

PUNISHMENTS

FOR
**NORTH CAROLINA
CRIMES**

AND
**MOTOR VEHICLE
OFFENSES**

2008 CUMULATIVE SUPPLEMENT

JOHN RUBIN &
SHEA RIGGSBEE DENNING



UNC
SCHOOL OF
GOVERNMENT

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PUNISHMENTS FOR NORTH CAROLINA CRIMES AND MOTOR VEHICLE OFFENSES: 2008 CUMULATIVE SUPPLEMENT

■ John Rubin and Shea Riggsbee Denning

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This supplement to the 2005 edition of the School of Government publication *Punishments for North Carolina Crimes and Motor Vehicle Offenses* (hereinafter *2005 Punishments*) covers legislation enacted by the North Carolina General Assembly through the end of its 2008 session. The supplement is divided into three parts, corresponding to the organization of the book and containing page references to the pertinent portions. The 2006 supplement should be discarded.

Structured Sentencing and Related Laws

Impact of *Blakely* Bill on Felony Sentencing (p. 1)

Background. In *Apprendi v. New Jersey*, 530 U.S. 466 (2000), the U.S. Supreme Court held that any fact (other than a prior conviction) that increases the defendant's sentence beyond the statutory maximum permitted for the offense must be submitted to a jury and found beyond a reasonable doubt. In *Blakely v. Washington*, 542 U.S. 296 (2004), the Court elaborated on this principle, holding that the term "maximum" means the maximum sentence that a judge may impose based solely on the facts found by the jury or admitted by the defendant. These rulings have had significant repercussions for felony sentencing in North Carolina. Almost all felonies in North Carolina are governed by structured sentencing, which permits a judge to impose a higher sentence based on the judge's own findings, by a preponderance of the evidence, that certain aggravating factors and prior record points exist. In several decisions, the North Carolina appellate courts recognized that, with some exceptions, such an approach violated the principles of *Apprendi* and *Blakely*.

In light of these problems, the General Assembly enacted S.L. 2005-145 (H 822), commonly referred to as the *Blakely* bill, effective for offenses committed on or after June 30, 2005. For a detailed discussion of the differences in procedure for offenses committed before and after the effective date of the *Blakely* bill, see Jessica Smith, North Carolina Sentencing after *Blakely v. Washington* and the *Blakely* Bill (Sept. 2005), online at www.sog.unc.edu/programs/crimlaw/Blakely%20Update.pdf.

The *Blakely* bill applies to structured sentencing for felonies in both district and superior court. It does not apply to structured sentencing for misdemeanors, which so far is unaffected by the U.S. Supreme Court's decisions. A separate act, applicable to offenses committed on or after December 1, 2006, revised the procedures for sentencing in impaired driving cases. See Section 23 of S.L. 2006-253 (H 1048), which revised Section 20-179 of the North Carolina General Statutes (hereinafter G.S.). Those procedures are discussed in the Introduction to the Punishment Chart for Motor Vehicles, below.

John Rubin specializes in criminal law and procedure and prepared the first two parts of this supplement; Shea Denning specializes in motor vehicle law and prepared the third part. Both are members of the faculty of the School of Government.

The changes made by the *Blakely* bill to the procedures for imposing a sentence in a felony case can be divided into three categories—the procedures for pleading or otherwise alleging aggravating factors and prior record points that would enhance a defendant’s sentence, the procedures for determining the existence of aggravating factors and prior record points, and the procedures for considering and weighing mitigating factors against aggravating factors and imposing sentence. Unless otherwise noted, all the changes appear in G.S. 15A-1340.16 (aggravated and mitigated sentences) and 15A-1340.14 (prior record level for felony sentencing).

Pleading requirements. The *Blakely* bill essentially creates three different pleading rules depending on the aggravating factors and prior record points being sought to enhance a defendant’s sentence.

1. The state must allege in an indictment or other charging instrument (an information if an indictment is waived) the aggravating factor under G.S. 15A-1340.16(d)(20), known as a nonstatutory aggravating factor because it does not specify any particular conduct but rather includes any aggravating factor “reasonably related to the purposes of sentencing.”
2. The state must provide written notice to the defendant of its intent to prove the existence of any aggravating factor listed in G.S. 15A-1340.16(d)(1) through (19), known as statutory aggravating factors because they specify conduct that constitutes an aggravating factor. The state also must provide written notice of its intent to prove the prior record point in G.S. 15A-1340.14(b)(7), which imposes a point if the defendant committed the offense while on probation, parole, or post-release supervision; while serving a sentence of imprisonment; or while on escape from a correctional facility during a sentence of imprisonment. The state must give this notice at least thirty days before trial or entry of a guilty or no contest plea, but the defendant may waive the notice. The act does not require the state to include these factors or points in an indictment.
3. The state is not required to allege in the charging instrument or in a written notice prior convictions or the prior record point in G.S. 15A-1340.14(b)(6), which imposes a point if all the elements of the present offense are included in a prior offense for which the defendant was convicted.

Procedure for determining aggravating factors and prior record points. The *Blakely* bill essentially creates four procedures for determining aggravating factors and the prior record point under G.S. 15A-1340.14(b)(7) (offense while on probation, parole, etc.). These procedures do not apply to prior convictions and the prior record point under G.S. 15A-1340.14(b)(6) (present offense included in prior offense); the judge continues to determine those sentence enhancements by a preponderance of the evidence. The *Blakely* bill states that the judge also determines the aggravating factor that the defendant was previously adjudicated delinquent for an offense that would be a Class A through E felony if committed by an adult. Under G.S. 15A-1340.16(a), the judge must find this factor beyond a reasonable doubt. *See State v. Boyce*, 175 N.C. App. 663 (2006) (juvenile adjudications are analogous to prior convictions and may be found by judge; court does not discuss *Yarrell*), *aff’d on other grounds*, 361 N.C. 670 (2007); *but see State v. Yarrell*, 172 N.C. App. 135 (2005) (in case arising before *Blakely* bill became effective, court held that this factor, like other aggravating factors, must be determined by the jury or admitted by the defendant). A judge also determines new aggravating factor no. 12a (defendant found to be in willful violation of probation, parole, or post-release supervision during ten years prior to commission of offense being sentenced). *See infra* Table 4a for a list of aggravating factors.

The jury procedures are as follows:

1. If the defendant does not plead guilty to the charged felony and does not admit the aggravating factors and prior record points alleged by the state, a jury must be impaneled to try the felony and determine the existence of the alleged aggravating factors and points. The state must prove these factors and points beyond a reasonable doubt. The judge may submit both the felony charge and the factors and points to the jury at the same trial unless the interests of justice require that the jury consider the factors and points at a separate proceeding after trial of the felony. G.S. 15A-1340.16(a1) describes the procedures to be followed for reconvening the jury in the event separate proceedings are held.
2. If the defendant pleads guilty to the felony but contests one or more of the alleged aggravating factors or prior record points, a jury determines the existence of the aggravating factors and points only.
3. If the defendant admits the alleged aggravating factors and prior record points but pleads not guilty to the charged felony, a jury decides the felony charge only, and evidence relating solely to the establishment of the factors and points is inadmissible. In taking the defendant’s admission, the court must comply with the procedures for taking guilty pleas, discussed next.
4. If the defendant pleads guilty to the charged felony and admits the alleged aggravating factors and prior record points, a jury trial is not required. To accept the defendant’s admission to aggravating factors and points, the judge must engage in the colloquy for accepting a guilty plea under G.S. 15A-1022(a) and must

follow the procedures in G.S. 15A-1022.1, including advising the defendant of his or her rights, determining that there is a factual basis for the factors and points admitted by the defendant, and determining that the decision to admit is the informed choice of the defendant. The transcript of plea form, AOC-CR-300 (Feb. 2006), contains these steps (online at www.nccourts.org/Forms/Documents/839.pdf).

Under all of the above procedures, the judge does not determine the existence of aggravating factors or prior record points alleged by the state. A judge may rely on those factors and points to enhance a defendant's sentence only if they are found by a jury or admitted by the defendant. If a prior record point involves a question of law, the defendant's admission does not relieve the judge of the responsibility of deciding the legal question. *See infra* "Proof of Convictions and Other Points."

Consideration of mitigating factors and selection of sentence range. As under the previous version of structured sentencing, the judge determines the existence of any mitigating factors. If a jury has determined or the defendant has admitted any aggravating factors, and the judge determines that the aggravating factors outweigh any mitigating factors, the judge may depart from the presumptive range of sentences and impose a sentence in the aggravated range. If the judge determines that the mitigating factors outweigh the aggravating factors, the judge may impose a sentence in the mitigated range. The judge must consider any evidence of mitigating factors, but the decision to depart from the presumptive range is in the judge's discretion.

Prior Convictions (p. 2)

Current classification of prior conviction. *See State v. Watkins*, ___ N.C. App. ___, 672 S.E.2d 43 (2009) (in determining the defendant's prior record level under G.S. 15A-1340(c), defendant's prior conviction for sale of cocaine, which was a Class H felony when that offense was committed, was properly treated as a Class G felony, the offense classification when the defendant committed the current offense; treatment of prior conviction was not *ex post facto* violation).

Multiple prior convictions. In *State v. Fuller*, 179 N.C. App. 61 (2006), the court held that the trial judge did not err in assigning points to two convictions obtained on the same day in the same county when one conviction was in district court and the other was in superior court. (The court remanded for a new sentencing hearing, however, because the trial judge sentenced the defendant to the maximum presumptive sentence based, in part, on the defendant's insistence on having a jury trial.)

Convictions from other jurisdictions. For cases discussing whether an out-of-state conviction was substantially similar to a North Carolina felony or Class A1 or Class 1 misdemeanor for purposes of assessing prior record points, *see State v. Sapp*, ___ N.C. App. ___, 661 S.E.2d 304 (2008) (Virginia conviction for inflicting bodily injury on juvenile detention center employee was substantially similar to North Carolina offense of assault on government officer); *State v. Key*, 180 N.C. App. 286 (2006) (Maryland conviction for theft was substantially similar to North Carolina offense of misdemeanor larceny); *State v. Cao*, 175 N.C. App. 434 (2006) (computer printouts were sufficient to show defendant's Texas convictions but insufficient to show that convictions were for felonies); *State v. Hanton*, 175 N.C. App. 250 (2006) (New York conviction of second-degree assault was not substantially similar to North Carolina offense of assault inflicting serious injury); *State v. Ayscue*, 169 N.C. App. 548 (2005) (evidence was insufficient to show that New York offense of criminal possession of stolen property in fifth degree was similar to Class 1 misdemeanor or higher in North Carolina).

Offenses joined for trial. In *State v. West*, 180 N.C. App. 664 (2006), the court held that convictions obtained during a single trial cannot be used to establish a defendant's prior record level for one of those convictions. In *West*, the defendant was convicted at a single trial of second-degree murder, two counts of felony larceny, and one count of breaking and entering a vehicle. Before recessing for lunch, the trial judge sentenced the defendant for the two larcenies and breaking and entering a vehicle. After lunch, the judge sentenced the defendant for second-degree murder and, in calculating the defendant's prior record level for that offense, assigned two points for one of the felony larceny convictions. The court ruled that this approach contravened the intent of structured sentencing and would be unjust.

Other Points (p. 4)

In *State v. Ford*, ___ N.C. App. ___, 672 S.E.2d 689 (2009), the defendant was convicted of attempted felony larceny and then pled guilty to being an habitual felon. The defendant had previously been convicted of felony larceny. The court held that one point could be added to the defendant's prior record level under G.S. 15A-1340.16(b)(6) (all elements of current offense are included in prior offense) because the current offense of attempted felony larceny was a lesser-included offense of the prior offense of felony larceny regardless of the theory on which the prior felony larceny was based. Relying on *State v. Bethea*, 122 N.C. App. 623 (1996), the court also held that the point could be assessed even though the prior conviction for felony larceny was used to establish the defendant's habitual felon status.

In *State v. Mack*, 188 N.C. App. 365 (2008), the court held that the defendant should not have been assessed a point under G.S. 15A-1340.16(b)(6) (all elements of current offense included in prior offense) because all the elements of the defendant's current offense, sale of cocaine, were not included in his prior conviction for possession of cocaine with intent to sell or deliver.

