	II	III
	No Prior Convictions	One to Four Prior Convictions	Five or More Prior Convictions
A1	1 - 60 days C/I/A	1 - 75 days C/I/A	1 - 150 days C/I/A
1	1 - 45 days C	1 - 45 days C/I/A	1 - 120 days C/I/A
2	1 - 30 days C	1 - 45 days C/I	1 - 60 days C/I/A
3	1 - 10 days C	1 - 15 days C/I	1 - 20 days C/I/A

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 (**Figure C**) which groups misdemeanants based on the class of their misdemeanor conviction and based on the number of their prior criminal convictions. Based on these groupings, the Misdemeanor Punishment Chart prescribes the type of sentence which may be imposed (active, intermediate, or community punishments) and the range of sentence lengths which may be imposed. Following is a detailed description of the steps required to impose misdemeanor sentences under the structured sentencing laws.

STEPS REQUIRED TO DETERMINE THE SENTENCE FOR MISDEMEANORS*

1. DETERMINE THE OFFENSE CLASS FOR EACH MISDEMEANOR CONVICTION		
9		
2. FIND THE PRIOR CONVICTION LEVEL FOR THE OFFENDER		
9		
3. SELECT A SENTENCE LENGTH FROM THE APPROPRIATE SENTENCE RANGE		
9		
4. SELECT AN APPROPRIATE SENTENCE DISPOSITION FROM THOSE AUTHORIZED:		
9	9	9
4A. IMPOSE AN ACTIVE PUNISHMENT	4B. IMPOSE AN INTERMEDIATE PUNISHMENT	4C. IMPOSE A COMMUNITY PUNISHMENT
9	9	9
<ol style="list-style-type: none"> 1. <i>Activate the sentence length</i> 	<ol style="list-style-type: none"> 1. <i>Suspend the sentence length</i> 2. <i>Impose supervised probation</i> 3. <i>Impose one or more intermediate punishments</i> 4. <i>Impose any appropriate community punishments</i> 	<ol style="list-style-type: none"> 1. <i>Suspend the sentence length</i> 2. <i>Impose probation and/or any other appropriate community punishment</i>

***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

Offenses appear in the far left column of the misdemeanor sentencing chart. Each misdemeanor offense is assigned by statute to one of four misdemeanor classes: Misdemeanor Class A1, Class 1, Class 2, or Class 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 structured 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 contains certain assaultive misdemeanor offenses. **Appendix B** lists the misdemeanor offense classifications under structured sentencing.

CONSPIRACY TO COMMIT A MISDEMEANOR *G.S. §14-2.4*

General Rule:

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

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

Exception:

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

ATTEMPT TO COMMIT A MISDEMEANOR *G.S. §14-2.5*

General Rule:

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

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

Exception:

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

SOLICITATION TO COMMIT A MISDEMEANOR G.S. §14-2.6

General Rule:

Unless a different classification is expressly stated, 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.

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 at the top row of the misdemeanor sentencing chart. For misdemeanants, there are three prior conviction levels: Level I, Level II, and Level III. 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:

<u>Prior Conviction Level</u>	<u>Number of Prior Convictions</u>
Level I	No prior convictions
Level II	1 to 4 prior convictions
Level III	5 or more prior convictions

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 prior conviction level. Infractions are noncriminal violations of law.

Example: An offender has two prior felony convictions, two prior misdemeanor convictions, and two prior infractions. All 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.

Example: An offender has a previous conviction in Superior Court for second-degree rape in 1998. 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 count when determining the prior conviction level. If an offender has been convicted of more than one offense in a single week of Superior Court, only one of the convictions count when determining the prior conviction level.

Example: An offender has two prior felony 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.

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.

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. When sentencing misdemeanants, 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.

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) for purposes of calculating his 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.

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/II/A	1-120 days C/II/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 could impose 10 days, 30 days, 38 days, or 45 days.

STEP 4: DETERMINE THE SENTENCE DISPOSITION

A sentence disposition must be imposed for each misdemeanor offense.

