

FELONY PLEAS IN DISTRICT COURT

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Guilty or no contest pleas for Class H and Class I felonies. Under G.S. 7A-272(c), with the consent of the presiding district court judge, the prosecutor, and the defendant, the district court has jurisdiction to accept a defendant's plea of guilty or no contest to a Class H or Class I felony if:

- (1) the defendant is charged with a felony in an information filed pursuant to G.S. 15A-644.1, the felony is pending in district court, and the defendant has not been indicted for the offense, or
- (2) the defendant has been indicted for a criminal offense but the case is transferred from superior court to district court pursuant to G.S. 15A-1029.1.

- When a plea is accepted in district court the trial judge must require that a true, complete, and accurate record be made of the proceeding. G.S. 7A-191.1.
- Authorized appeals from a plea entered in district court are to the appellate division. G.S. 7A-272(d).

Probation violations. The superior court has exclusive jurisdiction over probation violation hearings where the district court accepted a plea under G.S. 7A-272(c), except that the district court shall have jurisdiction to hear these matters with the consent of the State and the defendant. G.S. 7A-271(e).

- If a Class H or I felony is pled in district court under G.S. 7A-272(c) and a subsequent revocation hearing is held in district court, the appeal of the revocation is to the superior court for a de novo revocation hearing, not to the Court of Appeals. *State v. Hooper*, 358 N.C. 122 (2004).

Supervision of felony drug treatment court or a therapeutic court in district court. With the consent of the chief district court judge and the senior resident superior court judge, the district court has jurisdiction to preside over the supervision of a probation judgment entered in superior court in which the defendant is required to participate in a drug treatment court program or a therapeutic court (a court that promotes activities designed to address underlying problems of substance abuse and mental illness that contribute to a person's criminal activity). G.S. 7A-272(e).

- The district court judge may modify or extend probation judgments supervised under G.S. 7A-272(e).
- The superior court has exclusive jurisdiction to revoke probation of cases supervised under G.S. 7A-272(e), except that the district court has jurisdiction to conduct the revocation proceeding when the chief district court judge and the senior resident superior court judge agree that it is in the interest of justice that the proceedings be conducted by the district court. G.S. 7A-271(f).
- If the district court exercises jurisdiction to revoke probation in a case supervised under G.S. 7A-272(e), appeal of an order revoking probation is to the appellate division. G.S. 7A-271(f).

Felony Offenses Committed on or after **October 1, 2013**

MINIMUM SENTENCES AND DISPOSITIONAL OPTIONS

OFFENSE CLASS	PRIOR RECORD LEVEL						DISPOSITION
	I 0–1 Pt	II 2–5 Pts	III 6–9 Pts	IV 10–13 Pts	V 14–17 Pts	VI 18+ Pts	
A Max. Death or Life w/o Parole	Death or Life without Parole Defendant under 18 at Time of Offense: Life with or without Parole						
B1 Max. Life w/o Parole	A 240–300	A 276–345	A 317–397	A 365–456	A Life w/o Parole	A Life w/o Parole	Aggravated
	192–240	221–276	254–317	292–365	336–420	386–483	PRESUMPTIVE
	144–192	166–221	190–254	219–292	252–336	290–386	Mitigated
B2 Max. 484 (532)	A 157–196	A 180–225	A 207–258	A 238–297	A 273–342	A 314–393	
	125–157	144–180	165–207	190–238	219–273	251–314	
	94–125	108–144	124–165	143–190	164–219	189–251	
C Max. 231 (279)	A 73–92	A 83–104	A 96–120	A 110–138	A 127–159	A 146–182	
	58–73	67–83	77–96	88–110	101–127	117–146	
	44–58	50–67	58–77	66–88	76–101	87–117	
D Max. 204 (252)	A 64–80	A 73–92	A 84–105	A 97–121	A 111–139	A 128–160	
	51–64	59–73	67–84	78–97	89–111	103–128	
	38–51	44–59	51–67	58–78	67–89	77–103	
E Max. 88 (136)	I/A 25–31	I/A 29–36	A 33–41	A 38–48	A 44–55	A 50–63	
	20–25	23–29	26–33	30–38	35–44	40–50	
	15–20	17–23	20–26	23–30	26–35	30–40	
F Max. 59	I/A 16–20	I/A 19–23	I/A 21–27	A 25–31	A 28–36	A 33–41	
	13–16	15–19	17–21	20–25	23–28	26–33	
	10–13	11–15	13–17	15–20	17–23	20–26	
G Max. 47	I/A 13–16	I/A 14–18	I/A 17–21	I/A 19–24	A 22–27	A 25–31	
	10–13	12–14	13–17	15–19	17–22	20–25	
	8–10	9–12	10–13	11–15	13–17	15–20	
H Max. 39	C/I/A 6–8	I/A 8–10	I/A 10–12	I/A 11–14	I/A 15–19	A 20–25	
	5–6	6–8	8–10	9–11	12–15	16–20	
	4–5	4–6	6–8	7–9	9–12	12–16	
I Max. 24	C 6–8	C/I 6–8	I 6–8	I/A 8–10	I/A 9–11	I/A 10–12	
	4–6	4–6	5–6	6–8	7–9	8–10	
	3–4	3–4	4–5	4–6	5–7	6–8	

Note: Numbers shown are in months. The number shown below each offense class reflects the maximum possible sentence for that class of offense (the highest maximum sentence from the aggravated range in prior record level VI). The maximum sentence for a defendant convicted of a reportable Class B1 through E sex crime is indicated in parentheses.