In *State v. Moore*, 188 N.C. App. 416 (2008), the court held that the trial court could assess one point under G.S. 15A-1340.14(b)(7) on the ground that the defendant was on probation at the time of the offense and could aggravate the defendant's sentence under G.S. 15A-1340.16(d)(12) on the ground that the defendant was on pretrial release at the time of the offense. In aggravating the sentence, the trial court also relied on the defendant's commission of the offense while on probation. The court of appeals rejected the defendant's argument that it was improper for the trial court to rely on the same factor to increase the defendant's prior record level and aggravate his sentence, but this part of the decision is arguably unnecessary to the court's holding since the trial court had a separate ground for aggravating the sentence.

Proof of Convictions and Other Points (p. 4)

Numerous cases have addressed whether the defendant stipulated to the prior convictions alleged by the state and therefore eliminated the need for other proof to establish the convictions. When defense counsel has specifically stipulated to the prior convictions, the courts have had no difficulty in finding the prior convictions established. See *State v. Hussey*, ___ N.C. App. ___, 669 S.E.2d 864 (2008) (stipulation in AOC form AOC-CR-600, signed by both parties, was sufficient to establish defendant's prior convictions); *State v. Ellis*, 168 N.C. App. 651 (2005) (defense counsel specifically stipulated to prior convictions in colloquy with court). When there has not been a specific stipulation, the courts have examined whether the statements of defense counsel amounted to a stipulation. Generally, defense counsel's failure to contest or object to prior convictions alleged by the state does not amount to a stipulation. See *State v. Chivers*, 180 N.C. App. 275 (2006) (prior record level worksheet not sufficient to establish prior convictions even if uncontested by defendant); *State v. Riley*, 159 N.C. App. 546 (2003) (prior convictions were not established by proof or stipulation; only evidence of prior record level was prosecutor's worksheet and unsupported statements to court); see also *State v. Silas*, 168 N.C. App. 627 (2005) (prior record worksheet insufficient; defendant's testimony at trial may be used to establish prior convictions, but in this case testimony did not support prior record level determination), *modified on other grounds*, 360 N.C. 377 (2006). The courts have found, however, that defense counsel's colloquy with the court, in which counsel did not specifically stipulate to the alleged convictions but did refer to them and made no objection, amounted to a stipulation. *State v. Alexander*, 359 N.C. 824 (2005); *State v. Hurley*, 180 N.C. App. 680 (2006); *State v. Cromartie*, 177 N.C. App. 73 (2006); but cf. *State v. Jeffery*, 167 N.C. App. 575 (2004) (plea agreement to specific sentence not sufficient stipulation to prior convictions; court distinguishes cases in which counsel engaged in colloquy with court).

For matters involving issues of law, the defendant's stipulation is insufficient. The court must decide the issue. The courts have so held with respect to whether:

- An out-of-state conviction is substantially similar to a North Carolina offense for purposes of prior conviction points. See *State v. Lee*, ___ N.C. App. ___, 668 S.E.2d 393 (2008); *State v. Palmateer*, 179 N.C. App. 579 (2006).
- An out-of-state conviction constitutes a felony for purposes of determining habitual felon status. See *State v. Moncree*, 188 N.C. App. 221 (2008).
- All the elements of the current offense are included within a prior offense for purposes of assessing an additional prior record point. See *State v. Prush*, 185 N.C. App. 472 (2007).

Aggravating and Mitigating Factors for Felonies (p. 4)

The General Assembly added and revised a number of aggravating factors since the publication of *2005 Punishments*. The changes are incorporated in Table 4a, below. No changes were made to mitigating factors.

Sentence Dispositions for Felonies and Misdemeanors (pp. 5, 11)

Credit for previous confinement. In *State v. Belcher*, 173 N.C. App. 620 (2005), the court held that the defendant was entitled to credit against his sentence for time she was incarcerated for contempt for violating her probation. The trial judge had found her in contempt for violating her probation and sentenced her to thirty days imprisonment. The trial judge later revoked her probation for different violations. The court held that the defendant was entitled to a thirty-day credit for the time she was previously incarcerated for contempt for violating her probation.

In *State v. Lutz*, 177 N.C. App. 140 (2006), the court held that the defendant was entitled to 91 days credit against his sentence for time spent in DART, a substance abuse program, which had been required as a special condition of probation. The trial judge revoked the defendant's probation and activated his suspended sentence for other violations. The court held that the trial judge erred in denying the defendant's motion to credit the DART time against his activated sentence.

Restitution for Felonies and Misdemeanors (pp. 6, 12)

The General Assembly revised the offenses subject to the Crime Victims' Rights Act, which contains special restitution requirements. The changes appear in revised Table 6, below.

Habitual Offender Laws and Other Offenses Dependent on Prior Convictions (p. 7)

Habitual and violent habitual felons. See Jeff Welty, *North Carolina's Habitual Felon and Violent Habitual Felon Laws*, ADMINISTRATION OF JUSTICE BULLETIN No. 2008/04 (June 2008), online at www.sog.unc.edu/programs/crimlaw/aoj.htm.

Habitual misdemeanor assault. Effective for offenses committed on or after December 1, 2004, the General Assembly revised the habitual misdemeanor assault statute, G.S. 14-33.2, to provide that "[a] conviction under this section shall not be used as a prior conviction for any other habitual offense statute." In *State v. Artis*, 181 N.C. App. 601 (2007), the court upheld a habitual felon conviction in which the current offense occurred before December 1, 2004, and the prior convictions on which the habitual felon charge was predicated included a conviction for habitual misdemeanor assault committed before December 1, 2004. The court found in these circumstances that revised G.S. 14-33.2 did not bar the use of the prior habitual misdemeanor assault conviction. The court did not resolve whether a habitual felon prosecution for an offense committed on or after December 1, 2004, could be predicated on a conviction for habitual misdemeanor assault that occurred before December 1, 2004. For a further discussion of habitual misdemeanor assault, see Robert L. Farb, *Habitual Offender Laws* at 13–15 (Jan. 2009), online at www.sog.unc.edu/programs/crimlaw/habitual.pdf.

Habitual impaired driving. See Robert L. Farb, *Habitual Offender Laws* at 10–13 (Jan. 2009), online at www.sog.unc.edu/programs/crimlaw/habitual.pdf.

Felon in possession of firearm. In *State v. Goodwin*, ___ N.C. App. ___, 661 S.E.2d 46 (2008), in which the defendant was convicted of second-degree murder and attempted first-degree murder, the court held that it was proper to assign points to both a prior felony drug conviction and a prior conviction of possession of firearm by a felon in which the felony drug conviction was an element. Distinguishing *State v. Gentry*, 135 N.C. App. 107 (1999) (prior conviction used to establish habitual impaired driving could not be used in calculating prior record level), the court held that possession of a firearm by a felon was a separate substantive offense from the defendant's prior felony drug conviction on which his status as a felon was based.

In *State v. Leach*, 166 N.C. App. 711 (2004), the court held that the defendant's prior conviction for possession of cocaine was a felony and could be used to establish the defendant's status as a felon for purposes of the charge of possession of a firearm by a felon.

Violation of sex offender registration requirements. In *State v. Harrison*, 165 N.C. App. 332 (2004), the defendant, a registered sex offender, was convicted of failing to notify the sheriff of a change of address in violation of sex offender registration requirements. The court held that the defendant's prior conviction of second-degree rape, which triggered the requirement that he register as a sex offender, was properly used to determine the defendant's prior record level.

Sentence Enhancements (p. 8)

G.S. 15A-1340.16A increases a defendant's sentence by sixty months if the defendant commits a Class A through E felony by using, displaying, or threatening the use or display of a firearm while actually possessing the firearm about his or her person. Effective for offenses committed on or after December 1, 2008, the statute imposes the sixty-month enhancement if the crime involves a firearm *or* deadly weapon in the above circumstances. The enhancement does not apply—whether the weapon is a firearm or other deadly weapon—if the evidence regarding its use, display, or threatened use or display is needed to prove an element of the felony or if the defendant does not receive a sentence of active imprisonment. G.S. 15A-1340.16A(f); *see also 2005 Punishments* at 8–9 (discussing cases interpreting statute).

Drug Trafficking Offenses (p. 9)

G.S. 90-95(h)(6) provides that sentences under G.S. 90-95(h) for drug trafficking offenses must run consecutively with, and begin at the expiration of, any other sentences being served by the defendant. In *State v. Walston*, ___ N.C. App. ___, 666 S.E.2d 872 (2008), the court recognized that when sentences are imposed for two drug trafficking offenses at the same sentencing hearing, G.S. 90-95(h)(6) does not require that the sentences be consecutive.

Costs and Fees

Local crime lab tests. Effective for offenses committed on or after October 1, 2005, G.S. 7A-304(a)(8) directs the judge to assess a fee of \$300 for the services of a crime laboratory operated by a local government if (a) the defendant is convicted, (b) as part of the investigation leading to conviction, the lab performed DNA analysis, tests of the defendant for the presence of alcohol or controlled substances, or analysis of a controlled substance possessed by the defendant or defendant's agents, and (c) the judge finds that the work was substantially equivalent to the kind of work performed by the State Bureau of Investigation. The court may waive or reduce the fee for good cause. The fees go to the general fund of the local government that operates the lab, to be used for law enforcement purposes. (There is a similar assessment when SBI laboratories perform the analysis. *See 2005 Punishments* at p. 61, n. 202.)

Table 4a (replaces Table 4a, p. 16)

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.
4. The defendant was hired or paid to commit the offense.
5. The offense was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws.
6. 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, firefighter, emergency medical technician, ambulance attendant, social worker, justice or judge, clerk or assistant or deputy clerk of court, magistrate, prosecutor, juror, or witness against the defendant, while engaged in the performance of that person’s official duties or because of the exercise of that person’s official duties.¹
- 6a. The offense was committed against or proximately caused serious harm as defined in G.S. 14-163.1 or death to a law enforcement agency animal or assistance animal as defined in G.S. 14-163.1, while engaged in the performance of the animal’s official duties.²
7. The offense was especially heinous, atrocious, or cruel.
8. The defendant knowingly created a great risk of death to more than one person by means of a weapon or device which would normally be hazardous to the lives of more than one person.
9. The defendant held public office at the time of the offense and the offense related to the conduct of the office.
10. The defendant was armed with or used a deadly weapon at the time of the crime.
11. The victim was very young, or very old, or mentally or physically infirm, or handicapped.
12. The defendant committed the offense while on pretrial release on another charge.
- 12a. The defendant has, during the ten-year period prior to the commission of the offense for which the defendant is being sentenced, been found by a court of this State to be in willful violation of the conditions of probation imposed pursuant to a suspended sentence or been found by the Post-Release Supervision and Parole Commission to be in willful violation of a condition of parole or post-release supervision imposed pursuant to release from incarceration.³

1. Effective for offenses committed on or after Dec. 1, 2005, aggravating factor no. 6 was revised to add social workers.
2. Aggravating factor no. 6a applies to offenses committed on or after Dec. 1, 2007.
3. Aggravating factor no. 12a applies to offenses committed on or after Dec. 1, 2008.

13. The defendant involved a person under the age of 16 in the commission of the crime.
14. The offense involved an attempted or actual taking of property of great monetary value or damage causing great monetary loss, or the offense involved an unusually large quantity of contraband.
15. The defendant took advantage of a position of trust or confidence, including a domestic relationship, to commit the offense.⁴
16. The offense involved the sale or delivery of a controlled substance to a minor.
- 16a. The offense is the manufacture of methamphetamine and was committed where a person under the age of 18 lives, was present, or was otherwise endangered by exposure to the drug, its ingredients, its by-products, or its waste.⁵
- 16b. The offense is the manufacture of methamphetamine and was committed in a dwelling that is one of four or more contiguous dwellings.⁶
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.

SOURCE: G.S. 15A-1340.16(d)

4. Effective for offenses committed on or after Dec. 1, 2004, aggravating factor no. 15 was revised to provide that a position of trust or confidence includes a domestic relationship.