SENTENCE DISPOSITIONS 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 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 misdemeanor class and prior conviction level, the punishment chart authorizes more than one disposition (separated by a slash "/"). In such cases, the court has 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/I/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. §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 facilities¹

INTERMEDIATE PUNISHMENTS G.S. §1340.11(6)

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

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

- a. Special Probation as defined in G.S. §15A-1351(a) which includes a period of active confinement followed by a period of probation. (This sanction is sometimes referred to as a split sentence.)
- b. 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.
- c. 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 conditions electronically.
- d. Intensive Probation assignment that requires the offender to submit to supervision by officers assigned to the Intensive Supervision Program established pursuant to G.S. §143B-262(c) and to comply with the rules adopted for that program.
- e. 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.
- f. Drug Treatment Court Program 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. **(Effective July 26, 2004)**

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.

COMMUNITY PUNISHMENTS *G.S. §15A-1340.11(2)*

A community punishment is any authorized sentence that does not include an active punishment or an intermediate punishment. Community punishments may include, but are not limited to, one or more of the following:

1. Supervised or unsupervised probation
2. Any authorized condition of probation (except those defined as an Intermediate Punishment)
3. Outpatient drug/alcohol treatment
4. Community service
5. Referral to T.A.S.C. (Treatment Alternatives to Street Crime)
6. Restitution and/or 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 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)*

Under structured sentencing, a misdemeanant 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 have been 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, impose concurrent sentences or consolidated sentences. Subject to certain limitations, the court may also impose consecutive sentences.

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.

Consolidated Sentences

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 judgment, the sentence imposed must conform to the sentence disposition and the sentence range prescribed for the most serious misdemeanor (the Class 1 misdemeanor). For example, the longest consolidated imprisonment sentence the court could impose would be 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. Consecutive sentences cannot be imposed if all convictions are for Class 3 misdemeanors.

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). 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).

FINES G.S. §15A-1340.23(b)

A fine may be imposed in conjunction with any active sentence.

STEP 4B: IMPOSING INTERMEDIATE PUNISHMENTS

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.

IMPOSING A TERM OF SUPERVISED PROBATION *G.S. §15A-1342 and 1343.2(d).*

Unless the court makes a specific finding that a longer or shorter term of probation is necessary, the court should impose a term of supervised probation which shall not be less than 12 months nor greater than 24 months. In no instance, however, can the length of probation exceed five years. The court, with the consent of the defendant, may extend the period of probation beyond five years 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 extension cannot exceed three 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 intermediate punishments, a term of supervised probation must be imposed. In addition to a term of supervised probation, at least one of the following intermediate punishments must be imposed.

- a. Special Probation (split sentence). The active portion of special probation cannot exceed one-fourth of the term of imprisonment imposed for the misdemeanor offense.

(For offenses committed before December 1, 1998) For offenders sentenced to the IMPACT program (boot camp), the active portion of special probation cannot exceed six months or one-half the maximum sentence imposed for the offense, whichever is less. If the offender is sentenced to the IMPACT program as part of special probation, the length of assignment is for a minimum of 90 days and a maximum of 120 days.

- b. 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.

(For offenses committed on or after December 1, 1998) The IMPACT program (boot camp) is a residential program. The length of assignment is for a minimum of 90 days and a maximum of 120 days. *The IMPACT program was closed effective August 15, 2002.*

- c. 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 90 days or less. Following completion of house arrest with electronic monitoring, the offender must continue to serve any remaining period of probation.
- d. Intensive Probation. 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.
- e. 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.
- f. Drug Treatment Court Program. 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. **(Effective July 26, 2004)**

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).

FINES G.S. §15A-1340.23(b)

A fine may be imposed in conjunction with any intermediate punishment.

STEP 4C: IMPOSING COMMUNITY PUNISHMENTS

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 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, outpatient treatment, restitution, community service, or any other statutorily authorized sanction or condition which is not defined as an intermediate punishment.

SETTING THE LENGTH OF PROBATION *G.S. §15A-1342 and 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 single term of supervised or unsupervised probation which shall not be less than 6 months nor greater than 18 months. In no instance, however, can the length of probation exceed five years. The court, with the consent of the defendant, may extend the period of probation beyond five years 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 extension cannot exceed three years. The court may also delegate certain powers to the Division of Community Corrections as described in **Part III**.

FINES *G.S. §15A-1340.23(b)*

A fine may be imposed in conjunction with any community punishment or may be imposed as the only punishment.

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 before December 1, 1997) The court may delegate the authority to the Division of Community Corrections if it finds that delegation is appropriate.

(For offenses committed on or after December 1, 1997) 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; or*
4. *Participate in an educational or vocational skills development program.*

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.

COURT RESPONSE TO VIOLATIONS OF PROBATION

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

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

Modify Probation *G.S. §15A-1344(a)*

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).

