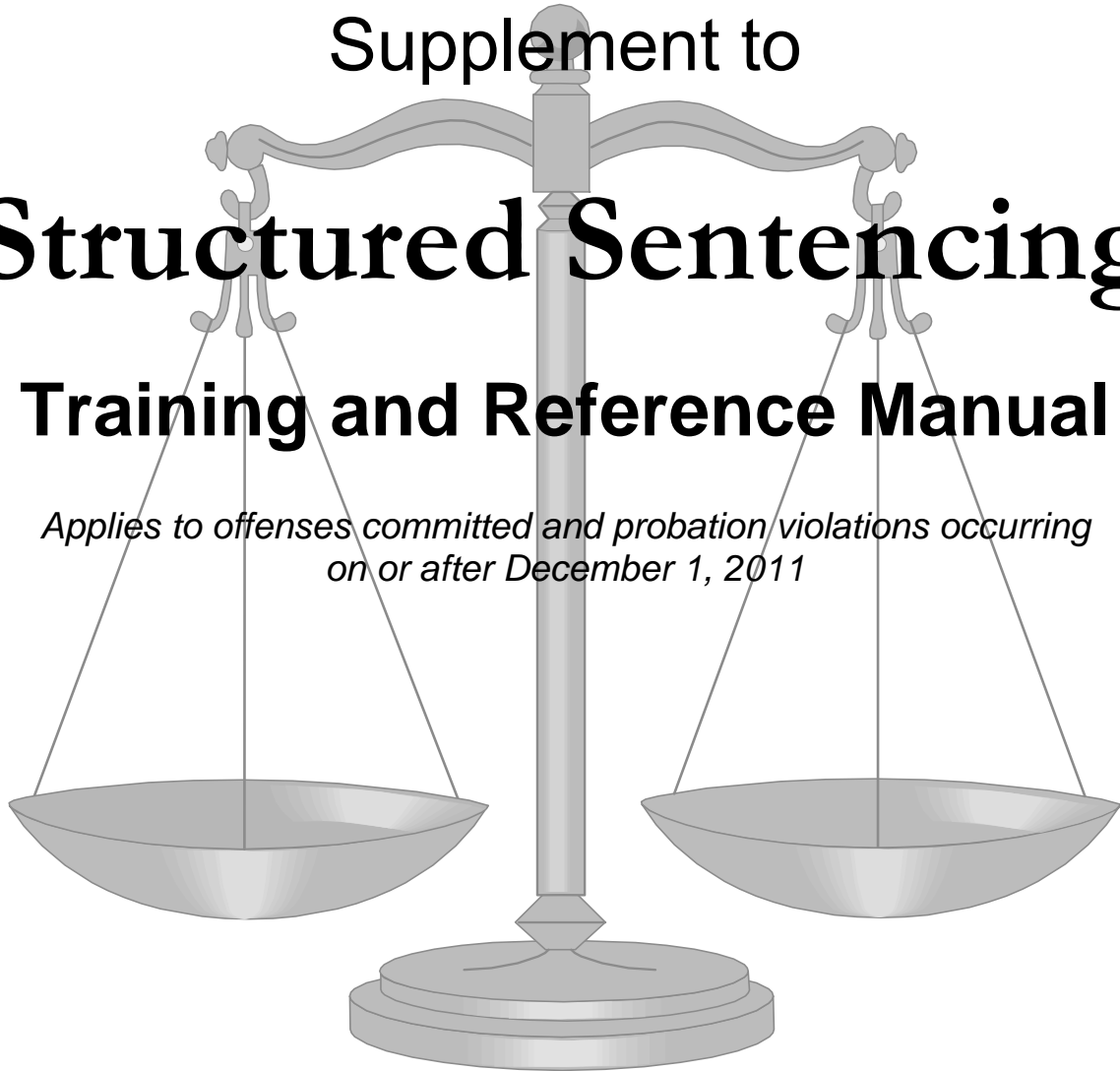


North Carolina
Sentencing and Policy Advisory Commission

Supplement to
Structured Sentencing
Training and Reference Manual

*Applies to offenses committed and probation violations occurring
on or after December 1, 2011*