5. Aggravating factor no. 16a applies to offenses committed on or after Dec. 1, 2004.

6. Aggravating factor no. 16b applies to offenses committed on or after Jan. 15, 2006.

Table 6 (replaces Table 6, pp. 18–19)

Felonies (Class F through I) and Misdemeanors Subject to Restitution Requirements under Crime Victims’ Rights Act

Note: All Class A through E felonies (not listed in this table) are subject to the Crime Victims’ Rights Act. If punishable as a felony, an attempt to commit a Class A through E felony or one of the Class F through I felonies listed here is also subject to the Crime Victims’ Rights Act. Unless a different classification is otherwise stated, an attempt to commit a felony is punishable one class lower than the felony attempted. See G.S. 14-2.5. An attempt to commit a Class I felony is normally a Class 1 misdemeanor, so it is normally not subject to the Crime Victims’ Rights Act.

The misdemeanors listed in this table are subject to the Crime Victims’ Rights Act only if the defendant and victim have a personal relationship as defined in G.S. 50B-1(b).

Statute	Description of Offense	Punishment
14-16.6(b)	Assault or violent attack with deadly weapon on executive, legislative, or court officer	Class F felony
14-16.6(c)	Assault or violent attack inflicting serious bodily injury on executive, legislative, or court officer	Class F felony
14-18	Involuntary manslaughter	Class F felony
14-32.1(e)	Assault on handicapped person: With deadly weapon or other means of force likely to inflict serious injury or damage Inflicting serious injury or damage With intent to kill	Class F felony Class F felony Class F felony
14-32.2(b)(3)	Patient abuse: pattern of conduct resulting in serious bodily injury	Class F felony
14-32.3(a)	Abuse by caretaker of disabled/elder adult in domestic setting: Resulting in serious injury Resulting in injury	Class F felony Class H felony
14-32.3(b)	Neglect by caretaker of disabled/elder adult in domestic setting: Resulting in serious injury Resulting in injury	Class G felony Class I felony
14-32.3(c)	Exploitation by caretaker of disabled/elder adult in domestic setting: resulting in loss of more than \$1,000	Class H felony
14-32.4(a)	Assault inflicting serious bodily injury	Class F felony
14-33(a)	Simple assault, simple assault and battery, or simple affray	Class 2 misdemeanor
14-33(c)(1)	Assault: Inflicting serious injury With deadly weapon	Class A1 misdemeanor Class A1 misdemeanor
14-33(c)(2)	Assault on female	Class A1 misdemeanor

Statute	Description of Offense	Punishment
14-33.2	Habitual misdemeanor assault	Class H felony
14-34	Assault by pointing gun	Class A1 misdemeanor
14-34.2	Assault with deadly weapon on government official or on company or campus police officer	Class F felony
14-34.6(b)	Assault on firefighter or emergency personnel: Inflicting serious bodily injury With deadly weapon other than firearm	Class I felony Class I felony
14-34.6(c)	Assault with firearm on firefighter or emergency personnel	Class F felony
14-41	Abduction of minor	Class F felony
14-43.3	Felonious restraint	Class F felony
14-43.11	Human trafficking of adult	Class F felony ¹
14-43.12	Involuntary servitude of adult	Class F felony ²
14-51, -52	Second-degree burglary	Class G felony
14-58	Second-degree arson	Class G felony
14-87.1	Common-law robbery	Class G felony
14-134.3(a)	Domestic criminal trespass	Class 1 misdemeanor
14-190.17	Second-degree sexual exploitation of minor	Class E felony ³
14-190.17A	Third-degree sexual exploitation of minor	Class H felony ⁴
14-190.19	Participating in prostitution of minor	Class F felony

1. G.S. 14-43.11 applies to offenses committed on or after Dec. 1, 2006, and the Class F felony violation of the statute is subject to the Crime Victims' Rights Act for offenses committed on or after Dec. 1, 2007.

2. G.S. 14-43.12 applies to offenses committed on or after Dec. 1, 2006; it replaced G.S. 14-43.2, which was repealed. The Class F felony violation of G.S. 14-43.12 is subject to the Crime Victims' Rights Act only for offenses committed on or after Dec. 1, 2006, and before Dec. 1, 2007. G.S. 14-43.12 was enacted as G.S. 14-43.6, but was recodified by the codifier of statutes as G.S. 14-43.12. G.S. 15A-830(a)(7), which identifies the offenses subject to the Crime Victims' Rights Act, was amended to refer to G.S. 14-43.6, but effective for offenses committed on or after Dec. 1, 2007, the reference to G.S. 14-43.6 in G.S. 15A-830(a)(7) was deleted; G.S. 14-43.12 was not added.

3. For offenses committed before Dec. 1, 2008, a violation of G.S. 14-190.17 was a Class F felony and was subject to the Crime Victims' Rights Act. Because a violation of G.S. 14-190.17 is a Class E felony on or after that date, it is automatically subject to the Crime Victims' Rights Act. *See* G.S. 15A-830(a)(7)a.

4. G.S. 15A-190.17A appears to be subject to the Crime Victims' Rights Act only for offenses committed before Dec. 1, 2008, when it was a Class I felony. *See* G.S. 15A-830(a)(7)e. (Act applies to a "Class I felony if it is a violation of one of the following: . . . 14-190.17A"). The Crime Victims' Rights Act does not appear to apply to a violation of G.S. 14-190.17A committed on or after Dec. 1, 2008, because on or after that date it is a Class H felony, not a Class I felony as required by G.S. 15A-830(a)(7)e.

Statute	Description of Offense	Punishment
14-202.1	Taking, or attempting to take, indecent liberties with child	Class F felony
14-277.3	Stalking: ⁵ First offense While court order in effect prohibiting similar behavior Subsequent offense	Class A1 misdemeanor Class H felony Class F felony
14-288.9	Assault on emergency personnel with dangerous weapon or substance	Class F felony
20-138.5	Habitual impaired driving	Class F felony
20-141.4(a1)	Felony death by vehicle	Class E felony ⁶
50B-4.1	Violating domestic violence protective order	Various ⁷

SOURCE: G.S. 15A-830(a)(7), 15A-834

5. Effective for offenses committed on or after Dec. 1, 2008, G.S. 14-277.3 was repealed and was replaced by G.S. 14-277.3A. A violation of G.S. 14-277.3A does not appear to be subject to the Crime Victims' Rights Act because G.S. 15A-830(a)(7) was not revised to include that statute number.

6. For offenses committed before Dec. 1, 2006, felony death by vehicle in violation of G.S. 20-141.4(a1) was a Class G felony and was covered by the Crime Victims' Rights Act. *See* G.S. 15A-830(a)(7)c. (Act applies to a "Class G felony if it is a violation of one of the following: . . . 20-141.4"). Because a violation of G.S. 20-141.4(a1) is a Class E felony on or after Dec. 1, 2006, it is automatically subject to the Crime Victims' Rights Act. *See* G.S. 15A-830(a)(7)a. For the same reason, the following offenses, added to G.S. 20-141.4 for offenses committed on or after Dec. 1, 2006, are subject to the Crime Victims' Rights Act: aggravated felony serious injury by vehicle in violation of G.S. 20-141.4(a4), a Class E felony; aggravated felony death by vehicle in violation of G.S. 20-141.4(a5), a Class D felony; and repeat felony death by vehicle in violation of G.S. 20-141.4(a6), which appears to be a Class E felony although subject to the same sentence as second-degree murder. Felony serious injury by vehicle in violation of G.S. 20-141.4(a3), a Class F felony, does not appear to be subject to the Crime Victims' Rights Act because G.S. 15A-830(a)(7) does not refer to any Class F felony violations of G.S. 20-141.4.

7. Effective Oct. 1, 2007, any violation of a domestic violence protective order under G.S. 50B-4.1 is subject to the Crime Victims' Rights Act. For the various violations and punishments under G.S. 50B-4.1, *see 2005 Punishments* and the Punishment Chart for Crimes in this supplement.

Punishment Chart for Crimes

Statute	Description of Offense	Punishment
14-3(c)	Misdemeanor committed because of victim's race, color, religion, nationality, or country of origin	Class 2 or 3 misdemeanor committed for proscribed reason punishable as Class 1 misdemeanor; Class 1 or A1 misdemeanor committed for proscribed reason punishable as Class H felony ¹
14-12.12(a), -12.15	Placing burning cross on property of another without consent	Class 1 misdemeanor
14-12.12(b), -12.15	Placing burning cross on property of another or on public street, highway, or place with intent to intimidate, to prevent lawful act, or cause unlawful act	Class H felony ²
14-12.13, -12.15	Placing exhibit in any location with intent to intimidate, prevent lawful act, or cause unlawful act	Class H felony ³
14-12.14, -12.15	Wearing mask, hood, or other disguise while placing exhibit in any location with intent to intimidate, prevent lawful act, or cause unlawful act	Class H felony ⁴
14-17	First-degree murder	Class A felony ⁵
14-27.2A	Rape of child under 13	Class B1 felony ⁶

1. For offenses committed before Dec. 1, 2008, a Class 1 or A1 misdemeanor for a reason proscribed by G.S. 14-3(c) was a Class I felony.

2. For offenses committed before Dec. 1, 2008, G.S. 14-12.12(b) did not include public places other than public streets and highways, and a violation was a Class I felony.

3. For offenses committed on or after Dec. 1, 2008, the term "exhibit" includes a noose. For offenses committed before Dec. 1, 2008, a violation was a Class I felony.

4. See note 3.

5. In *Roper v. Simmons*, 543 U.S. 551 (2005), the United States Supreme Court held that it was unconstitutional to put a person to death for a crime committed when the person was under the age of 18. To conform with *Roper*, the General Assembly revised the punishment for first-degree murder in G.S. 14-17 to bar execution of a person under the age of eighteen in all circumstances, effective June 14, 2007.

6. G.S. 14-27.2A applies to offenses committed on or after Dec. 1, 2008. A person convicted of this offense must be sentenced to an active term of imprisonment of at least 300 months. If the court finds "egregious aggravation," it may sentence the defendant to life in prison without parole. *But see* John Rubin, *2008 Legislation Affecting Criminal Law and Procedure*, ADMINISTRATION OF JUSTICE BULLETIN No. 2008/06 (Nov. 2008) (questioning constitutionality of procedure for imposing life in prison without parole), online at www.sog.unc.edu/programs/crimlaw/aoj.htm. The offense is designated as a "sexually violent offense" under G.S. 14-208.6(5), subjecting a defendant to the sex offender registration requirements in G.S. Ch. 14, Art. 27A. When released from prison, the defendant must submit to satellite monitoring for life. A person convicted of this offense "has no rights to custody of or rights of inheritance from any child born as a result of the commission of the rape" and has no rights "related to the child under Chapter 48 [adoptions] or Subchapter 1 of Chapter 7B [abuse, neglect, and dependency] of the General Statutes."

Statute	Description of Offense	Punishment
14-27.4A	Sex offense against child under 13	Class B1 felony ⁷
14-27.5A	Sexual battery	Class A1 misdemeanor ⁸
14-27.7A(a)	Statutory rape or sexual offense with person who is 13, 14, or 15 years old when defendant is at least 6 years older	Class B1 felony ⁹
14-32.1(f)	Simple assault on handicapped person	Class A1 misdemeanor ¹⁰
14-32.2(b)(4), -32.2(a)	Patient abuse: pattern of conduct resulting in bodily injury	Class H felony ¹¹
14-33(c)(8)	Assault on company or campus police officer	Class A1 misdemeanor ¹²
14-34.1(a)	Discharging or attempting to discharge firearm into occupied property	Class E felony ¹³
14-34.1(b)	Discharging or attempting to discharge firearm into occupied dwelling or occupied conveyance in operation	Class D felony ¹⁴
14-34.1(c)	Violation of G.S. 14-34.1(a) or (b) resulting in serious bodily injury	Class C felony ¹⁵
14-34.2	Assault with deadly weapon on government official or on company or campus police officer	Class F felony ¹⁶

7. G.S. 14-27.4A applies to offenses committed on or after Dec. 1, 2008. A person convicted of this offense must be sentenced to an active term of imprisonment of at least 300 months. If the court finds “egregious aggravation,” it may sentence the defendant to life in prison without parole. *But see* John Rubin, *2008 Legislation Affecting Criminal Law and Procedure*, ADMINISTRATION OF JUSTICE BULLETIN No. 2008/06 (Nov. 2008) (questioning constitutionality of procedure for imposing life in prison without parole), online at www.sog.unc.edu/programs/crimlaw/aoj.htm. The offense is designated as a “sexually violent offense” under G.S. 14-208.6(5), subjecting a defendant to the sex offender registration requirements in G.S. Ch. 14, Art. 27A. When released from prison, the defendant must submit to satellite monitoring for life.