A—Active Punishment **I**—Intermediate Punishment **C**—Community Punishment

MAXIMUM SENTENCES

FOR OFFENSE CLASSES B1 THROUGH E (*Sex Crimes*)

15-30 (78)	56-80 (128)	97-129 (177)	138-178 (226)	179-227 (275)	220-276 (324)	261-326 (374)	302-375 (423)
16-32 (80)	57-81 (129)	98-130 (178)	139-179 (227)	180-228 (276)	221-278 (326)	262-327 (375)	303-376 (424)
17-33 (81)	58-82 (130)	99-131 (179)	140-180 (228)	181-230 (278)	222-279 (327)	263-328 (376)	304-377 (425)
18-34 (82)	59-83 (131)	100-132 (180)	141-182 (230)	182-231 (279)	223-280 (328)	264-329 (377)	305-378 (426)
19-35 (83)	60-84 (132)	101-134 (182)	142-183 (231)	183-232 (280)	224-281 (329)	265-330 (378)	306-380 (428)
20-36 (84)	61-86 (134)	102-135 (183)	143-184 (232)	184-233 (281)	225-282 (330)	266-332 (380)	307-381 (429)
21-38 (86)	62-87 (135)	103-136 (184)	144-185 (233)	185-234 (282)	226-284 (332)	267-333 (381)	308-382 (430)
22-39 (87)	63-88 (136)	104-137 (185)	145-186 (234)	186-236 (284)	227-285 (333)	268-334 (382)	309-383 (431)
23-40 (88)	64-89 (137)	105-138 (186)	146-188 (236)	187-237 (285)	228-286 (334)	269-335 (383)	310-384 (432)
24-41 (89)	65-90 (138)	106-140 (188)	147-189 (237)	188-238 (286)	229-287 (335)	270-336 (384)	311-386 (434)
25-42 (90)	66-92 (140)	107-141 (189)	148-190 (238)	189-239 (287)	230-288 (336)	271-338 (386)	312-387 (435)
26-44 (92)	67-93 (141)	108-142 (190)	149-191 (239)	190-240 (288)	231-290 (338)	272-339 (387)	313-388 (436)
27-45 (93)	68-94 (142)	109-143 (191)	150-192 (240)	191-242 (290)	232-291 (339)	273-340 (388)	314-389 (437)
28-46 (94)	69-95 (143)	110-144 (192)	151-194 (242)	192-243 (291)	233-292 (340)	274-341 (389)	315-390 (438)
29-47 (95)	70-96 (144)	111-146 (194)	152-195 (243)	193-244 (292)	234-293 (341)	275-342 (390)	316-392 (440)
30-48 (96)	71-98 (146)	112-147 (195)	153-196 (244)	194-245 (293)	235-294 (342)	276-344 (392)	317-393 (441)
31-50 (98)	72-99 (147)	113-148 (196)	154-197 (245)	195-246 (294)	236-296 (344)	277-345 (393)	318-394 (442)
32-51 (99)	73-100 (148)	114-149 (197)	155-198 (246)	196-248 (296)	237-297 (345)	278-346 (394)	319-395 (443)
33-52 (100)	74-101 (149)	115-150 (198)	156-200 (248)	197-249 (297)	238-298 (346)	279-347 (395)	320-396 (444)
34-53 (101)	75-102 (150)	116-152 (200)	157-201 (249)	198-250 (298)	239-299 (347)	280-348 (396)	321-398 (446)
35-54 (102)	76-104 (152)	117-153 (201)	158-202 (250)	199-251 (299)	240-300 (348)	281-350 (398)	322-399 (447)
36-56 (104)	77-105 (153)	118-154 (202)	159-203 (251)	200-252 (300)	241-302 (350)	282-351 (399)	323-400 (448)
37-57 (105)	78-106 (154)	119-155 (203)	160-204 (252)	201-254 (302)	242-303 (351)	283-352 (400)	324-401 (449)
38-58 (106)	79-107 (155)	120-156 (204)	161-206 (254)	202-255 (303)	243-304 (352)	284-353 (401)	325-402 (450)
39-59 (107)	80-108 (156)	121-158 (206)	162-207 (255)	203-256 (304)	244-305 (353)	285-354 (402)	326-404 (452)
40-60 (108)	81-110 (158)	122-159 (207)	163-208 (256)	204-257 (305)	245-306 (354)	286-356 (404)	327-405 (453)
41-62 (110)	82-111 (159)	123-160 (208)	164-209 (257)	205-258 (306)	246-308 (356)	287-357 (405)	328-406 (454)
42-63 (111)	83-112 (160)	124-161 (209)	165-210 (258)	206-260 (308)	247-309 (357)	288-358 (406)	329-407 (455)
43-64 (112)	84-113 (161)	125-162 (210)	166-212 (260)	207-261 (309)	248-310 (358)	289-359 (407)	330-408 (456)
44-65 (113)	85-114 (162)	126-164 (212)	167-213 (261)	208-262 (310)	249-311 (359)	290-360 (408)	331-410 (458)
45-66 (114)	86-116 (164)	127-165 (213)	168-214 (262)	209-263 (311)	250-312 (360)	291-362 (410)	332-411 (459)
46-68 (116)	87-117 (165)	128-166 (214)	169-215 (263)	210-264 (312)	251-314 (362)	292-363 (411)	333-412 (460)
47-69 (117)	88-118 (166)	129-167 (215)	170-216 (264)	211-266 (314)	252-315 (363)	293-364 (412)	334-413 (461)
48-70 (118)	89-119 (167)	130-168 (216)	171-218 (266)	212-267 (315)	253-316 (364)	294-365 (413)	335-414 (462)
49-71 (119)	90-120 (168)	131-170 (218)	172-219 (267)	213-268 (316)	254-317 (365)	295-366 (414)	336-416 (464)
50-72 (120)	91-122 (170)	132-171 (219)	173-220 (268)	214-269 (317)	255-318 (366)	296-368 (416)	337-417 (465)
51-74 (122)	92-123 (171)	133-172 (220)	174-221 (269)	215-270 (318)	256-320 (368)	297-369 (417)	338-418 (466)
52-75 (123)	93-124 (172)	134-173 (221)	175-222 (270)	216-272 (320)	257-321 (369)	298-370 (418)	339-419 (467)
53-76 (124)	94-125 (173)	135-174 (222)	176-224 (272)	217-273 (321)	258-322 (370)	299-371 (419)	
54-77 (125)	95-126 (174)	136-176 (224)	177-225 (273)	218-274 (322)	259-323 (371)	300-372 (420)	
55-78 (126)	96-128 (176)	137-177 (225)	178-226 (274)	219-275 (323)	260-324 (372)	301-374 (422)	