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*

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.

PART IV

EXAMPLE EXERCISES

SECTION I

EXAMPLE FELONY EXERCISES

*Each exercise presents a brief hypothetical case (offense and prior criminal record). A list of questions follow. The answers to the questions and additional commentary are shown following the felony example exercises. Assume that all crimes were committed on or after **December 1, 2003**.*

EXAMPLE #1

OFFENSE: Assault with a deadly weapon with intent to kill inflicting serious injury

G.S. No.: 14-32

F/M: Felony

Class: C

PRIOR RECORD: No prior record.

QUESTIONS

1. *What is the offender's prior record level?*
2. *What is the longest minimum sentence which can be imposed from the presumptive range?*
3. *What is the longest possible maximum sentence which can be imposed, assuming the court finds aggravating factors which outweigh mitigating factors?*
4. *Can the active sentence be suspended?*

EXAMPLE #2

OFFENSE: Obtaining property by false pretenses (value less than \$100,000)

G.S. No.: 14-100

F/M: Felony

Class: H

PRIOR RECORD

Prior Offense: Driving while license suspended

Conviction Date: 1991

F/M: Misdemeanor

Current Class: 1

Prior Offense: Embezzlement (value less than \$100,000)

Conviction Date: 1992

F/M: Felony

Current Class: H

Prior Offense: Larceny (value more than \$1,000)

Conviction Date: 1995

F/M: Felony

Current Class: H

Prior Offense: Larceny (value more than \$1,000)

Conviction Date: 1997

F/M: Felony

Current Class: H

The defendant was on probation when he committed the current offense.

(Assume the offender is not charged as an habitual felon.)

QUESTIONS

1. *What is the offender's prior record level?*
2. *What is the shortest minimum sentence the court could impose from the mitigated range?*
3. *What is the shortest amount of time this offender (in question #2) must serve in prison if the sentence is activated?*
4. *What is the longest possible maximum sentence that the court could impose from the aggravated range?*
5. *Could this offender be sentenced to a community punishment?*

EXAMPLE #3

OFFENSE: Second degree kidnapping

G.S. No.: 14-39

F/M: Felony

Class: E

OFFENSE: Possession with intent to sell a Controlled Substance (cocaine)

G.S. No.: 90-95

F/M: Felony

Class: H

PRIOR RECORD

Prior Offense: First-degree rape (in Pennsylvania)

Conviction Date: 1985

F/M: Felony

Current Class: *

Prior Offense: Sale of a Controlled Substance

Conviction Date: 1996

F/M: Felony

Current Class: H

Prior Offense: Assault inflicting serious injury

Conviction Date: 1997

F/M: Misdemeanor

Current Class: A1

Prior Offense: Assault inflicting serious injury

Conviction Date: 1997

F/M: Misdemeanor

Current Class: A1

The offender was convicted of the assaults inflicting serious injury at the same session of court in 1997.

*(Assume that the prosecution proves that the first-degree rape conviction is substantially similar to first-degree rape in North Carolina.)

QUESTIONS

1. *What is the offender's prior record level?*
2. *What is the longest minimum sentence which could be imposed (from the presumptive ranges) if the sentences were consolidated?*
3. *What is the longest total minimum sentence which could be imposed (assume presumptive range) if the sentences were run consecutively?*
4. *Assuming consecutive sentences, must the judge activate both sentences?*

EXAMPLE #4

OFFENSE: First-degree rape

G.S. No.: 14-27.2

F/M: Felony

Class: B1

PRIOR RECORD

Prior Offense: Assault with a deadly weapon

Conviction Date: 1984

F/M: Misdemeanor

Current Class: A1

Prior Offense: Second-degree rape

Conviction Date: 1985

F/M: Felony

Current Class: C

Prior Offense: Assault with a deadly weapon inflicting serious injury

Conviction Date: 1992

F/M: Felony

Current Class: E

Prior Offense: Second-degree burglary

Conviction Date: 1996

F/M: Felony

Current Class: G

Prior Offense: Larceny (value more than \$1,000)

Conviction Date: 1996

F/M: Felony

Current Class: H

The offender was convicted of both the burglary and the larceny during the same week of court.

(Assume that the offender was not charged as an habitual felon or as a violent habitual felon.)