8. Effective for offenses committed on or after Dec. 1, 2005, this offense was designated as a “sexually violent offense” under G.S. 14-208.6(5), subjecting a convicted defendant to the sex offender registration requirements in G.S. Ch. 14, Art. 27A, and it was added to the list of offenses for which a convicted defendant must provide a DNA sample under G.S. 15A-266.4. Effective for offenses committed on or after Dec. 1, 2006, the definition of “sexual contact,” an element of sexual battery, was revised to include ejaculating, emitting, or placing semen, urine, or feces on any part of another person. *See* G.S. 14-27.1(5).

9. Effective for offenses committed on or after Dec. 1, 2006, this offense was designated as a “sexually violent offense” under G.S. 14-208.6(5), subjecting a convicted defendant to the sex offender registration requirements in G.S. Ch. 14, Art. 27A.

10. For offenses committed before Dec. 1, 2006, a violation of G.S. 14-32.1(f) was a Class 1 misdemeanor.

11. For offenses committed before Dec. 1, 2007, a violation of G.S. 14-32.2(b)(4) was a Class A1 misdemeanor.

12. G.S. 14-33(c)(8) applies to offenses committed on or after July 28, 2005.

13. This offense previously appeared in G.S. 14-34.1 but was redesignated as G.S. 14-34.1(a) when the offenses in G.S. 14-34.1(b) and (c) were added.

14. G.S. 14-34.1(b) applies to offenses committed on or after Dec. 1, 2005.

15. G.S. 14-34.1(c) applies to offenses committed on or after Dec. 1, 2005.

16. Effective for offenses committed on or after July 28, 2005, G.S. 14-34.2 covers campus police officers certified under G.S. Ch. 74G.

Statute	Description of Offense	Punishment
14-34.9	Discharging firearm from enclosure as part of pattern of criminal street gang activity	Class E felony ¹⁷
14-39	Kidnapping: ¹⁸ First-degree Second-degree	Class C felony Class E felony
14-43.11	Human trafficking: ¹⁹ Of adult Of minor	Class F felony Class C felony
14-43.12(a), -43.12(b)	Involuntary servitude: ²⁰ Of adult Of minor	Class F felony Class C felony
14-43.12(e)	Failure of party to labor contract to report involuntary servitude	Class 1 misdemeanor ²¹
14-43.13	Sexual servitude: ²² Of adult Of minor	Class F felony Class C felony
14-50.16	Pattern of criminal street gang activity ²³ In violation of 14-50.16(a)(1) or (2) In violation of 14-50.16(a)(1) by organizer or supervisor	Class H felony Class F felony

17. G.S. 14-34.9 applies to offenses committed on or after Dec. 1, 2008. This statute is not a part of Article 13A on gangs, discussed in note 23, and a violation may not be governed by the definitions in that article or subject to the additional consequences provided there.

18. Effective for offenses committed on or after Dec. 1, 2006, the definition of kidnapping was revised to include confining, removing, or restraining a person for the purpose of involuntary servitude, sexual servitude, or human trafficking.

19. G.S. 14-43.11 applies to offenses committed on or after Dec. 1, 2006.

20. G.S. 14-43.12 applies to offenses committed on or after Dec. 1, 2006. It replaces G.S. 14-43.2, which was repealed.

21. G.S. 14-43.12(e) applies to offenses committed on or after Dec. 1, 2006.

22. G.S. 14-43.13 applies to offenses committed on or after Dec. 1, 2006. The offense is designated as a “sexually violent offense” under G.S. 14-208.6(5), subjecting a convicted defendant to the sex offender registration requirements in G.S. Ch. 14, Art. 27A.

23. Article 13A (North Carolina Street Gang Suppression Act) of G.S. Chapter 14, of which this statute is a part, applies to offenses committed on or after Dec. 1, 2008. G.S. 14-2.3 provides for the forfeiture of any money or other property acquired in the case of any violation of Article 13A, while G.S. 14-50.23 provides for the forfeiture of the proceeds of criminal street gang activity or a pattern of criminal street gang activity and includes an exception for innocent activities. G.S. 14-50.24 provides that real property used by a criminal street gang for the purpose of criminal street gang activity constitutes a public nuisance and is subject to abatement as provided in G.S. Chapter 19, Article 1 (abatement of nuisances). G.S. 14-50.25 provides that when a defendant is found guilty of an offense other than a violation of G.S. 14-50.16 through 14-50.20, the judge must determine whether the offense involved criminal street gang activity and, if the judge so finds, indicate that fact on the judgment form; there is no additional punishment prescribed in those circumstances. G.S. 14-50.26 provides that a conviction of an offense defined as criminal gang activity precludes the defendant from contesting any factual matters determined in the criminal proceeding in any subsequent civil action or proceeding based on the same conduct. For a discussion of the definitions used in Article 13A, see John Rubin, *2008 Legislation Affecting Criminal Law and Procedure*, ADMINISTRATION OF JUSTICE BULLETIN No. 2008/06 (Nov. 2008), online at www.sog.unc.edu/programs/crimlaw/aoj.htm.

Statute	Description of Offense	Punishment
14-50.17	Solicitation of person 16 or older to participate in criminal street gang activity	Class H felony ²⁴
14-50.18	Solicitation of person under 16 to participate in criminal street gang activity	Class F felony ²⁵
14-50.19	Threatening to injure person or damage property with intent to deter person from assisting another to withdraw from criminal street gang	Class H felony ²⁶
14-50.20	Threatening to injure person or damage property in retaliation against person for having withdrawn from criminal street gang	Class H felony ²⁷
14-50.22	Misdemeanor by person 15 or older on behalf of criminal street gang	Punishable one class higher than misdemeanor committed ²⁸
14-54.1	Breaking or entering place of worship	Class G felony ²⁹
14-56.4(b), -56.4(d)	Unlawfully possessing motor vehicle master key or other lock-picking device: ³⁰ First offense Subsequent offense under 14-56.4	Class 1 misdemeanor Class I felony
14-56.4(c), -56.4(d)	Unlawfully buying, selling, or transferring motor vehicle master key or other lock-picking device: ³¹ First offense Subsequent offense under 14-56.4	Class 1 misdemeanor Class I felony
14-69.1(a)	Making false report of explosive in structure or building	Class H felony ³²
14-69.1(c)	Making false report of explosive in public building: ³³ First offense Subsequent conviction within 5 years of first conviction	Class H felony Class G felony

24. See note 23.

25. See note 23.

26. See note 23.

27. See note 23.

28. See note 23. If the misdemeanor committed is a Class A1 misdemeanor, it is treated as a Class I felony.

29. G.S. 14-54.1 applies to offenses committed on or after Dec. 1, 2005.

30. G.S. 14-56.4 applies to offenses committed on or after Dec. 1, 2005.

31. See note 30.

32. Effective for offenses committed on or after Dec. 1, 2005, the definition of this offense was revised to include false reports of a bomb in sufficient proximity to the structure to cause damage.

33. See note 32.

Statute	Description of Offense	Punishment
14-70, -72(a), -72(b)(2)	Larceny pursuant to breaking or entering place of worship	Class H felony ³⁴
14-71(a), -72(a), -72(c)	Receiving goods stolen pursuant to breaking or entering place of worship	Class H felony ³⁵
14-71(b)	Receiving or possessing property in custody of law enforcement agency that was represented to be stolen	Class H felony ³⁶
14-71.1, -72(a), -72(c)	Possessing goods stolen pursuant to breaking or entering place of worship	Class H felony ³⁷
14-72.6(a)(1)	Larceny of construction materials worth more than \$300 and less than \$1,000 from permitted construction site	Class I felony ³⁸
14-72.6(a)(2)	Receiving or possessing construction materials worth more than \$300 and less than \$1,000 stolen from permitted construction site	Class I felony ³⁹
14-72.7	Chop shop activity: ⁴⁰ Altering, destroying, dismantling, or storing a motor vehicle or part known to be illegally obtained Permitting place to be used for illegal activity under 14-72.7 Purchasing, disposing of, selling, receiving, or possessing a motor vehicle or part knowing that the vehicle ID number has been altered	Class H felony Class H felony Class H felony

34. Effective for offenses committed on or after December 1, 2006, this offense is a felony regardless of the value or type of property taken.

35. See note 34.

36. G.S. 14-71(b) applies to offenses committed on or after Dec. 1, 2007; for offenses committed on or after Aug. 7, 2008, it was revised to include representations by a person authorized to act on behalf of a law enforcement agency as well as by an agent of a law enforcement agency. G.S. 14-71(b) was enacted to address a gap in the law governing possessing and receiving of stolen goods—namely, a person could not be convicted of possessing or receiving stolen goods that were stolen, recovered by law enforcement, and then transferred to the defendant because, once recovered by law enforcement, the goods lost their status as “stolen.” See John Rubin, *2007 Legislation Affecting Criminal Law and Procedure*, ADMINISTRATION OF JUSTICE BULLETIN No. 2008/01, at p. 23 (Jan. 2008), online at www.sog.unc.edu/programs/crimlaw/aoj.htm. G.S. 14-71(b) may go further, however, making possessing or receiving stolen goods from a law enforcement agent a Class H felony regardless of the circumstances of the underlying theft. Compare G.S. 14-71(a) (receiving or possessing stolen goods is Class H felony if underlying theft meets certain conditions, such as when goods are stolen pursuant to a breaking or entering or are worth more than \$1,000).

37. See note 34.

38. G.S. 14-72.6(a)(1) applies to offenses committed on or after Dec. 1, 2005.

39. G.S. 14-72.6(a)(2) applies to offenses committed on or after Dec. 1, 2005.

40. G.S. 14-72.7 applies to offenses committed on or after Dec. 1, 2007. The statute authorizes the following additional remedies: (1) the criminal court may assess a civil penalty, in addition to or in lieu of a fine, of up to three times the assets obtained by the defendant as a result of the violation, to be remitted to the Civil Penalty and Forfeiture Fund; (2) a person aggrieved by a violation may file a civil action for damages; and (3) any instrumentality used in a prohibited activity is subject to seizure and forfeiture under G.S. 14-86.1, and the real property used for a prohibited activity is subject to abatement and forfeiture under G.S. Chapter 19.

Statute	Description of Offense	Punishment
	Purchasing, disposing of, selling, receiving, or possessing a motor vehicle or part to or from person engaged in illegal activity under 14-72.7	Class H felony
14-72.11	Larceny from merchant: ⁴¹ By use of certain exit doors when property has value of more than \$200 By removing, destroying, or deactivating antishoplifting or inventory control device By affixing product code for purpose of fraudulently obtaining goods at less than actual price When property is infant formula and has value of more than \$100	Class H felony Class H felony Class H felony Class H felony
14-86.6(a)(1)	Organized retail theft	Class H felony ⁴²
14-86.6(a)(2)	Receiving or possessing retail property taken in violation of 14-86.6(a)(1)	Class H felony ⁴³
14-111.4	Misuse of 911 system: ⁴⁴ Accessing or attempting to access 911 system for purpose other than emergency communication Accessing or attempting to access 911 system for purpose of avoiding charge for voice communications service in excess of \$100	Class 3 misdemeanor Class 1 misdemeanor
14-112.2(b), -112.2(d)	Exploitation of elder or disabled adult by person who stands in position of trust if property is worth: ⁴⁵ \$100,000 or more \$20,000 or more and less than \$100,000 Less than \$20,000	Class F felony Class G felony Class H felony
14-112.2(c), -112.2(e)	Exploitation of elder or disabled adult by person who knows or reasonably should know adult lacks capacity to consent if property is worth: ⁴⁶ \$100,000 or more \$20,000 or more and less than \$100,000 Less than \$20,000	Class G felony Class H felony Class I felony

41. G.S. 14-72.11 applies to offenses committed on or after Dec. 1, 2007. For offenses committed on or after Aug. 7, 2008, the reference to the Code of Federal Regulations, a part of the definition of the violation involving exit doors, was revised.