FOR OFFENSE CLASSES F THROUGH I






3-13	9-20	15-27	21-35	27-42	33-49	39-56	45-63
4-14	10-21	16-29	22-36	28-43	34-50	40-57	46-65
5-15	11-23	17-30	23-37	29-44	35-51	41-59	47-66
6-17	12-24	18-31	24-38	30-45	36-53	42-60	48-67
7-18	13-25	19-32	25-39	31-47	37-54	43-61	49-68
8-19	14-26	20-33	26-41	32-48	38-55	44-62	

The tables above show the maximum sentence that corresponds to each minimum sentence. For minimum sentences of 340 months or more, the maximum sentence is 120 percent of the minimum sentence, rounded to the next highest month, plus 12 additional months. G.S. 15A-1340.17(e1).

Sex Crimes: The maximum sentence for a Class B1 through E felony subject to the registration requirements of G.S. Chapter 14, Article 27A is 120 percent of the minimum sentence, rounded to the next highest month, plus 60 additional months, as indicated in parentheses above. G.S. 15A-1340.17(f).

Step 1: Determine the Applicable Law

Choose the appropriate sentencing grid based on the defendant's date of offense.

-  Offenses committed on or after October 1, 2013.
-  Offenses committed December 1, 2011, through September 30, 2013.
-  Offenses committed December 1, 2009, through November 30, 2011.
-  Offenses committed December 1, 1995, through November 30, 2009.
-  Offenses committed October 1, 1994, through November 30, 1995.

NOTES:

- *Grid applicability.* The defendant must be sentenced under the law that existed at the time of his or her offense. *State v. Whitehead*, 365 N.C. 444 (2012). Subsequent changes to the grid should not be retroactively applied. *State v. Lee*, 745 S.E.2d 73 (N.C. Ct. App. 2013).
- *Range of offense dates.* If the precise offense date is unknown and the range of possible dates crosses an effective date threshold, use the law most favorable to the defendant. *State v. Poston*, 162 N.C. App. 642 (2004). If a continuing offense occurred over a range of dates, use the law in place when the offense was completed. *State v. Mullaney*, 129 N.C. App. 506 (1998).
- *Older offenses.* Offenses committed before October 1, 1994, are sentenced under the Fair Sentencing Act or other prior law.

Step 2: Determine the Offense Class

North Carolina felonies are assigned to one of ten offense classes—Class A through Class I, from most to least serious. Identify the offense class of the crime being sentenced.

See **APPENDIX A** Offense Class Table for Felonies.

OFFENSE CLASS REDUCTIONS

Unless otherwise provided by law, the following step-down rules apply for attempts, conspiracies, and solicitations to commit a felony and for other participants in crimes.

Principal Offense	A	B1	B2	C	D	E	F	G	H	I
<i>Same classification as principal:</i> Aiding and Abetting Accessory before the Fact (G.S. 14-5.2)	A	B1	B2	C	D	E	F	G	H	I
<i>One classification lower:</i> Attempt (G.S. 14-2.5) Conspiracy (G.S. 14-2.4)	B2	B2	C	D	E	F	G	H	I	Class 1 Misd.
<i>Two classifications lower:</i> Solicitation (G.S. 14-2.6) Accessory after the Fact (G.S. 14-7)	C	C	D	E	F	G	H	I	Class 1 Misd.	Class 2 Misd.

OFFENSE CLASS ENHANCEMENTS

With appropriate factual findings, the offense class of certain felonies may be increased under the enhancements set out below. Additional procedural requirements apply.

Habitual felon (G.S. 14-7.6)

- Offenses committed before 12/1/2011 Enhance to Class C
- Offenses committed on/after 12/1/2011 Four-class enhancement, capped at Class C

Habitual breaking and entering (G.S. 14-7.31)

- Offenses committed on/after 12/1/2011 Enhance to Class E

Armed habitual felon (G.S. 14-7.41)

- Offenses committed on/after 10/1/2013 Enhance to Class C, with 120-month mandatory minimum sentence

Bullet-proof vest enhancement (G.S. 15A-1340.16C)

- Offenses committed on/after 12/1/1999 One-class enhancement

Protective order violation (G.S. 50B-4.1(d))

- Offenses committed on/after 3/1/2002 One-class enhancement

Injury to pregnant woman (G.S. 14-18.2(b))

- Repealed* for offenses committed on/after 12/1/2011 One-class enhancement

Step 3: Calculate the Prior Record Level

The defendant is assigned to one of six prior record levels (I through VI) according to a point scale based on his or her criminal history.