QUESTIONS

1. *What is the prior record level?*
2. *What is the longest aggravated minimum sentence the offender can receive?*
3. *What is the shortest maximum sentence that can be imposed, assuming the minimum sentence is selected from the mitigated range?*
4. *Can the sentence ever be suspended?*
5. *How much time, if any, will this offender be on post-release supervision when released from prison (assuming a life sentence is not imposed)?*

EXAMPLE #5

OFFENSE: Possession of marijuana - 2 ounces		
G.S. No.: 90-95	F/M: Felony	Class: I
PRIOR RECORD		
Prior Offense: Worthless check (value more than \$2,000)		
Conviction Date: 1997	F/M: Felony	Current Class: I
Prior Offense: Possession of marijuana - more than 1.5 ounces		
Conviction Date: 1998	F/M: Felony	Current Class: I

QUESTIONS

1. *How many prior record points does the offender receive?*
2. *Can the judge impose an active sentence in this case?*
3. *Can the judge suspend the sentence and impose unsupervised probation?*
4. *In this case, could the court impose a term of supervised probation longer than 36 months?*
5. *What is the shortest minimum sentence which may be activated if the offender is revoked for violating the conditions of probation (assume the court initially sentenced the offender to a minimum term of 6 months from the presumptive range)?*

EXAMPLE #1: ANSWERS AND COMMENTARY

1. *What is the offender's prior record level?*

Answer: Prior Record Level I

Commentary: The offender has no prior convictions and therefore receives no prior record points. This places the offender in Prior Record Level I.

2. *What is the longest minimum sentence which can be imposed from the presumptive range?*

Answer: 73 months

Commentary: For a Class C offense and a Prior Record Level I, the minimum sentence within the presumptive range is 58 to 73 months.

3. *What is the longest possible maximum sentence which can be imposed, assuming the court finds aggravating factors which outweigh mitigating factors?*

Answer: 120 months

Commentary: For a Class C offense and Prior Record Level I, the aggravated range is 73 to 92 months. The longest possible minimum sentence is 92 months, and from **Figure B**, the longest possible corresponding maximum sentence is 120 months. To impose a sentence from the aggravated range, the court must find that there are aggravating factors which outweigh any mitigating factors.

4. *Can the active sentence be suspended?*

Answer: No, unless the court finds extraordinary mitigation.

Commentary: The prescribed disposition for a Class C offense and Prior Record Level I is active punishment ("A"). The only exception is if the court finds extraordinary mitigation. If it finds extraordinary mitigation, the court may suspend the sentence and impose an intermediate punishment. Extraordinary mitigation can be used only in Offense Classes B2, C, and D and cannot be used if the Prior Record Level is III, IV, V, or VI.

EXAMPLE #2: ANSWERS AND COMMENTARY

1. *What is the offender's prior record level?*

Answer: Prior Record Level III

Commentary: The offender receives a total of seven prior record points and falls into Prior Record Level III: two points for each of the prior Class H convictions and one for being on probation at the time of arrest. The offender receives no points for the prior misdemeanor conviction because misdemeanor traffic offenses do not count (except for impaired driving and death by vehicle).

2. *What is the shortest minimum sentence the court could impose from the mitigated range?*

Answer: 6 months

Commentary: For a Class H offense and Prior Record Level III, the mitigated range is 6 to 8 months. To impose a sentence from the mitigated range, the court must find mitigating factors which outweigh any aggravating factors.

3. *What is the shortest amount of time this offender (in question #2) must serve in prison if the sentence is activated?*

Answer: 6 months

Commentary: Since the shortest possible minimum sentence is six months, the shortest amount of time which must be served is six months. The offender must serve the entire minimum sentence. There is no parole.

4. *What is the longest possible maximum sentence that the court could impose from the aggravated range?*

Answer: 15 months

Commentary: The aggravated range for a Class H offense and Prior Record Level III is 10 to 12 months. The longest possible minimum sentence is 12 months, and from **Figure B** (for Class F through I felonies), the longest possible corresponding maximum sentence is 15 months.

5. *Can this offender be sentenced to a community punishment?*

Answer: No

Commentary: The court, in its discretion, may either impose an active punishment ("A") or an intermediate punishment ("I"). However, the court is not authorized to impose a community punishment ("C").