42. G.S. 14-86.6 applies to offenses committed on or after Dec. 1, 2007. G.S. 14-86.6(b) provides that any interest acquired or maintained in violation of G.S. 14-86.6 is subject to forfeiture as provided in G.S. 18B-504, although that statute deals with violations of the alcoholic beverage control laws. Effective for offenses committed on or after Aug. 7, 2008, G.S. 14-86.6 was revised to provide that a violation of G.S. 14-86.6(a)(1) occurs if the person conspires to commit theft of retail property from “retail establishments” (rather than a single retail establishment), assuming the other elements of the offense are met.

43. See note 42.

44. G.S. 14-111.4 applies to offenses committed on or after Jan. 1, 2008.

45. G.S. 14-112.2 applies to offenses committed on or after Dec. 1, 2005. It replaces G.S. 14-32.3(c), which was repealed.

46. See note 45.

Statute	Description of Offense	Punishment
14-113.20, -113.22(a)	Financial identity theft	Class G felony ⁴⁷
14-113.31(a), -113.33	Obtaining or attempting to obtain customer's telephone record without consent	Class H felony ⁴⁸
14-113.31(b), -113.33	Purchasing or receiving, or soliciting another to purchase or receive, customer's telephone record without authorization	Class H felony ⁴⁹
14-113.31(c), -113.33	Selling or offering to sell telephone record that was obtained without customer's consent	Class H felony ⁵⁰
14-118.12, -118.15	Residential mortgage fraud: ⁵¹ Involving a single mortgage loan Involving a pattern of residential mortgage fraud	Class H felony Class E felony
14-144	Defacing or damaging house, church, fence, or wall: ⁵² Causing damage less than \$5,000 Causing damage of \$5,000 or more	Class 2 misdemeanor Class I felony
14-148(a)(1), -148(c)	Throwing trash in cemetery: ⁵³ Causing damage less than \$1,000 Causing damage of \$1,000 or more	Class 1 misdemeanor Class I felony
14-148(a)(2), -148(c)	Vandalizing cemetery enclosure: ⁵⁴ Causing damage of less than \$1,000 Causing damage of \$1,000 or more	Class 1 misdemeanor Class I felony

47. This offense is punishable as a Class F felony in certain circumstances. *See 2005 Punishments* at p. 40, n. 72. Effective for offenses committed on or after Dec. 1, 2005, the title of the offense was changed from "financial identity fraud" to "financial identity theft," and the identifying information included in the offense was broadened. The broader offense definition also affects violations of G.S. 14-113.20A (trafficking in stolen identities), which incorporates G.S. 14-113.20.

48. G.S. 14-113.31 applies to offenses committed on or after Dec. 1, 2007. A violation is a violation of G.S. 75-1.1, allowing a customer to bring a civil action for damages or \$1,000, whichever is greater.

49. *See* note 48.

50. *See* note 48.

51. G.S. 14-118.12 applies to offenses committed on or after Dec. 1, 2007. The court may order restitution to any person who suffered a financial loss as a result of a violation, and all real and personal property used or derived from a violation is subject to forfeiture as provided in G.S. 14-2.3 and 14-7.20. *See* G.S. 14-118.16.

52. For offenses committed before Dec. 1, 2008, a violation of G.S. 14-144 was a Class 2 misdemeanor regardless of the amount of the damage.

53. Effective for offenses committed on or after Dec. 1, 2007, the definitions and punishments for offenses under G.S. 14-148 were revised as indicated in the text. For offenses committed before Dec. 1, 2007, consult *2005 Punishments* at p. 41. As under the previous version of the statute, G.S. 14-148(c) provides that the court shall consider, as an alternative to imposition of a fine or jail term, the appropriateness of restitution or reparation as a condition of probation.

54. *See* note 53.

Statute	Description of Offense	Punishment
14-148(a)(3), -148(c)	Vandalizing flowers, plants, and other articles in cemetery: ⁵⁵ Causing damage of less than \$1,000 Causing damage of \$1,000 or more	Class 1 misdemeanor Class I felony
14-149(a)(1)	Vandalizing casket or other repository of human remains	Class I felony ⁵⁶
14-149(a)(2)	Vandalizing grave marker or ornament	Class I felony ⁵⁷
14-149(a1)	Vandalizing human remains interred in cemetery	Class H felony ⁵⁸
14-154	Damaging telegraph, telephone, cable telecommunications, electric power line, or equipment related to wireless communications	Class I felony ⁵⁹
14-163.1(a1)	Killing law enforcement or assistance animal	Class H felony ⁶⁰
14-163.1(b)	Causing or attempting to cause serious harm to law enforcement or assistance animal	Class I felony ⁶¹
14-163.1(c)	Causing or attempting to cause harm to law enforcement or assistance animal	Class 1 misdemeanor ⁶²
14-167	Failing to return: ⁶³ Rented motor vehicle worth more than \$4,000 Other rented property	Class H felony Class 2 misdemeanor
14-190.9(a)	Indecent exposure	Class 2 misdemeanor ⁶⁴

55. See note 53.

56. Effective for offenses committed on or after Dec. 1, 2007, the definitions and punishments for offenses under G.S. 14-149(a) were revised. For offenses committed before Dec. 1, 2007, consult *2005 Punishments* at p. 41–42.

57. See note 56.

58. G.S. 14-149(a1) applies to offenses committed on or after Dec. 1, 2007.

59. For offenses committed before Dec. 1, 2007, G.S. 14-154 did not include damage to cable telecommunications and wireless communications equipment, and a violation was a Class 1 misdemeanor.

60. G.S. 14-163.1(a1) applies to offenses committed on or after Dec. 1, 2007.

61. Effective for offenses committed on or after Dec. 1, 2005, the definition of “harm” in this offense was broadened to include certain non-physical harms, and a person convicted of the offense must be ordered to make restitution for specified expenses, such as veterinary care for the animal, under G.S. 14-163.1(d1).

62. See note 61.

63. For offenses committed before Dec. 1, 2005, the failure to return rented property in violation of G.S. 14-167 was a Class 2 misdemeanor regardless of the type of property.

64. Effective for offenses committed on or after Dec. 1, 2005, G.S. 14-190.9 was redesignated as G.S. 14-190.9(a), and the definition of the offense was revised to include indecent exposure in the presence of a person of the same sex.

Statute	Description of Offense	Punishment
14-190.9(a1)	Indecent exposure if defendant is 18 or older, person is under 16, and defendant acts for sexual purpose	Class H felony ⁶⁵
14-190.16	First-degree sexual exploitation of minor	Class C felony ⁶⁶
14-190.17	Second-degree sexual exploitation of minor	Class E felony ⁶⁷
14-190.17A	Third-degree sexual exploitation of minor	Class H felony ⁶⁸
14-202.3(a), -202.3(c)	Soliciting child by computer to commit sex act: Solicitation Solicitation if defendant, or person for whom defendant was arranging meeting, appears at meeting location	Class H felony ⁶⁹ Class G felony ⁷⁰
14-202.5	Accessing commercial social networking website by sex offender knowing that site permits minors to become members or maintain personal web pages	Class I felony ⁷¹
14-208.9A(c)	Failing to provide photograph by sex offender on request by sheriff	Class 1 misdemeanor ⁷²
14-208.11	Violating sex-offender registration requirements	Class F felony ⁷³
14-208.11A	Assisting person who has violated sex offender registration requirements in eluding arrest	Class H felony ⁷⁴

65. G.S. 14-190.9(a1) applies to offenses committed on or after Dec. 1, 2005. The offense is designated as a “sexually violent offense” under G.S. 14-208.6(5), subjecting a convicted defendant to the sex offender registration requirements in G.S. Ch. 14, Art. 27A.

66. Effective for offenses committed on or after Dec. 1, 2008, the definition of “sexual activity,” an element of this offense, was revised, and the class of offense was increased from a Class D to Class C felony.

67. Effective for offenses committed on or after Dec. 1, 2008, the definition of “sexual activity,” an element of this offense, was revised, and the class of offense was increased from a Class F to Class E felony.

68. Effective for offenses committed on or after Dec. 1, 2008, the definition of “sexual activity,” an element of this offense, was revised, and the class of offense was increased from a Class I to Class H felony.

69. Effective for offenses committed on or after Dec. 1, 2005, the punishment for this offense was raised from a Class I to Class H felony; the definition of the offense was revised; and the offense was designated as a “sexually violent offense” under G.S. 14-208.6(5), subjecting a convicted defendant to the sex offender registration requirements in G.S. Ch. 14, Art. 27A.

70. Effective for offenses committed on or after Dec. 1, 2008, G.S. 14-202.3 was revised to add this offense, which is designated as a “sexually violent offense” under G.S. 14-208.6(5), subjecting a convicted defendant to the sex offender registration requirements in G.S. Ch. 14, Art. 27A.

71. G.S. 14-202.5 applies to offenses committed on or after Dec. 1, 2008.

72. G.S. 14-208.9A(c) applies to offenses committed on or after Dec. 1, 2006.

73. On Dec. 1, 2006, Dec. 1, 2007, Dec. 1, 2008, and May 1, 2009, various changes to the sex-offender registration requirements became effective. For a discussion of those changes, *see* ADMINISTRATION OF JUSTICE BULLETIN Nos. 2007/03 (Jan. 2007), 2008/01 (Jan. 2008), and 2008/06 (Nov. 2008), online at www.sog.unc.edu/programs/crimlaw/aoj.htm; *see also* *Determining the Defendant’s Registration, Satellite Monitoring, and Other Obligations under the Sex Offender Laws* (Nov. 2008), online at www.sog.unc.edu/programs/crimlaw/Sex%20Offender%20Handout.pdf.

74. G.S. 14-208.11A applies to offenses committed on or after Dec. 1, 2006.

Statute	Description of Offense	Punishment
14-208.16	Residing near minor by sex offender	Class G felony ⁷⁵
14-208.17(a), -208.17(c)	Working by sex offender at place where minor is present	Class F felony ⁷⁶
14-208.17(b), -208.17(c)	Accepting minor into care or custody knowing that sex offender resides at that location	Class F felony ⁷⁷
14-208.18	Being on or near location primarily for use of minors by sex offender convicted of certain offenses	Class H felony ⁷⁸
14-208.44(a)	Failing to enroll by sex offender in satellite monitoring program	Class F felony ⁷⁹
14-208.44(b)	Tampering with satellite monitoring device issued to sex offender	Class E felony ⁸⁰
14-208.44(c)	Failing to cooperate with DOC guidelines and regulations for satellite monitoring program	Class 1 misdemeanor ⁸¹
14-226.2	Harassment of participant in neighborhood watch program	Class 1 misdemeanor ⁸²
14-277.3A	Stalking: ⁸³ First offense Subsequent offense While court order in effect prohibiting conduct described in 14-277.3A	Class A1 misdemeanor Class F felony Class H felony

75. G.S. 14-208.16 applies to individuals required to register on or after Dec. 1, 2006. A registrant does not violate the statute if the ownership or use of the nearby property changes after the registrant establishes residence or if the registrant established residence before Dec. 1, 2006.

76. G.S. 14-208.17 applies to offenses committed on or after Dec. 1, 2006.

77. See note 76.

78. G.S. 14-208.18 applies to offenses committed on or after Dec. 1, 2008. G.S. 115C-391(d) provides that a local school board may expel any student who is subject to the prohibitions in G.S. 14-208.18.

79. G.S. 14-208.44(a) applies to offenses committed on or after Jan. 1, 2007. For a discussion of people subject to the satellite monitoring program, consult the publications in note 73.

80. G.S. 14-208.44(b) applies to offenses committed on or after Jan. 1, 2007. Effective for offenses committed on or after Dec. 1, 2007, the statute was revised to include intentionally interfering with a satellite monitoring device.

81. G.S. 14-208.44(c) applies to offenses committed on or after Dec. 1, 2007.

82. G.S. 14-226.2 applies to offenses committed on or after Dec. 1, 2006. A violation includes a minimum fine of \$300.

83. G.S. 14-277.3A applies to offenses committed on or after Dec. 1, 2008. G.S. 14-277.3A(d) provides that if a person is convicted of the misdemeanor version of the offense and is sentenced to a community punishment, the court must place the person on supervised probation in addition to any other punishment. The previous stalking statute, G.S. 14-277.3, is repealed. Several statutes—G.S. 15A-266.4 (blood sample for DNA analysis on conviction of certain offenses), G.S. 15A-830 (offenses subject to Crime Victims' Rights Act), and G.S. 50B-1 (definition of domestic violence for purposes of obtaining domestic violence protective order)—refer to repealed to G.S. 14-277.3; they were not revised to refer to G.S. 14-277.3A.