POINTS FOR PRIOR CONVICTIONS

Class A	10
Class B1	9
Class B2, C, or D	6
Class E, F, or G	4
Class H or I	2
Qualifying misdemeanors (<i>Class A1 and 1 non-traffic misdemeanors; DWI, commercial DWI, and misdemeanor death by vehicle</i>)	1
If all elements of the present offense are included in a prior offense, whether or not the prior offense was used in determining the defendant's prior record level. A judicial finding is required; a defendant cannot validly stipulate to this point. G.S. 15A-1340.14(b)(6).	1
If the defendant is on supervised or unsupervised probation, parole, or post-release supervision, serving a sentence, or on escape at the time of the offense. The State must provide 30 days' written notice if it intends to seek this point and then must prove it like an aggravating factor if it is not admitted to. G.S. 15A-1340.14(b)(7); -1340.16(a5).	1

QUALIFYING PRIOR CONVICTIONS

COUNT:

- Only the most serious prior conviction from one calendar week of a single superior court. G.S. 15A-1340.14(d).
- Only one conviction from a single session of district court. G.S. 15A-1340.14(d).
- A prayer for judgment continued (PJC). *State v. Canellas*, 164 N.C. App. 775 (2004).
- A conviction resulting in G.S. 90-96 probation, if it has not yet been dismissed. *State v. Hasty*, 133 N.C. App. 563 (1999).
- Convictions in superior court, regardless of a pending appeal to the appellate division. G.S. 15A-1340.11(7).
- Qualifying convictions, regardless of when they arose (there is no statute of limitations). *State v. Rich*, 130 N.C. App. 113 (1998).
- Crimes from other jurisdictions, as described below.
- *For possession of firearm by felon*: The prior felony used to establish the person's status as a felon. *State v. Best*, 214 N.C. App. 39 (2011).
- *For failure to register as sex offender*: The sex crime that caused the offender to register. *State v. Harrison*, 165 N.C. App. 332 (2004).

NOTES:

- *Proof*. The State must prove a defendant's record by a preponderance of the evidence. Prior convictions are proved by stipulation, court or administrative records, or any other method found by the court to be reliable. For felony sentencing, the State must make all feasible efforts to obtain and present the defendant's full record. G.S. 15A-1340.14(f).
- *Out-of-state prior convictions*. By default, an out-of-state felony is treated as a Class I felony (2 points), and an out-of-state misdemeanor is treated as a Class 3 misdemeanor (0 points). If the State or defendant proves by a preponderance of the evidence that the out-of-state offense is *substantially similar* to a North Carolina crime, the prior out-of-state conviction may count for points like the similar North Carolina crime. A defendant may stipulate that a crime is a felony or misdemeanor in another state, but not to its substantial similarity, which is a question of law that must be determined by the judge. The judge must compare the elements of the out-of-state crime to the elements of the purportedly similar North Carolina crime. *State v. Hanton*, 175 N.C. App. 250 (2006).
- *Date of determination*. Prior record level is determined on the date a criminal judgment is entered, G.S. 15A-1340.11(7), and may include convictions for offenses that occurred after the offense now being sentenced, *State v. Threadgill*, 741 S.E.2d 677 (N.C. Ct. App. 2013).
- *Prior offense classifications*. If the offense class of a prior conviction has changed over time, use the classification assigned to the prior conviction as of the offense date of the crime now being sentenced. G.S. 15A-1340.14(c).
- *Habitualized prior felonies*. Prior offenses that were sentenced under the habitual felon law count for points according to their original offense class, not the elevated habitual felon offense class. *State v. Vaughn*, 130 N.C. App. 456 (1998).

PRIOR RECORD LEVEL POINT SCALE

Level	Points	
	Offenses Committed before 12/1/2009	Offenses Committed on/after 12/1/2009
I	0	0–1
II	1–4	2–5
III	5–8	6–9
IV	9–14	10–13
V	15–18	14–17
VI	19+	18+

- *Ethical considerations.* The State and the defendant may not agree to intentionally underreport a defendant's record to the court. Council of the N.C. State Bar, 2003 Formal Ethics Op. 5. A defendant may not misrepresent his or her record but may remain silent on the issue, even during the presentation of an inaccurate record, provided he or she was not the source of the inaccuracy. 1998 Formal Ethics Op. 5.
- *Suppression.* The defendant may move to suppress a prior conviction obtained in violation of the right to counsel. G.S. 15A-980.

Step 4: Consider Aggravating and Mitigating Factors

With findings of aggravating or mitigating factors, the court may depart from the presumptive range of sentence durations.

See **APPENDIX C** Aggravating Factors and **APPENDIX D** Mitigating Factors.

NOTES:

- *Notice.* The State must provide written notice of its intent to prove specific aggravating factors at least thirty days before trial or plea, unless the defendant waives the right to notice. G.S. 15A-1340.16(a6). (Use form AOC-CR-614.)
- *Pleading.* Statutory aggravating factors need not be pled. Non-statutory (ad hoc) factors must be pled by indictment or other instrument. G.S. 15A-1340.16(a4).
- *Proof.* Aggravating factors (except for factors 12a and 18a) must be proved to the jury beyond a reasonable doubt, unless admitted to. G.S. 15A-1340.16(a). Admitted aggravating factors must be pled to under G.S. 15A-1022.1; a mere stipulation is insufficient. The defendant bears the burden of proving mitigating factors to the judge by a preponderance of the evidence.
- *Jury procedure.* The jury impaneled for trial may in the same trial determine aggravating factors, unless the court determines that the interests of justice require a separate proceeding. A defendant may admit to aggravating factors but plead not guilty to the underlying felony. Conversely, a defendant may plead guilty to a felony but contest aggravating factors. G.S. 15A-1340.16.
- *Prohibited aggravating factors.* Evidence necessary to prove an element of the offense may not be used to prove an aggravating factor. The same item of evidence may not be used to prove more than one aggravating factor. The defendant's exercise of the right to a jury trial is not an aggravating factor. G.S. 15A-1340.16.
- *Findings.* Written findings of aggravating and mitigating factors are required only when the court departs from the presumptive range. G.S. 15A-1430.16(c). (Use form AOC-CR-605.)
- *Uncontroverted mitigating factors.* If the court gives a sentence from the aggravated range, it must also make written findings of any presented mitigating factor supported by uncontroverted and manifestly credible evidence. *State v. Wilkes*, 736 S.E.2d 582 (N.C. Ct. App. 2013).
- *Opportunity to prove.* The court must allow the defendant an opportunity to present evidence of mitigating factors. *State v. Knott*, 164 N.C. App. 212 (2004).
- *Weighing of factors.* Weighing aggravating and mitigating factors is a matter of judicial discretion and not a mathematical balance. *State v. Vaughters*, 219 N.C. App. 356 (2012) (no error to find that one aggravating factor outweighed nineteen mitigating factors).
- *Judge's discretion.* The decision to depart from the presumptive range is entirely within the court's discretion. The court may enter a presumptive sentence even after finding that mitigating factors outweigh aggravating factors. *State v. Bivens*, 155 N.C. App. 645 (2002).