EXAMPLE #3: ANSWERS AND COMMENTARY

1. *What is the offender's prior record level?*

Answer: Prior Record Level IV

Commentary: The offender receives a total of 12 prior record points and falls into Prior Record Level IV. The offender receives nine points for the Class B1 felony, two points for the Class H felony, and one point for the Class A1 misdemeanors. Only one of the two prior assault convictions count, since the convictions occurred on the same day of court. If the prosecutor did not prove that the out-of-state conviction for rape was substantially similar to first-degree rape in North Carolina (or another felony), then that conviction would be treated as a Class I felony and would receive two points.

2. *What is the longest minimum sentence which could be imposed (from the presumptive ranges) if the sentences were consolidated?*

Answer: 46 months

Commentary: When consolidating offenses, refer to the sentence disposition and sentence range for the conviction with the highest offense class (in this case the Class E felony). For the Class E felony with a Prior Record Level IV, the presumptive sentence range is from 37 to 46 months. Therefore, the longest presumptive minimum sentence which can be imposed is 46 months, assuming both offenses are consolidated.

3. *What is the longest total minimum sentence which could be imposed (assume presumptive range) if the sentences were run consecutively?*

Answer: 57 months

Commentary: For consecutive sentences, the court separately determines the disposition and minimum sentence for each offense. For the Class E felony with a Prior Record Level IV, the presumptive range is from 37 to 46 months. For the Class H felony with a Prior Record Level IV, the presumptive range is from 9 to 11 months. Running these sentences consecutively results in a combined longest total minimum sentence of 57 months (46 months on the Class E offense plus 11 months on the Class H offense).

4. *Assuming consecutive sentences, must the judge activate both sentences?*

Answer: No

Commentary: The disposition prescribed for the Class E felony is "A", and the sentence must be activated. The disposition prescribed for the Class H felony is "I/A", and the court has discretion to either activate the sentence or suspend the sentence and impose an intermediate punishment "I".

EXAMPLE #4: ANSWERS AND COMMENTARY

1. *What is the prior record level?*

Answer: Prior Record Level V

Commentary: The offender receives a total of 15 prior record points and falls into Prior Record Level V. The offender receives one point for the Class A1 misdemeanor, six points for the Class C felony, four points for the Class E felony, and four points for the Class G felony. The points are based on the classification of the offense when the current crime is committed, not the class at the time the offender was convicted of the crime. The offender does not receive any points for the Class H felony, since the conviction occurred during the same week of court as the Class G felony (in such cases, only the most serious conviction counts).

2. *What is the longest aggravated minimum sentence the offender can receive?*

Answer: Life imprisonment without parole

Commentary: For a Class B1 offense with a Prior Record Level V, the aggravated range prescribes a sentence of life without parole. Because this is the offender's third conviction for a Class E or higher felony, the offender is potentially eligible to be charged and sentenced as a violent habitual felon under "three strikes and you're in" provisions. If the offender were found to be a violent habitual felon, a sentence of life imprisonment without parole would have to be imposed.

3. *What is the shortest maximum sentence that can be imposed, assuming the minimum sentence is selected from the mitigated range?*

Answer: 321 months

Commentary: The mitigated range for a Class B1 felony with Prior Record Level V is from 260 to 346 months. Assuming a minimum sentence of 260 months is imposed, then the maximum sentence is automatically set in **Figure B** to be 321 months.

4. *Can the sentence ever be suspended?*

Answer: No

Commentary: The disposition prescribed for Class B1 felonies is "A", and the sentence must be activated. A finding of extraordinary mitigation is not authorized for Class B1 offenses or for Prior Record Level V.

5. *How much time, if any, will this offender be on post-release supervision when released from prison (assuming a life sentence is not imposed)?*

Answer: Five years

Commentary: All offenders convicted of Class B1, B2, C, D, or E felonies automatically receive nine months of post-release supervision following their release from prison, unless the offense was a sex offense in which case the offender receives five years of post-release supervision.

EXAMPLE #5: ANSWERS AND COMMENTARY

1. *How many prior record points does the offender receive?*

Answer: 5 points

Commentary: The offender receives a total of five prior record points and falls into Prior Record Level III. The offender receives two points for each of the prior Class I felonies, and a one point enhancement because all of the elements of the current conviction are included in a prior conviction (possession of marijuana).

2. *Can the judge impose an active sentence in this case?*

Answer: No

Commentary: Only an intermediate punishment is authorized for a Class I offense and Prior Record Level III.

3. *Can the judge suspend the sentence and impose unsupervised probation?*

Answer: No

Commentary: An intermediate punishment must include a period of supervised probation.