Statute	Description of Offense	Punishment
14-277.5	Making false report concerning mass violence on educational property	Class H felony ⁸⁴
14-280.2	Pointing laser device at aircraft	Class H felony ⁸⁵
14-288.4(a)(8), -288.4(c)	Disorderly conduct at funeral: ⁸⁶ First offense Second offense Third or subsequent offense	Class 2 misdemeanor Class 1 misdemeanor Class I felony
14-304, -309	Manufacture, sale, etc., of slot machine: ⁸⁷ First offense Second offense Third or subsequent offense	Class 1 misdemeanor Class H felony Class G felony
14-305, -309	Agreeing to provide thing of value to user of slot machine: ⁸⁸ First offense Second offense Third or subsequent offense	Class 1 misdemeanor Class H felony Class G felony
14-306(d), -309	Making unlawful payout to player: ⁸⁹ First offense Second offense Third or subsequent offense	Class 1 misdemeanor Class H felony Class G felony
14-306.1A, -309	Violation of video gaming machine ban: ⁹⁰ First offense Second offense Third or subsequent offense Offense involving operation of five or more machines	Class 1 misdemeanor Class H felony Class G felony Class G felony

84. G.S. 14-277.5 applies to offenses committed on or after Dec. 1, 2007. G.S. 14-277.5(c) authorizes the court to order a person convicted of a violation to pay restitution, including costs and consequential damages resulting from the disruption of normal activity on the premises.

85. G.S. 14-280.2 applies to offenses committed on or after Dec. 1, 2005.

86. G.S. 14-288.4(a)(8) and (c) apply to offenses committed on or after Dec. 1, 2006.

87. For offenses committed before July 1, 2007, a second offense is a Class I felony and a third or subsequent offense is a Class H felony.

88. See note 87.

89. See note 87.

90. G.S. 14-306.1A applies to offenses committed on or after July 1, 2007. G.S. 14-306.1 governs video gaming violations committed before July 1, 2007. G.S. 14-306.1 phases out video gaming machines from June 6, 2006, to July 1, 2007, when the statute is repealed. For violations of G.S. 14-306.1 committed before July 1, 2007, a second offense is a Class I felony and a third or subsequent offense is a Class H felony.

Statute	Description of Offense	Punishment
14-306.3(a), -309	Promoting, operating, or conducting server-based electronic game promotion: ⁹¹ First offense Second offense Third or subsequent offense	Class 1 misdemeanor Class H felony Class G felony
14-306.3(b), -309	Possession of game terminal for purpose of promoting, operating, or conducting server-based electronic game promotion: ⁹² First offense Second offense Third or subsequent offense Offense involving possession of five or more machines	Class 1 misdemeanor Class H felony Class G felony Class G felony
14-309.15(a)	Unlawful raffle	Class 2 misdemeanor ⁹³
14-318.2	Inflicting physical injury on child	Class A1 misdemeanor ⁹⁴
14-318.4(a)	Intentionally inflicting serious physical injury on child	Class E felony ⁹⁵
14-318.4(a1)	Committing, permitting, or encouraging prostitution by child	Class E felony ⁹⁶
14-318.4(a2)	Parent or legal guardian committing or allowing commission of sexual act on child	Class E felony ⁹⁷
14-318.4(a3)	Intentionally inflicting serious bodily injury on child	Class C felony ⁹⁸

91. G.S. 14-306.3 applies to offenses committed on or after Dec. 1, 2008. G.S. 14-298 provides for the seizure and destruction of any game terminal described in G.S. 14-306.3(b); it is unclear whether this provision applies to violations of both G.S. 14-306.3(a) and 14-306.3(b) or just to violations of the latter subsection. G.S. 14-299 provides for the seizure and destruction, sale, or forfeiture of money and other property or things of value exhibited for the purpose of alluring people to bet on any game or used in the conduct of any such game; unlike G.S. 14-298, G.S. 14-299 does not specifically refer to game terminals under G.S. 14-306.3. A conviction of a violation of G.S. 14-306.3 results in automatic revocation of an alcoholic beverage control (ABC) permit under Chapter 18B and contract to sell lottery tickets under Article 5C of Chapter 18C. *See* G.S. 14-306.3(d). A violation of the gambling statutes on licensed premises by a person with an ABC permit is also a violation of the ABC laws, subject to the penalties in G.S. 18B-1005(a)(3) and 18B-102(b).

92. *See* note 91.

93. G.S. 14-309.15(a) provides that a person convicted of this offense may not conduct a raffle for one year. Effective August 31, 2005, G.S. 14-309.15(d) was revised to increase the maximum cash prize that may be offered for any one raffle from \$10,000 to \$50,000, and to increase the maximum total cash prize that may be offered or paid by any nonprofit organization or association during one calendar year from \$10,000 to \$50,000.

94. For offenses committed before Dec. 1, 2008, this offense was a Class 1 misdemeanor.

95. Effective for offenses committed on or after Dec. 1, 2008, G.S. 14-318.4(d)(2) defines “serious physical injury” as physical injury that causes great pain and suffering or serious mental injury. The punishment for this offense did not change.

96. Effective for persons convicted or released from a penal institution on or after Dec. 1, 2008, this offense is designated as a “sexually violent offense” under G.S. 14-208.6(5), subjecting a defendant to the sex offender registration requirements in G.S. Ch. 14, Art. 27A.

97. *See* note 96.

98. The definition of “serious bodily injury” for this offense was recodified in G.S. 14-318.4(d)(1) but did not change. The punishment also did not change.

Statute	Description of Offense	Punishment
14-318.4(a4)	Willful act or grossly negligent omission resulting in serious bodily injury on child	Class E felony ⁹⁹
14-318.4(a5)	Willful act or grossly negligent omission resulting in serious physical injury on child	Class H felony ¹⁰⁰
14-321.1	Baby sitting by or near sex offender: ¹⁰¹ First offense Subsequent offense	Class 1 misdemeanor Class H felony
14-344.1, -344	Internet sale of ticket that does not comply with requirements of 14-344.1	Class 2 misdemeanor ¹⁰²
14-360(a1)	Killing animal by starvation	Class A1 misdemeanor ¹⁰³
14-362	Cock fighting	Class I felony ¹⁰⁴
14-362.2(a)	Promoting fighting or baiting of dog	Class H felony ¹⁰⁵
14-362.2(b)	Possessing or training dog with intent to use in fighting exhibition	Class H felony ¹⁰⁶
14-362.2(c)	Participating as spectator at dog fight	Class H felony ¹⁰⁷
14-401.17	Removing electronic dog collar: ¹⁰⁸ First offense Subsequent offense	Class 3 misdemeanor Class 2 misdemeanor
14-401.22(a)	Failing to notify law enforcement of person's death or secretly disposing of body with intent to conceal death	Class I felony ¹⁰⁹
14-401.22(b)	Aiding or abetting concealing of death of person	Class A1 misdemeanor ¹¹⁰

99. G.S. 14-318.4(a4) applies to offenses committed on or after Dec. 1, 2008.

100. G.S. 14-318.4(a5) applies to offenses committed on or after Dec. 1, 2008.

101. G.S. 14-321.1 applies to offenses committed on or after Dec. 1, 2005.

102. G.S. 14-344.1 is effective Aug. 1, 2008, and expires June 30, 2009.

103. G.S. 14-360(a1) applies to offenses committed on or after Dec. 1, 2007.

104. For offenses committed before Dec. 1, 2005, this offense was a Class 2 misdemeanor.

105. Effective for offenses committed on or after Dec. 1, 2006, the dog fighting offenses in G.S. 14-362.2 include fighting of a dog with animals other than dogs.

Effective for offenses committed on or after Dec. 1, 2005, G.S. 19A-70 provides for a procedure for the court to order a defendant charged with illegally using dogs for fighting to deposit with the clerk of court the expected costs of caring for the dogs pending disposition of the charges. Effective for actions commenced on or after Dec. 1, 2006, these provisions cover violations of any provision of Ch. 14, Art. 47 (the animal cruelty statutes) and G.S. 67-4.3 (attack by dangerous dog).

106. See note 105.

107. See note 105.

108. For offenses committed before Dec. 1, 2005, G.S. 14-401.17 applied to certain North Carolina counties only.

109. G.S. 14-401.22(a) applies to offenses committed on or after Dec. 1, 2005.

110. G.S. 14-401.22(b) applies to offenses committed on or after Dec. 1, 2005.

Statute	Description of Offense	Punishment
14-415.26(d)	Intentional misrepresentation by applicant, or person assisting applicant for certification, to carry concealed handgun	Class 2 misdemeanor ¹¹¹
14-440.1(a1)	Pirating movie in theater by photographic camera for the purpose of recording or transmitting not more than one image	Class 1 misdemeanor ¹¹²
14-440.1(b)	Pirating movie in theater by video camera: ¹¹³ First offense Subsequent offense	Class I felony; minimum fine of \$2,500 Class I felony; minimum fine of \$5,000
18B-302(a1), -302.1(a)	Giving of alcoholic beverage to person under 21	Class 1 misdemeanor ¹¹⁴
18B-302(b)(3), -302(i), -102(b)	Consumption of alcoholic beverage: ¹¹⁵ By person 19 or 20 By person under 19	Class 3 misdemeanor Class 1 misdemeanor
18B-302(c)(1)	Aiding violation of 18B-302(a), (a1), or (b) if aider is under 21	Class 2 misdemeanor ¹¹⁶
18B-302(c)(2), -302.1(b)	Aiding violation of 18B-302(a), (a1), or (b) if aider is 21 or older	Class 1 misdemeanor ¹¹⁷

111. G.S. 14-415.26(d) applies to offenses committed on or after Dec. 1, 2007. A violation results in the immediate revocation of the certification to carry a concealed handgun and renders the person ineligible for certification and a concealed handgun permit.

112. G.S. 14-440.1(a1) applies to offenses committed on or after Dec. 1, 2007. For offenses committed on or after Dec. 1, 2005, and before Dec. 1, 2007, use of a photographic or video camera was a Class 1 misdemeanor for a first offense and a Class I felony for a second offense, and the court had to order the forfeiture and destruction of unauthorized recordings and devices used in connection with the offense.

113. G.S. 14-440.1(b) applies to offenses committed on or after Dec. 1, 2007. Upon conviction of a violation of G.S. 14-440.1(b), the court must order the forfeiture and destruction of unauthorized recordings and devices used in connection with the offense. For offenses committed on or after Dec. 1, 2005, and before Dec. 1, 2007, *see* note 112.

114. G.S. 18B-302(a1) applies to offenses committed on or after Dec. 1, 2007. If the court does not impose an active punishment, it must impose at least a \$250 fine and 25 hours of community service for a first violation and at least a \$500 fine and 150 hours of community services for a subsequent violation within four years of a previous conviction. In addition to any punishment, G.S. 18B-302.1(c) authorizes the court to impose the provisions of G.S. 18B-202, 18B-503, 18B-504, and 18B-505. A conviction of this offense results in a one-year driver's license revocation under G.S. 18B-302(g) and 20-17.3. For offenses committed before Dec. 1, 2007, this offense was a violation of G.S. 18B-302(a).

115. These provisions apply to offenses committed on or after Dec. 1, 2006.

116. A conviction of this offense results in a one-year driver's license revocation under G.S. 18B-302(g) and 20-17.3. (2005 *Punishments* incorrectly states that the revocation applies only if the offense involves aiding purchase or attempted purchase.)

117. Effective for offenses committed on or after Dec. 1, 2007, a conviction of this offense results in a one-year driver's license revocation under G.S. 18B-302(g) and 20-17.3.