Step 5: Select a Sentence of Imprisonment

The court imposes a sentence of imprisonment as part of every sentence, including probationary sentences. The court then determines (in Step 6) whether the defendant will be incarcerated for that term (Active punishment) or whether the sentence will be suspended and served only upon revocation of probation (Intermediate or Community punishment). The only exception to the requirement for the court to select a sentence of imprisonment is a sentence to a fine only, which is permissible as a Community punishment. G.S. 15A-1340.17(b).

MINIMUM SENTENCE (G.S. 15A-1340.17(c))

The court selects a minimum sentence from the desired range (presumptive, aggravated, or mitigated) of the appropriate cell of the sentencing grid. The range of permissible minimum sentences is set out on the left-hand page of each sentencing grid.

Firearm/Deadly Weapon Enhancement

If a defendant actually possessed and used, displayed, or threatened the use or display of a firearm or deadly weapon in committing a felony, the State may seek an enhancement of the minimum sentence as provided in G.S. 15A-1340.16A. The facts supporting the enhancement must be set out in the indictment or information charging the underlying felony. The enhancement may apply only to a defendant sentenced to Active punishment (see Step 6 below) and may not apply if the evidence necessary to prove the enhancement is needed to prove an element of the felony.

Offenses committed before 10/1/2013

Class B1–E Felonies	60-month enhancement
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Offenses committed on or after 10/1/2013

Class B1–E felonies	72-month enhancement
Class F and G felonies	36-month enhancement
Class H and I felonies	12-month enhancement

MAXIMUM SENTENCE (G.S. 15A-1340.17(d)–(f))

The maximum sentence corresponding to each minimum sentence is displayed in the table on the right-hand page of each sentencing grid. Use the portion of the table applicable to the offense class being sentenced.

Step 6: Choose a Sentence Disposition

The court must choose a disposition for each sentence. There are three possible sentence dispositions under Structured Sentencing: Active, Intermediate, and Community. The letters shown in each grid cell (A, I, and/or C) indicate which dispositions are permissible in that cell.

Extraordinary Mitigation

Although they fall in “A”-only grid cells, certain Class B2–D felons with fewer than 5 prior record points are eligible for Intermediate punishment if the court finds extraordinary mitigation under G.S. 15A-1340.13(g)–(h). (Use form AOC-CR-606.)

ACTIVE PUNISHMENT (G.S. 15A-1340.11(1))

An Active punishment requires that the defendant serve the imposed sentence of imprisonment in prison, in the custody of the Division of Adult Correction (DAC).

Post-Release Supervision (PRS) (G.S. 15A-1368.2)

All felonies committed on or after December 1, 2011, and sentenced to an Active punishment require post-release supervision (PRS). Defendants subject to PRS are automatically released from prison a certain number of months before attaining their maximum sentence. The remaining term of imprisonment operates as a suspended sentence during a period of PRS, the length of which varies depending on the offense date, offense class, and whether or not the crime requires registration as a sex offender, as shown in the table below. The remaining imprisonment is subject to activation upon certain findings of violation by the Post-Release Supervision and Parole Commission. G.S. 15A-1368.3.

		Release to Post-Release Supervision (months before maximum)	Post-Release Supervision Period
Offenses Committed before 12/1/2011			
Class B1–E felonies	Nonreportable crimes	9 months	9 months
	Reportable sex crimes	9 months	60 months
Class F–I felonies	All crimes	N/A (no PRS)	N/A (no PRS)
Offenses Committed on/after 12/1/2011			
Class B1–E felonies	Nonreportable crimes	12 months	12 months
	Reportable sex crimes	60 months	60 months
Class F–I felonies	Nonreportable crimes	9 months	9 months
	Reportable sex crimes	9 months	60 months

Advanced Supervised Release (ASR) (G.S. 15A-1340.18)

If the prosecutor does not object, the sentencing judge may, when imposing an Active sentence, also order some defendants into the Advanced Supervised Release (ASR) program. Defendants ordered to ASR who complete “risk reduction incentives” in prison are released onto post-release supervision on their ASR date. Defendants who do not complete the ASR program are released according to their regular sentence.

ELIGIBLE GRID CELLS:

- Class D, Prior Record Levels I–III
- Class E, Prior Record Levels I–IV
- Class F, Prior Record Levels I–V
- All Class G and H felonies

ASR DATE:

- Presumptive or Aggravated sentences: The ASR date is the lowest permissible minimum sentence in the mitigated range for the defendant’s offense class and prior record level.
- Mitigated sentences: The ASR date is 80 percent of the imposed minimum sentence.

INTERMEDIATE PUNISHMENT (G.S. 15A-1340.11(6))

Intermediate punishment requires that the court suspend the sentence of imprisonment and impose SUPERVISED probation.

COMMUNITY PUNISHMENT (G.S. 15A-1340.11(2))

Community punishment requires that the court suspend the sentence of imprisonment and impose SUPERVISED or UNSUPERVISED probation. A Community punishment also may consist of a fine only.