4. *In this case, could the court impose a term of supervised probation longer than 36 months?*

Answer: Yes, if the court finds that such a length is necessary.

Commentary: When sentencing a felon to an intermediate punishment, the recommended length of probation is no less than 18 months and no more than 36 months. However, the court may impose a different term if the court finds that a longer or shorter term is necessary. In no case, however, can the court initially impose a term of probation longer than five years.

5. *What is the shortest minimum sentence which may be activated if the offender is revoked for violating the conditions of probation (assume the court initially sentenced the offender to a minimum term of 6 months from the presumptive range)?*

Answer: 5 months

Commentary: When activating a sentence upon a revocation of probation, the minimum term must be equal to the suspended term or to a lesser term from within the original sentence range used by the court. The original presumptive range for this Class I felony and Prior Record Level III was 5 to 6 months. Upon revocation, the court cannot impose a new minimum sentence more than 6 months (the original term) or less than 5 months (the low end of the original sentence range used by the court).

SECTION II

EXAMPLE MISDEMEANOR EXERCISES

Each exercise presents a brief hypothetical case (misdemeanor class and prior criminal record). A list of questions follow. The answers to the questions and additional commentary are shown following the misdemeanor example exercises. Assume that all crimes were committed on or after **December 1, 2003**.

EXAMPLE #1

OFFENSE: Carrying a concealed weapon

G.S. No.: 14-269

F/M: Misdemeanor

Class: 2

PRIOR RECORD

Prior Offense: Illegally parking in a handicapped parking space

Conviction Date: 1998

F/M: Infraction

Current Class: -

Prior Offense: Failure to stop at stop sign

Conviction Date: 1998

F/M: Infraction

Current Class: -

QUESTIONS

1. *What is the offender's prior conviction level?*
2. *Can an active sentence be imposed?*
3. *Can an intermediate punishment be imposed?*
4. *If probation was revoked, what is the longest active sentence which the offender could be required to serve (assume the suspended sentence was 30 days)?*
5. *What is the maximum time the offender could serve in jail if the court found the offender in violation of probation and held the offender in contempt of court?*

EXAMPLE #2

OFFENSE: Assault on a female

G.S. No.: 14-33

F/M: Misdemeanor

Class: A1

PRIOR RECORD

Prior Offense: Larceny (value of \$1,000 or less)

Conviction Date: 1993

F/M: Misdemeanor

Current Class: 1

Prior Offense: Larceny (value of \$1,000 or less)

Conviction Date: 1993

F/M: Misdemeanor

Current Class: 1

Prior Offense: Worthless check (value of \$2,000 or less)

Conviction Date: 1993

F/M: Misdemeanor

Current Class: 2

Prior Offense: Sale of a Controlled Substance

Conviction Date: 1995

F/M: Felony

Current Class: H

Prior Offense: Larceny (value more than \$1,000)

Conviction Date: 1997

F/M: Felony

Current Class: H

The offender was convicted of the three prior misdemeanor convictions during the same session of court.

QUESTIONS

1. *What is the offender's prior conviction level?*
2. *What is the longest active sentence length which can be imposed?*
3. *Could the court suspend the sentence and impose an intermediate punishment?*
4. *Could the court suspend the sentence and impose a community punishment?*

EXAMPLE #3

OFFENSE: Larceny (value of \$1,000 or less)

G.S. No.: 14-72

F/M: Misdemeanor

Class: 1

OFFENSE: Injuring/damaging personal property (value of \$200 or less)

G.S. No.: 14-160

F/M: Misdemeanor

Class: 2

PRIOR RECORD

Prior Offense: Burglary (in Oklahoma)

Conviction Date: 1990

F/M: Felony

Current Class: ?

Prior Offense: Larceny (value of \$1,000 or less)

Conviction Date: 1994

F/M: Misdemeanor

Current Class: 1

Prior Offense: Larceny (value of \$1,000 or less)

Conviction Date: 1995

F/M: Misdemeanor

Current Class: 1

Prior Offense: Larceny (value of \$1,000 or less)

Conviction Date: 1997

F/M: Misdemeanor

Current Class: 1

Prior Offense: Larceny (value of \$1,000 or less)

Conviction Date: 1998

F/M: Misdemeanor

Current Class: 1

QUESTIONS

1. *What is the offender's prior conviction level?*
2. *Could an active sentence be imposed?*
3. *What is the longest active sentence which can be imposed if the sentences are consolidated?*
4. *What is the longest active sentence which can be imposed if the sentences are run consecutively?*
5. *Could the court suspend the sentence, impose a community punishment and impose five years of supervised probation?*

EXAMPLE #4

OFFENSE: Sale of cigarettes to minors (3 counts)

G.S. No.: 14-313

F/M: Misdemeanor

Class: 2

PRIOR RECORD: No prior convictions.