Statute	Description of Offense	Punishment
18B-403.1(a), -303(b), -102(b)	Failure of purchaser to obtain purchase-transportation permit for keg of malt beverage	Class 1 misdemeanor ¹¹⁸
18B-403.1(b), -403.1(c), -102(b)	Violation by seller of permit requirements for purchase of keg of malt beverage: ¹¹⁹ First violation Subsequent violation	Warning Class 1 misdemeanor
18C-131(d)	Lotteries: ¹²⁰ Selling lottery ticket to person under 18 Purchasing of lottery ticket by person under 18	Class 1 misdemeanor Class 1 misdemeanor
50B-4.1(f)	Knowingly violating valid domestic violence protective order after conviction of two offenses under Ch. 50B	Class H felony ¹²¹
50B-4.1(g)	Knowingly violating valid domestic violence protective order by failing to stay away from place or person while possessing deadly weapon	Class H felony ¹²²
58-2-164(b)(1)	Rate evasion fraud	Class 3 misdemeanor ¹²³
58-2-164(b)(2)	Assisting, abetting, soliciting, or conspiring with another to engage in rate evasion fraud	Class 3 misdemeanor ¹²⁴
66-254.1	Sale by itinerant merchant of pseudoephedrine product and certain drugs: ¹²⁵ First offense Second offense Third or subsequent offense	Class 1 misdemeanor Class A1 misdemeanor Class I felony
84-2	Engaging in practice of law by justice, judge, magistrate, full-time district attorney, full-time assistant district attorney, public defender, assistant public defender, clerk, deputy or assistant clerk, and certain others	Class 3 misdemeanor ¹²⁶

118. These provisions apply to offenses committed on or after Dec. 1, 2006.

119. See note 118.

120. G.S. 18C-131(d) applies to offenses committed on or after Aug. 31, 2005.

121. Effective for offenses committed on or after Dec. 1, 2008, G.S. 50B-4.1(f) was revised to require two rather than three prior convictions under Ch. 50B.

122. G.S. 50B-4.1(g) applies to offenses committed on or after Dec. 1, 2007.

123. G.S. 58-2-164 applies to applications for motor vehicle insurance made on or after Jan. 1, 2008. In addition to any other penalties provided by law, a violation is punishable by a fine up to \$1,000. G.S. 58-2-164(h) provides that in a civil suit based on a claim for which a person has been convicted under G.S. 58-2-164, the conviction may be entered into evidence against the defendant and establishes the defendant's liability as a matter of law for any damages, fees, or costs as may be proven. G.S. 58-2-164(h) also provides that the court may award the prevailing party compensatory damages, attorneys' fees, costs, and reasonable investigative costs; if the prevailing party demonstrates a pattern of violations, the court may award treble damages.

124. See note 123.

125. G.S. 66-254.1 applies to offenses committed on or after January 15, 2006.

126. A violation is punishable by a fine of at least \$200 only. Effective for offenses committed on or after Dec. 1, 2007, the prohibition on the practice of law applies to magistrates.

Statute	Description of Offense	Punishment
90-95(e)(8), -95(a)(1)	Violation of 90-95(a)(1) by person 21 or older within 1,000 feet of elementary or secondary school or licensed child care center	Class E felony ¹²⁷
90-95(e)(10), -95(a)(1)	Violation of 90-95(a)(1) by person 21 or older on or within 1,000 feet of public park	Class E felony ¹²⁸
90-113.10, -113.13	Inhaling fumes for purpose of intoxication	Class 1 misdemeanor ¹²⁹
90-113.10A, -113.13	Manufacturing, selling, delivering, or possessing an alcohol vaporizing device	Class 1 misdemeanor ¹³⁰
90-113.11, -113.13	Possession of substance for purpose of inhaling for intoxication	Class 1 misdemeanor ¹³¹
90-113.12, -113.13	Sale or delivery of, or possession with intent to sell or deliver, substance to induce intoxication, with knowledge of intended illegal use	Class 1 misdemeanor ¹³²
90-113.56(a)	Violation by retailer of restrictions on sale of pseudoephedrine in 90-113.52 through 90-113.54: ¹³³ First offense Subsequent offense	Class A1 misdemeanor Class I felony
90-113.56(b)	Violation by purchaser or employee of retailer of restrictions on sale of pseudoephedrine in 90-113.52(c) or 90-113.53: ¹³⁴ First offense Second offense Third or subsequent offense	Class 1 misdemeanor Class A1 misdemeanor Class I felony

127. For offenses committed before Dec. 1, 2007, the offense had to occur within 300 feet of a school or child care center.

128. For offenses committed before Dec. 1, 2007, the offense had to occur within 300 feet of a playground in a public park.

129. Effective for offenses committed on or after Dec. 1, 2007, ethyl alcohol is added to the list of covered substances.

130. G.S. 90-113.10A applies to offenses committed on or after Dec. 1, 2007.

131. See note 129.

132. See note 129.

133. G.S. 90-113.56(a) applies to offenses committed on or after Jan. 15, 2006. It provides that a retailer convicted of a third offense on the premises of a single establishment is prohibited from selling pseudoephedrine products at that establishment. G.S. 90-113.56(c) provides that a retailer who fails to train employees in accordance with G.S. 90-113.55, supervise them in transactions involving pseudoephedrine products, or discipline them for violations is subject to a fine of \$500 for a first violation, \$750 for a second violation, and \$1,000 for a third or subsequent violation; these sanctions, although labeled “fines,” appear to be civil penalties, imposed administratively and not as part of a criminal case. Effective for offenses committed on or after Aug. 3, 2006, the restrictions on the retail sale and purchase of pseudoephedrine products were tightened.

134. G.S. 90-113.56(b) applies to offenses committed on or after Jan. 15, 2006. Effective for offenses committed on or after Aug. 3, 2006, the restrictions on the retail sale and purchase of pseudoephedrine products were tightened.

Statute	Description of Offense	Punishment
113-291.1A, -294(q)	Computer-assisted remote hunting	Class 1 misdemeanor ¹³⁵
115C-378, -380	Failing to require child to attend school	Class 1 misdemeanor ¹³⁶

135. G.S. 113-291.1A and 113-294(q) apply to offenses committed on or after Dec. 1, 2005. A violation results in a two-year suspension, under G.S. 113-276.3(d), of any license or permit applicable to the type of activity that resulted in the conviction.

136. For offenses committed before Dec. 1, 2005, this offense was a Class 3 misdemeanor.

Punishment Chart for Motor Vehicle Offenses

Introduction

Changes in the motor vehicle punishment chart necessitated by enactments of the General Assembly from 2005 through 2008 are set out in the material that follows. Unless otherwise noted, offenses listed below are effective December 1, 2005, for offenses committed on and after that date.

Waiver Lists

Many traffic offenses are disposed of pursuant to a “waiver list.” When that happens, the person charged admits the offense and submits payment of the specified fine and court costs for the charge by mail or by appearing in person at the courthouse. The amount of the fines and the charges that are included on the list are established by the Conference of Chief District Court Judges, and new lists are typically issued each December. This year’s lists became effective December 1, 2008. The lists are not reproduced in this supplement, but the traffic offense waiver list is available from the website for the North Carolina court system at www.nccourts.org/Forms/Documents/1088.pdf. Other waiver lists for Alcohol Beverage Control Offenses; Hunting, Fishing, and Boating Offenses; Marine Fisheries Offenses; and Parks and Recreation Offenses are also available at that website, in the section on Forms at www.nccourts.org/Forms/FormSearch.asp (select “Waiver” under “Category”).

Commercial Driver License Changes

Laws governing commercial driver’s licenses have been extensively amended since the publication of the 2005 edition of *Punishments for North Carolina Crimes and Motor Vehicle Offenses*. Changes were required for North Carolina to retain authority to issue commercial driver’s licenses and its eligibility for Motor Carrier Safety Assistance Program grant funds.

Under Chapter 20 of the North Carolina General Statutes, one set of driver’s license rules governs drivers who hold regular, noncommercial, driver’s licenses, while more restrictive rules govern commercial license holders. Beginning in 2005 with the enactment of S.L. 2005-349 (H 670), the General Assembly made several changes to the latter set of rules.

For offenses committed on or after September 30, 2005, any prayer for judgment continued (PJC) in a case involving a commercial vehicle or a commercial license holder is considered a conviction for motor vehicle law purposes. A PJC is a sentence deferral procedure often used in motor vehicle cases to postpone the imposition of a sentence indefinitely. Persons with a regular driver’s license, in contrast to holders of a commercial driver’s license, do not receive a conviction, as that term is defined in G.S. 20-4.01(4a), until they have three PJCs in a five-year-period.

The bases upon which a commercial license holder may be disqualified from driving a commercial vehicle also have expanded since 2005. Along with adding new categories of conduct that can result in a commercial license disqualification, the legislature has amended G.S. 20-17.4, the statute governing commercial license disqualification, to provide for disqualification for conduct committed by the holder of a commercial license in a *noncommercial* vehicle. For example, for offenses committed on or after December 1, 2008, a civil license revocation based upon a charge of impaired driving disqualifies a commercial license holder from driving a commercial vehicle for a year regardless of whether the driving giving rise to the civil revocation occurred in a commercial or noncommercial motor vehicle.

Impact of *Blakely v. Washington* on Sentences for Impaired Driving

The decision of the U.S. Supreme Court in *Blakely v. Washington*, 542 U.S. 296 (2004), discussed in the section on general sentencing, required changes to the statutory sentencing scheme governing sentencing for impaired driving. Before amendments to the impaired driving sentencing procedures were enacted in 2006, aggravating factors determined by the judge by a preponderance of the evidence exposed defendants to increased levels of punishment carrying increased statutory maximum sentences. S.L. 2006-253 (H 1048) amended the impaired driving sentencing

procedures in G.S. 20-179, which govern sentencing for a conviction of G.S. 20-138.1 (impaired driving), G.S. 20-138.2 (impaired driving in a commercial vehicle), a second or subsequent conviction of G.S. 20-138.2A (operating a commercial vehicle after consuming), or a second or subsequent conviction of G.S. 20-138.2B (operating a school bus, school activity bus, or child care vehicle after consuming), to conform with the Sixth Amendment requirement, as articulated in *Blakely*, that any fact (other than a prior conviction) that increases the defendant's sentence beyond the statutory maximum be submitted to a jury and found beyond a reasonable doubt. These amendments became effective for offenses committed on or after December 1, 2006. Clarifying amendments to G.S. 20-179 were enacted by S.L. 2007-493 (S 999). Under revised G.S. 20-179, all aggravating factors (including grossly aggravating factors) must be found beyond a reasonable doubt. Aggravating factors (other than the fact of a prior conviction) must be found by a jury if the case is heard in superior court. In addition, if the state intends to present evidence of an aggravating factor in superior court, the state must provide the defendant notice of its intent no later than ten days prior to trial. The notice must contain a "plain and concise factual statement" indicating the factor or factors the state intends to use. The jury impaneled for the trial may, in the same trial, also determine if one or more aggravating factors is present unless the court determines that the interests of justice require that a separate sentencing proceeding be used to make that determination. If the court determines that a separate proceeding is required, it must be conducted by the trial judge before the trial jury as soon as practicable after the guilty verdict is returned. If a defendant admits that an aggravating factor exists, but pleads not guilty to the underlying charge, a jury must be impaneled to dispose of the charge only, and evidence that relates solely to the aggravating factor is inadmissible at trial. If, alternatively, the defendant pleads guilty but contests the existence of an aggravating factor, a jury must be impaneled to determine if the aggravating factor exists.

Other Changes to Impaired Driving Sentencing

Blakely was not the only impetus for amendments to the impaired driving statutes in the 2006 legislative session. The Governor's Task Force on Driving While Impaired reported to the General Assembly in 2005 its recommendations regarding statutory changes to the impaired driving laws. The Motor Vehicle Driver Protection Act of 2006, S.L. 2006-53 (H 1048), resulted from the General Assembly's consideration of bills incorporating many of the task force's recommendations. The act became effective December 1, 2006, and applies to offenses committed on or after that date. The sentencing provisions for impaired drivers codified in G.S. 20-179 were among the many laws amended by the act.