See PROBATIONARY SENTENCES, PAGE 17

Step 7: Review Additional Issues, as Appropriate

The section of this handbook on “Additional Issues” includes information on the following matters that may arise at sentencing:

- Fines, costs, and other fees
- Restitution
- Sentencing multiple convictions
- Jail credit
- Sentence reduction credits
- DNA sample
- Deferrals (deferred prosecution, PJC, and conditional discharge)
- Purposes of sentencing
- Obtaining additional information for sentencing

Fines, Costs, and Other Fees

FINES

Any sentence may include a fine. Unless otherwise provided for a specific crime, the amount of the fine is in the discretion of the court. Unless otherwise provided by law, the maximum fine for a Class 3 misdemeanor is \$200, and the maximum fine for a Class 2 misdemeanor is \$1,000. G.S. 15A-1340.23(b). The fine for a local ordinance violation may not exceed \$50 unless the ordinance expressly provides for a larger fine, which in no case may exceed \$500. G.S. 14-4. For Class 3 misdemeanors committed on or after December 1, 2013, unless otherwise provided for a specific offense, the judgment for a defendant with no more than three prior convictions shall consist of a fine only. G.S. 15A-1340.23(b).

Unpaid fines may, upon a determination of default, be responded to as provided in G.S. 15A-1364 and docketed as a civil judgment as provided in G.S. 15A-1365.

COSTS

Court costs apply by default in every case in which the defendant is convicted, regardless of sentence disposition. Only upon entry of a written order, supported by findings of fact and conclusions of law, determining that there is just cause may the court waive costs. G.S. 7A-304(a). Unpaid costs may, upon a determination of default, be responded to as provided in G.S. 15A-1364 and docketed as a civil judgment as provided in G.S. 15A-1365.

Restitution

The court must consider ordering restitution from a criminal defendant to a victim in every case. G.S. 15A-1340.34(a). The court shall order restitution to the victim of any offense covered under the Crime Victims' Rights Act (CVRA). G.S. 15A-1340.34(b).

See **APPENDIX E** Crimes Covered under the Crime Victims' Rights Act.

RESTITUTION MAY BE ORDERED FOR THE FOLLOWING:

- Bodily injury. G.S. 15A-1340.35(a)(1).
- Damage, loss, or injury to property. G.S. 15A-1340.35(a)(2).
- To a party that provided assistance to the victim. G.S. 15A-1340.37(b).

NOTES:

- *Proof of the restitution amount.* The restitution amount must be supported by evidence adduced at trial or at the sentencing hearing, or by stipulation. A prosecutor's statement or restitution worksheet, standing alone, is insufficient to support an award of restitution.
- *Ability to pay.* The court must consider the defendant's ability to pay restitution. The burden of demonstrating the defendant's inability to pay restitution is on the defendant. *State v. Tate*, 187 N.C. App. 593 (2007).
- *Active cases.* The court must consider recommending that restitution be paid out of any work-release earnings or as a condition of post-release supervision. G.S. 15A-1340.36(c).
- *Civil judgments.* In CVRA cases, restitution orders exceeding \$250 may be enforced as a civil judgment as provided in G.S. 15A-1340.38(b). If initially ordered as a condition of probation, the judgment may be executed upon the defendant's property only when probation is terminated or revoked and the judge has made a finding that a sum certain remains owed. G.S. 15A-1340.38(c). There is no clear authority to order restitution as a civil judgment in non-CVRA cases.

Sentencing Multiple Convictions

CONSOLIDATION

If a defendant is convicted of more than one offense at the same time, the court may consolidate the convictions and impose a single judgment with a sentence appropriate for the most serious offense. G.S. 15A-1340.15(b) (felonies); -1340.22(b) (misdemeanors).

DWI Two or more impaired driving charges may not be consolidated for judgment. Such sentences may, however, run concurrently. An impaired driving conviction sentenced under G.S. 20-179 may be consolidated with a charge carrying greater punishment.

ATTORNEY FEES

Attorney fees are ordered and docketed as provided in G.S. 7A-455, under rules adopted by the Office of Indigent Defense Services. An additional \$60 attorney appointment fee applies under G.S. 7A-455.1.

PROBATION SUPERVISION FEES

Supervised probationers pay a supervision fee of \$40 per month. The fee is waivable for good cause and upon motion of the probationer. G.S. 15A-1343(c1).

PROBATIONARY JAIL FEES

Probationers may, in the discretion of the court, be ordered to pay a \$40 fee for each day of jail confinement imposed as a condition of probation. This fee is not to be confused with the \$10 per day fee for *pretrial* confinement, which is a court cost and applicable by default unless waived for good cause. G.S. 7A-313.

ELECTRONIC HOUSE ARREST (EHA) FEE

Probationers sentenced to electronic house arrest (EHA) pay a one-time fee of \$90, plus an additional fee reflecting the actual daily cost (\$4.37 per day as of September 2014). This fee is waivable for good cause upon motion of the probationer. G.S. 15A-1343(c2).

COMMUNITY SERVICE FEE

Defendants ordered to complete community service pay a fee of \$250 per sentencing transaction. G.S. 143B-708.

RESTITUTION MAY NOT BE ORDERED FOR THE FOLLOWING:

- A victim's pain and suffering. *State v. Wilson*, 158 N.C. App. 235 (2003).
- As punitive damages. *State v. Burkhead*, 85 N.C. App. 535 (1987).
- Directly to an insurer. G.S. 15A-1340.37(d).

CONCURRENT SENTENCES

Unless otherwise specified by the judge, all sentences of imprisonment run concurrently with one another. G.S. 15A-1340.15(a); -1354(a).