QUESTIONS

1. *What is the offender's prior conviction level?*
2. *Can an active sentence be imposed?*
3. *What is the longest suspended sentence which can be imposed if the sentences are consolidated?*
4. *What is the longest suspended sentence which can be imposed if the sentences are run consecutively?*

EXAMPLE #5

OFFENSE: Theft of cable television service (2 counts) G.S. No.: 14-118.5	F/M: Misdemeanor	Class: 3
PRIOR RECORD		
Prior Offense: Impaired driving Conviction Date: 1992	F/M: Misdemeanor	Current Class: -
Prior Offense: Impaired driving Conviction Date: 1993	F/M: Misdemeanor	Current Class: -
Prior Offense: Worthless check (value more than \$2,000) Conviction Date: 1994	F/M: Felony	Current Class: I
Prior Offense: Impaired driving Conviction Date: 1997	F/M: Misdemeanor	Current Class: -
Prior Offense: Worthless check (value more than \$2,000) Conviction Date: 1998	F/M: Felony	Current Class: I

QUESTIONS

1. *What is the offender's prior conviction level?*
2. *What is the longest suspended sentence which can be imposed if the sentences are consolidated?*
3. *Can the court impose consecutive sentences for these offenses?*
4. *If the offender is sentenced to special probation (as part of an intermediate punishment), what is the longest period of confinement which may be imposed?*

EXAMPLE #1: ANSWERS AND COMMENTARY

1. *What is the offender's prior conviction level?*

Answer: Level I

Commentary: Prior infractions do not count in determining the prior conviction level; therefore, this offender has no prior convictions and falls into Prior Conviction Level I.

2. *Can an active sentence be imposed?*

Answer: No. However, if the offender has spent time in confinement awaiting trial, the judge may impose an active punishment.

Commentary: The only authorized disposition is a community punishment "C". An active punishment could be imposed only if the offender spent time in confinement awaiting trial and the sentence is equal to or less than that time.

3. *Can an intermediate punishment be imposed?*

Answer: No

Commentary: The only authorized disposition is a community punishment "C".

4. *If probation was revoked, what is the longest active sentence which the offender could be required to serve (assume the suspended sentence was 30 days)?*

Answer: 30 days

Commentary: The suspended sentence was 30 days. Therefore, upon revocation of probation, the longest active sentence which could be imposed is 30 days.

5. *What is the maximum term of imprisonment the offender could serve if the court found the offender in contempt of court for a probation violation?*

Answer: 30 days

Commentary: The court may hold the offender in contempt of court for willfully failing to comply with a condition of probation and may confine the offender for up to 30 days.

EXAMPLE #2: ANSWERS AND COMMENTARY

1. *What is the offender's prior conviction level?*

Answer: Level II

Commentary: The offender has three prior convictions and falls into Prior Conviction Level II. Since the three misdemeanor convictions occurred during the same session of court, they count only as one prior conviction.

2. *What is the longest active sentence length which can be imposed?*

Answer: 75 days

Commentary: Since the disposition includes an "A", an active sentence can be imposed. Since the sentence range is from 1 to 75 days, the longest sentence length which can be imposed is 75 days.

3. *Could the court suspend the sentence and impose an intermediate punishment?*

Answer: Yes

Commentary: An intermediate punishment "I" is authorized for this misdemeanor class and this prior conviction level.

4. *Could the court suspend the sentence and impose a community punishment?*

Answer: Yes

Commentary: A community punishment "C" is authorized for this misdemeanor class and this prior conviction level.

EXAMPLE #3: ANSWERS AND COMMENTARY

1. *What is the offender's prior conviction level?*

Answer: Level III

Commentary: The out-of-state conviction counts if the court finds that it is proved by a preponderance of the evidence. Since the offender has four additional in-state prior convictions, the offender falls in Prior Conviction Level III.

2. *Could an active sentence be imposed?*

Answer: Yes

Commentary: An active sentence is authorized for all misdemeanor classes if the offender falls into Prior Conviction Level III.