In addition to amending the procedures for sentencing impaired drivers, the act changed provisions related to service of the sentence imposed. G.S. 20-179(s), as amended, requires that a term of imprisonment of forty-eight hours or more be served in forty-eight hour increments. In addition, credit for jail time may be given only hour for hour for time actually served, and jails must maintain a log showing the number of hours served. Another significant amendment to G.S. 20-179 removed nonoperation of a vehicle as a condition that satisfied mandatory minimum sentencing requirements for first-time offenders. Defendants sentenced for a Level 3, 4, or 5 DWI committed on or after December 1, 2006, must either serve jail time or perform community service as a condition of probation. Provisions governing the parole of persons convicted of impaired driving also were amended to require that such persons be paroled to a residential treatment program, be placed on community service parole, or be subject to electronic monitoring during the parole period. For a detailed list of changes to the impaired driving statutes since 2006, see *DWI Legislative Changes Since 2006*, by James C. Drennan (January 2008), available at www.sog.unc.edu/programs/crimlaw/DWIBillsummaryDrennan2006.pdf.

Dispositions in Speeding Cases

Legislative action designed to stiffen penalties for drivers convicted of speeding followed close on the heels of the "Speed Unlimited" series published in *The News & Observer* in May 2007. Among *The News & Observer's* findings was that, in 2006, only 19 percent of drivers ticketed for speeding at 100 mph or more were convicted as charged. For the year ending June 30, 2006, the newspaper reported that four of every five speeding charges were dismissed, reduced, or disposed of by entry of a PJC. S.L. 2007-380 (S 925) addressed two of the more prominent issues raised in the newspaper's report: pleas to improper equipment (an infraction) and the entry of PJCs. The act amended G.S. 20-141(o) to remove a violation of G.S. 20-123.2, the statute requiring that motor vehicles operated on a

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highway be equipped with a working speedometer, as a lesser included offense of charges of speeding in excess of 25 mph over the posted speed limit. Other amendments to G.S. 20-141(o) require that a conviction for a violation of G.S. 20-123.2 be recorded in a driver's official record as "Improper equipment-Speedometer." G.S. 20-141(p) provides that a driver charged with speeding more than 25 mph over the posted speed limit is ineligible for a PJC. These amendments are effective for offenses committed on or after December 1, 2007.

Punishment Chart (*offenses created by, or changes in punishments to existing offenses made by the 2005–2008 sessions of the North Carolina General Assembly; effective for offenses committed on or after December 1, 2005, unless otherwise noted*)

Offense Statute	Description of Offense	Punishment Statute	Punishment
20-28(a2)	Driving after notification or failure to appear ¹	20-28(a2)	Class 1 misdemeanor
20-137.3	Using mobile phone by driver under 18 ²	20-137.3	Infraction, penalty of \$25
20-137.4	Use of a mobile phone while operating a school bus ³	20-137.4	Class 2 misdemeanor, penalty of not less than \$100
20-141	Driving more than 25 mph over speed limit ⁴	20-141(j1), (o), (p)	Class 2 misdemeanor ⁵
20-141.4(a1)	Felony death by vehicle ⁶	20-141.4(b)	Class E felony ⁷
20-141.4(a3)	Felony serious injury by vehicle ⁸	20-141.4(b)	Class F felony
20-141.4(a4)	Aggravated felony serious injury by vehicle ⁹	20-141.4(b)	Class E felony
20-141.4(a5)	Aggravated felony death by vehicle ¹⁰	20-141.4(b)	Class D felony

1. Effective Dec. 1, 2006, for offenses committed on or after that date.

2. Effective Dec. 1, 2006, for offenses committed on or after that date. No court costs are assessed for this violation.

3. Effective Dec. 1, 2007, for offenses committed on or after that date.

4. Driving at a speed of more than 25 mph over the speed limit is not defined as a separate speeding offense, but special provisions govern the punishment for a conviction on charges of speeding in excess of 25 mph over the limit. A violation of G.S. 20-123.2, which requires that motor vehicles operated on the highway be equipped with a working speedometer, is not a lesser included offense of a charge of speeding in excess of 25 mph over the speed limit. Moreover, a driver charged with speeding more than 25 mph over the posted speed limit is ineligible for a disposition of prayer for judgment continued. These punishment provisions became effective Dec. 1, 2007, for offenses committed on or after that date.

5. Driving at a speed of more than 15 mph over the speed limit is defined as a separate speeding offense, punishable as a Class 2 misdemeanor, so it is safe to assume in the absence of a separately defined offense for greater speeds that driving more than 25 mph over the speed limit likewise is punishable as a Class 2 misdemeanor.

6. G.S. 20-19(i) requires that the Division of Motor Vehicles (DMV) permanently revoke the license of a person convicted of manslaughter or a violation of G.S. 20-141.4 if the offense involved impaired driving and a fatality. The person may apply for a conditional restoration of the license after it has been revoked for at least five years.

7. Effective Dec. 1, 2006, for offenses committed on or after that date. For earlier offenses, felony death by vehicle is a Class G felony.

8. Effective Dec. 1, 2006, for offenses committed on or after that date. Pursuant to G.S. 20-17(a)(9) and 20-19(d), DMV must revoke for four years the license of a driver convicted of felony serious injury by vehicle.

9. Effective Dec. 1, 2006, for offenses committed on or after that date. Pursuant to G.S. 20-17(a)(9) and 20-19(e), DMV must permanently revoke the license of a driver convicted of aggravated felony serious injury by vehicle. DMV may conditionally restore the license after it has been revoked for three years provided the applicant meets certain requirements. DMV may place conditions on the person whose license is restored for up to five years from the date of the restoration.

10. Effective Dec. 1, 2006, for offenses committed on or after that date.

Offense Statute	Description of Offense	Punishment Statute	Punishment
20-141.4(a6)	Repeat felony death by vehicle ¹¹	20-141.4	Punished as second-degree murder (Class B2 felony)
20-141.5	Misdemeanor driving to elude arrest, causing death ¹²	20-141.5	Class H felony
20-141.5	Felony driving to elude arrest, causing death	20-141.5	Class E felony
20-157(b), (c), (d), (e), (f)	Following emergency vehicle too closely, parking too close to emergency scene, or failing to move over to avoid stopped emergency vehicles ¹³	20-157(g)	Infraction, penalty of \$250
20-157(h)	Failing to yield to emergency vehicle and causing more than \$500 property damage in immediate area of emergency ¹⁴	20-157(h)	Class 1 misdemeanor
20-157(i)	Failing to yield to emergency vehicle and causing serious injury or death in immediate area of emergency ¹⁵	20-157(i)	Class I felony
20-166(a)	Failure to stop by driver who knew or should have known he or she was involved in a crash that resulted in serious bodily injury or death ¹⁶	20-166(a)	Class F felony
20-166(a1)	Failure to stop by driver who knew or should have known he or she was involved in a crash that resulted in injury ¹⁷	20-166(a1)	Class H felony
20-166.2(a)	Passenger leaving scene of accident without being authorized to do so or facilitating removal of vehicle from scene in accident involving personal injury or death	20-166.2(a)	Class H felony

11. Effective Dec. 1, 2006, for offenses committed on or after that date.

12. Driving to elude arrest is generally a Class 1 misdemeanor when there are fewer than two specified aggravating factors present. If two or more aggravating factors are present, the violation is a Class H felony.

13. Effective July 1, 2006, for offenses committed on or after that date.

14. Effective July 1, 2006, for offenses committed on or after that date.

15. Effective July 1, 2006, for offenses committed on or after that date. DMV may suspend, for up to six months, the driver's license of a person convicted under G.S. 20-157(i).

16. S.L. 2008-128 (S 944) amended G.S. 20-166 to distinguish a driver's failure to stop at the scene of a crash resulting in serious bodily injury (G.S. 20-166(a)) from a driver's failure to stop at the scene of a crash resulting in injury (G.S. 20-166(a1)). A driver who fails to stop at the scene of a crash resulting in serious bodily injury commits a Class F felony, whereas a driver who fails to stop at the scene of a crash resulting in injury commits a Class H felony. The act became effective Dec. 1, 2008, for offenses committed on or after that date. DMV must revoke the driver's license of a person convicted under G.S. 20-166(a) or (a1) for one year, unless the court makes a finding that a longer period of revocation is appropriate. Upon such a finding, DMV must revoke the person's driver's license for two years. Pursuant to G.S. 20-24(a), the court must require the driver convicted of G.S. 20-166(a) to surrender his or her driver's license to the court.

17. Effective Dec. 1, 2008, for offenses committed on or after that date. For additional explanation, see note 16. Pursuant to G.S. 20-24(a), the court must require the driver convicted of G.S. 20-166(a1) to surrender his or her driver's license to the court.

Offense Statute	Description of Offense	Punishment Statute	Punishment
20-166.2(a)	Passenger leaving scene of accident without being authorized to do so or facilitating removal of vehicle from scene in accident involving property damage or personal injury not known to driver	20-166.2(a)	Class 1 misdemeanor
20-166.2(b)	Failure to transfer information to others involved in accident or collision by passenger, or failure by passenger to render aid to persons injured in accident	20-166.2(b)	Class 1 misdemeanor
20-171.15	Permitting operation of all-terrain vehicle by child in violation of age restrictions by a parent or guardian ¹⁸	20-171.21	Infraction, penalty up to \$200
20-171.17	Sale of all-terrain vehicle for unlawful use by underage person	20-171.21	Infraction, penalty up to \$200
20-171.18	Sale or operation of improperly equipped all-terrain vehicle ¹⁹	20-171.21	Infraction, penalty up to \$200
20-171.19(a)	Operation of all-terrain vehicle without eye protection and helmet	20-171.21	Infraction, penalty up to \$200
20-171.19(b)	Authorization by owner of unlawful operation of all-terrain vehicle	20-171.21	Infraction, penalty up to \$200
20-171.19(c), (d)	Operation of all-terrain vehicle while impaired by alcohol or drugs or carelessly and recklessly	20-171.21	Infraction, penalty up to \$200
20-171.19(e), (f)	Operation of all-terrain vehicle on public street (except when crossing the street), or on interstate highway	20-171.21	Infraction, penalty up to \$200
20-171.19(g)	Operation of all-terrain vehicle without lighted headlight and taillight after dark	20-171.21	Infraction, penalty up to \$200
20-171.20	Operation of all-terrain vehicle without possessing safety certificate ²⁰	20-171.21	Infraction, penalty up to \$200
20-217	Passing stopped school bus ²¹	20-217	Class 1 misdemeanor

18. Varying age limits apply to the operation of specific sizes of all-terrain vehicles (ATV). Parents or guardians may not permit a child under eight to operate any ATV. They may not permit a child under twelve to operate an ATV with an engine capacity of 70 cc's or more or a child under sixteen to operate an ATV with an engine capacity greater than 90 cc's. They must ensure that any child under sixteen who is operating an ATV is in continuous visual supervision by a person eighteen or older.

19. Each ATV must be equipped with a brake system, a muffler system, and a U.S. Forest Service qualified spark arrester—all maintained in good working condition.

20. This offense became effective Oct. 1, 2006, and applies to any operator born on or after Jan. 1, 1990.

21. Effective Sept. 1, 2005.

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Offense Statute	Description of Offense	Punishment Statute	Punishment
20-217	Willfully passing stopped school bus and striking person ²²	20-217	Class I felony

22. Effective Sept. 1, 2005. Elements of offense revised effective for offenses committed on or after Dec. 1, 2006.

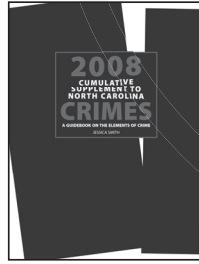
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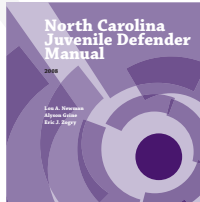
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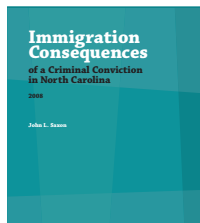
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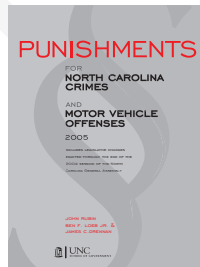
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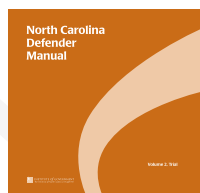
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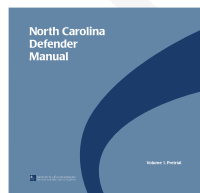
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