CONSECUTIVE SENTENCES

Generally, the judge may order one sentence of imprisonment to run at the expiration of another sentence. Note the following:

- *Single sentence rule.* When felony sentences are run consecutively, the Division of Adult Correction (DAC) treats them as a single sentence. The aggregate minimum sentence is the sum of all of the individual minimum sentences. The aggregate maximum sentence is the sum of all the individual maximum sentences, less 12 months for each of the second and subsequent Class B1–E felonies, less 60 months for each second or subsequent Class B1–E reportable sex crime, and less 9 months for each second and subsequent Class F–I felony. The defendant will serve a single term of supervised release upon his or her release from prison, the length of which is dictated by the longest post-release supervision term to which the defendant is subject. G.S. 15A-1354(b).
- *Mandatory consecutive sentences.* Some laws require a sentence to run consecutively to any other sentence being served by the defendant: habitual felon (G.S. 14-7.6); violent habitual felon (G.S. 14-7.12); armed habitual felon (G.S. 14-7.41); habitual breaking and entering (G.S. 14-7.31); habitual impaired driving (G.S. 20-138.5(b)); drug trafficking (G.S. 90-95(h)). These laws allow for concurrent or consolidated sentences for convictions sentenced at the same time. *State v. Bozeman*, 115 N.C. App. 658 (1994).
- *Limit on consecutive sentences for misdemeanors.* The cumulative term of imprisonment of consecutive misdemeanor sentences may not exceed twice the maximum sentence authorized for the class and prior conviction level of the most serious offense. If all convictions are for Class 3 misdemeanors, consecutive sentences shall not be imposed. G.S. 15A-1340.22(a).

PROBATIONARY SENTENCES

Suspended sentences may (consistent with the limitations described above) be set to run concurrently with or consecutively to one another in the event of revocation. Probation periods themselves, however, must run concurrently with one another. G.S. 15A-1346(a). The court may order a probation period to run consecutively to an Active sentence—an arrangement sometimes referred to as a contingent sentence. G.S. 15A-1346(b).

Jail Credit

A defendant must receive credit for the total amount of time he or she has spent in any State or local correctional, mental, or other institution as a result of the charge that culminated in the sentence, including credit for all time spent in custody pending trial, trial de novo, appeal, retrial, or pending parole, probation, or post-release supervision revocation hearing. G.S. 15-196.1. The presiding judge must determine jail credit. G.S. 15-196.4.

COUNT FOR CREDIT:

- Pretrial confinement and time spent in confinement awaiting a probation violation hearing. G.S. 15-196.1.
- The active portion of a split sentence. *State v. Farris*, 336 N.C. 552 (1994).
- Time spent at DART Cherry as a condition of probation. *State v. Lutz*, 177 N.C. App. 140 (2006).
- Presentence commitment for study. *State v. Powell*, 11 N.C. App. 194 (1971).
- Hospitalization to determine competency to stand trial. *State v. Lewis*, 18 N.C. App. 681 (1973).
- Time spent in confinement in another state awaiting extradition when the defendant was held in the other state solely based on North Carolina charges. *Childers v. Laws*, 558 F. Supp. 1284 (W.D.N.C. 1983).
- Time spent imprisoned for contempt under G.S. 15A-1344(e1). *State v. Belcher*, 173 N.C. App. 620 (2005).
- Time imprisoned as confinement in response to violation (CRV). G.S. 15A-1344(d2).
- **DWI** Time spent as an inpatient at a state-operated or state-licensed treatment facility for the treatment of alcoholism or substance abuse, provided such treatment occurred after the commission of the offense for which the defendant is being sentenced. G.S. 20-179(k1).

DO NOT COUNT FOR CREDIT:

- Time credited on the term of a previously imposed sentence to which a defendant is subject. G.S. 15-196.1.
- Time spent under electronic house arrest. *State v. Jarman*, 140 N.C. App. 198 (2000).
- Time spent at a privately run residential treatment program. *State v. Stephenson*, 213 N.C. App. 621 (2011).
- **DWI** The first 24 hours spent in jail pending trial. G.S. 20-179(p).

NOTES:

- *Multiple charges.* When a defendant is detained on multiple charges and has shared jail credit applicable to all of them, the following rules apply. If the convictions are sentenced to run *concurrently*, each sentence is credited by as much of the time as was spent in custody on each charge. If the convictions are sentenced to run *consecutively*, shared credit is applied against only one sentence. G.S. 15-196.2.
- *Special probation.* When imposing special probation (a split sentence), the judge has discretion to order credit for any pretrial confinement to either the active portion of the split sentence or to the suspended sentence of imprisonment. G.S. 15A-1351(a).
- **DWI** *Jail credit.* If a defendant sentenced under G.S. 20-179 is ordered to serve 48 hours or more or has 48 hours or more remaining on a term of imprisonment, he or she must be required to serve 48 continuous hours of imprisonment to be given credit. Credit for jail time may only be awarded hour for hour for time actually served. G.S. 20-179(s).

Sentence Reduction Credits

A defendant serving an active term of imprisonment may reduce his or her maximum sentence by working or participating in educational programming in prison. By Division of Adult Correction (DAC) regulation, *earned time* credit is awarded at 3, 6, or 9 days per month, depending on the nature of the work or program. In no case may the defendant's sentence be reduced below the minimum term of imprisonment. A misdemeanor may reduce his or her sentence by up to 4 days per month through earned time and credit for work or educational programming. G.S. 15A-1340.20(d); 162-60. A term of special probation (a split sentence) may not be reduced by any sentence reduction credit. G.S. 148-13(f).

DWI By DAC regulation, DWI inmates are awarded good time at the rate of one day deducted from their prison or jail term for each day they spend in custody without a conviction through the Disciplinary Process of a violation of inmate conduct rules—which generally results in an inmate's sentence being cut in half. A defendant sentenced under G.S. 20-179 is eligible for good time credit regardless of the place of confinement. Good time may not be used to reduce an inmate's sentence below the mandatory minimum period of imprisonment for his or her level of DWI. G.S. 20-179(r). The prison system does not award good time to Aggravated Level One DWI sentences.