3. *What is the longest active sentence which can be imposed if the sentences are consolidated?*

Answer: 120 days

Commentary: When consolidating offenses, the sentence must be consistent with the disposition and sentence range prescribed for the most serious misdemeanor conviction (that carrying the highest misdemeanor class). The most serious offense is the Class 1 misdemeanor larceny and the sentence range is from 1 to 120 days. Therefore, assuming the sentences are consolidated, the longest active sentence which can be imposed is 120 days.

4. *What is the longest active sentence which can be imposed if the sentences are run consecutively?*

Answer: 180 days

Commentary: When running sentences consecutively, the sentence is determined separately for each conviction. For the Class 1 misdemeanor, the sentence range is from 1 to 120 days; for the Class 2 misdemeanor, the sentence range is from 1 to 60 days. Therefore, assuming the sentences are run consecutively, the longest active sentence which can be imposed is 180 days (120 days for the Class 1 misdemeanor and 60 days for the Class 2 misdemeanor).

5. *Could the court suspend the sentence, impose a community punishment and impose five years of supervised probation?*

Answer: Yes, providing the court finds that a probation term greater than 18 months is necessary.

Commentary: A community disposition is always an authorized sentence for misdemeanors. Statutes specify that if a community punishment is imposed, the term of probation should not be less than 6 months nor greater than 18 months. However, a longer or shorter term can be imposed if the court finds that such a term is necessary.

EXAMPLE #4: ANSWERS AND COMMENTARY

1. *What is the offender's prior conviction level?*

Answer: Level I

Commentary: The offender has no prior convictions and falls in Prior Conviction Level I.

2. *Can an active sentence be imposed?*

Answer: No. However, if the offender has spent time in confinement awaiting trial, the judge may impose an active punishment.

Commentary: The only authorized disposition is a community punishment "C". An active punishment could be imposed only if the offender spent time in confinement awaiting trial and the sentence is equal to or less than that time.

3. *What is the longest suspended sentence which can be imposed if the sentences are consolidated?*

Answer: 30 days

Commentary: When consolidating offenses, the sentence must be consistent with the disposition and sentence range prescribed for the most serious misdemeanor conviction (that carrying the highest Misdemeanor Class). All three convictions are Class 2 misdemeanors, and the sentence range is from 1 to 30 days. Therefore, assuming the sentences are consolidated, the longest suspended sentence which can be imposed is 30 days.

4. *What is the longest suspended sentence which can be imposed if the sentences are run consecutively?*

Answer: 60 days

Commentary: When running sentences consecutively, the sentence is separately determined for each conviction. For each of the three misdemeanors, the sentence range is from 1 to 30 days. However, if sentences are imposed consecutively, the cumulative length of imprisonment cannot exceed twice that authorized for the most serious conviction (two times 30 days). Therefore, the longest suspended sentence would be 60 days. The third misdemeanor conviction would have to be consolidated with the other convictions or run concurrently.

EXAMPLE #5: ANSWERS AND COMMENTARY

1. *What is the offender's prior conviction level?*

Answer: Level III

Commentary: The offender has five prior convictions and falls into Prior Conviction Level III.

2. *What is the longest active sentence which can be imposed if the sentences are consolidated?*

Answer: 20 days

Commentary: When consolidating offenses, the sentence must be consistent with the disposition and sentence range prescribed for the most serious misdemeanor conviction (that carrying the highest Misdemeanor Class). Both convictions are for Class 3 misdemeanors and the sentence range is from 1 to 20 days. Therefore, the longest active sentence which can be imposed is 20 days, assuming the sentences are consolidated.

3. *Can the court impose consecutive sentences for these offenses?*

Answer: No

Commentary: Consecutive sentences are not authorized if the only convictions are for Class 3 misdemeanors. Therefore, the longest active sentence which can be imposed is 20 days. The second misdemeanor conviction would have to be consolidated or run concurrently.

4. *If the offender is sentenced to special probation (as part of an intermediate punishment), what is the longest period of confinement which may be imposed?*

Answer: 5 days

Commentary: The confinement portion of special probation cannot exceed one-fourth the period of imprisonment which the court imposes. Since 20 days is the longest authorized active sentence, the period of confinement for special probation cannot exceed 5 days.

APPENDICES

APPENDIX A: Felony Classification
APPENDIX B: Misdemeanor Classification
APPENDIX C: Case Law