DWI Parole

Defendants sentenced to a term of imprisonment for a conviction sentenced under G.S. 20-179—other than defendants sentenced at Aggravated Level One—are eligible for parole. G.S. 15A-1371.

If the sentence includes a minimum term of imprisonment, the person is eligible for release on parole upon completion of the minimum term or one-fifth the maximum term, whichever is less, subject to the limitations below. If no minimum sentence is imposed for a prisoner serving an active term of imprisonment for a conviction of impaired driving, the person is eligible for release on parole at any time, subject to the limitations below. Good time credit reduces the term that must expire before a defendant becomes eligible for release on parole. Because good time credit is awarded day for day, the time that must expire before a defendant is parole-eligible effectively is halved. G.S. 15A-1355(c). Limitations on DWI parole:

- A defendant may not be released on parole until he or she has served the mandatory minimum term of imprisonment. G.S. 20-179(p).
- To be released on parole, a defendant must have obtained a substance abuse assessment and have completed any recommended treatment or training program or must be paroled into a residential treatment program. G.S. 20-179(p).

In addition to the rules above, a defendant serving a sentence of imprisonment of not less than 30 days nor as great as 18 months under G.S. 20-179 may be released on parole after serving one-third of the maximum sentence as provided in G.S. 15A-1371(g).

DNA Sample

The court must, under G.S. 15A-266.4, order the defendant to provide a DNA sample as a condition of the sentence for defendants convicted of:

- Any felony.
- Assault on a handicapped person (G.S. 14-32.1).
- Stalking (G.S. 14-277.3A).
- Cyberstalking (G.S. 14-196.3).
- Any offense requiring registration as a sex offender (G.S. 14-208.6).

See **APPENDIX F** Crimes Requiring Sex Offender Registration.

Deferrals

DEFERRED PROSECUTION

Prosecution may be deferred for a person charged with a misdemeanor or a Class H or Class I felony, and the defendant may be placed on probation as provided in G.S. 15A-1341(a). The maximum probation period for a deferred prosecution is 2 years. G.S. 15A-1342(a). A district attorney may also have local deferral procedures.

PRAYER FOR JUDGMENT CONTINUED (PJC)

A prayer for judgement continued (PJC) is permissible for any defendant who is found guilty or pleads guilty, except for:

- Impaired driving. *State v. Greene*, 297 N.C. 305 (1979).
- Solicitation of prostitution. G.S. 14-205.1.
- Speeding in excess of 25 m.p.h. over the posted limit. G.S. 20-141(p).
- Passing a stopped school bus. G.S. 20-217(e).

For Class B1–E felonies committed on or after December 1, 2012, the permissible length of a PJC is limited by G.S. 15A-1331.2.

A PJC is converted into a judgment when it includes conditions that amount to punishment. Conditions not amounting to punishment include payment of costs (G.S. 15A-101(4a)) and a requirement to obey the law. *State v. Brown*, 110 N.C. App. 658 (1993).

CONDITIONAL DISCHARGE UNDER G.S. 15A-1341(a4)

When a defendant pleads guilty to or is found guilty of any Class H or I felony or a misdemeanor, the court may, on joint motion of the defendant and prosecutor, place the defendant on probation without entering a judgment of guilt, as provided in G.S. 15A-1341(a4). The maximum period of probation for this conditional discharge is 2 years. G.S. 15A-1342(a).

CONDITIONAL DISCHARGE UNDER G.S. 90-96

Certain defendants who plead guilty to or are found guilty of the following drug offenses are eligible for a conditional discharge under G.S. 90-96(a):

- Misdemeanor possession of a controlled substance in Schedules I–VI.
- Felony possession of a controlled substance under G.S. 90-95(a)(3).
- Misdemeanor possession of drug paraphernalia under G.S. 90-113.22.

Eligible defendants are those who:

- Have no prior felony convictions of any type.
- Have no prior convictions under Article 5 of G.S. Chapter 90.
- Have never received a prior discharge and dismissal under G.S. 90-96 or 90-113.14.

G.S. 90-96(a) is mandatory for consenting defendants for offenses committed before December 1, 2013. For offenses committed on or after December 1, 2013, conditional discharge is not required if the court, with the agreement of the district attorney, makes a written finding that the defendant is inappropriate for a conditional discharge for factors related to the offense.

G.S. 90-96(a1) describes a discretionary conditional discharge with slightly broader eligibility than G.S. 90-96(a) and a seven-year look-back limitation on disqualifying prior convictions and conditional discharges.

Purposes of Sentencing

Under G.S. 15A-1340.12, the primary purposes of sentencing in North Carolina are to:

PUNISH the defendant, commensurate with the injury the offense has caused, taking into account factors that may diminish or increase the defendant's culpability.

PROTECT the public by restraining the defendant.

REHABILITATE the defendant.

RESTORE the defendant to the community as a lawful citizen.

DETER criminal behavior by others.

Obtaining Additional Information for Sentencing

PRESENTENCE INVESTIGATION

In any case, the court may order a probation officer to make a presentence investigation of the defendant. G.S. 15A-1332(b). To accommodate rotation, a judge who orders a presentence report may direct that the sentencing hearing in the case be held before him or her in another district during or after the session in which the defendant was convicted. G.S. 15A-1334(c).

DWI When a person has been convicted of an offense involving impaired driving, the court may, unless the person objects, request a presentence investigation to determine whether the person would benefit from treatment for habitual use of alcohol or drugs. G.S. 20-179.1.

PRESENTENCE COMMITMENT FOR STUDY

Defendants charged with or convicted of any felony or a Class A1 or Class 1 misdemeanor may, with the defendant's consent, be committed to prison for up to 90 days for diagnostic study. G.S. 15A-1332(c). Contact the Division of Adult Correction (DAC) Diagnostic Services Branch at 919-838-3729 to make arrangements.