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Supplement to Structured Sentencing Training and Reference Manual

The State's structured sentencing laws went into effect on October 1, 1994, and apply to all felony offenses and all misdemeanor offenses (except for "driving while impaired," "driving while impaired in a commercial vehicle," and "failure to comply with control conditions by persons with communicable diseases") committed on or after that date. This book supplements the training and reference manual that applies to offenses committed on or after December 1, 2009. It includes changes that are in effect on December 1, 2011, and apply to all felony and misdemeanor offenses committed and probation violations occurring on or after that date. Sections and page numbers used throughout this supplement refer to sections and pages in the training manual. The laws are codified in Chapters 14 and 15A of the North Carolina General Statutes.

Many of the changes are a result of the Justice Reinvestment Act, which the General Assembly enacted during the 2011 Session (Session Law 2011-192). The changes are explained on the following pages of this supplement:

- Redefine intermediate punishment – pages 9, 13, 23, 25.
- Redefine community punishment – page 10, 15, 24, 26.
- Reclassify status offense of habitual felon – page 16.
- Create status offense of habitual breaking and entering – page 16.
- Create Advanced Supervised Release – page 16.
- Expand post-release supervision – page 18.
- Change commitment locations for some misdemeanants – page 23.
- Change authority delegated to probation officer – page 28.
- Limit responses to probation violations – page 29.

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

Part I. Structured Sentencing for Felonies

(Page 3)

The State's structured sentencing laws went into effect on October 1, 1994, and apply to all felony offenses committed on or after that date. This supplement includes changes that are in effect on December 1, 2011, and apply to all felony offenses committed on or after that date. The laws are codified in Chapters 14 and 15A of the North Carolina General Statutes.

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

Figure A

***** Effective for Offenses Committed on or after 12/1/11 *****

**FELONY PUNISHMENT CHART
PRIOR RECORD LEVEL**

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

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

Revised: 08-11-11

Figure B
MINIMUM AND MAXIMUM SENTENCES

The corresponding maximum sentence for each minimum sentence is shown in the tables below. In each column, the number to the left of the dash represents the minimum sentence (in months) and the number to the right of the dash represents the corresponding maximum sentence (in months).

FOR OFFENSE CLASSES B1 THROUGH E

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

To calculate a maximum sentence when the minimum sentence is 340 months or more, multiply the minimum sentence by 1.20 (rounding to the next highest month) and add 12. *See* G.S. 15A-1340.17(e1).

Sex Offenses: To calculate a maximum sentence for a Class B1 through E felony that is subject to the registration requirements of G.S. Chapter 14, Article 27A, multiply the minimum sentence by 1.20 (rounding to the next highest month) and add 60. *See* G.S. 15A-1340.17(f).

FOR OFFENSE CLASSES F THROUGH I

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

Section I. Imposing Sentences for Felonies

(Page 6)

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

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

Step 1. Determine the Offense Class for Each Felony Conviction

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

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Felony Offense Class Enhancements

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

Injury to a Pregnant Woman *G.S. 14-18.2(b)*
(For offenses committed on or after December 1, 2011)

This section is repealed.

Table 1: Classification of a Sample of Felony Offenses
(Effective December 1, 2011)

CLASS A	
First-Degree Murder. (G.S. 14-17)	
CLASS B1	
First-Degree Rape. (G.S. 14-27.2)	First-Degree Sexual Offense. (G.S. 14-27.4)
CLASS B2	
Second-Degree Murder. (G.S. 14-17)	
CLASS C	
Second-Degree Rape. (G.S. 14-27.3)	First-Degree Kidnapping. (G.S. 14-39)
Second-Degree Sexual Offense. (G.S. 14-27.5)	Embezzlement (amount involved \$100,000 or more). (G.S. 14-90)
Assault W/D/W/I/K/I/S/I. (G.S. 14-32(a))	
CLASS D	
Voluntary Manslaughter. (G.S. 14-18)	Armed Robbery. (G.S. 14-87)
Malicious Use of Explosive or Incendiary. (G.S. 14-49(a))	Sell or Deliver a Controlled Substance to a Person Under 16 but more than 13 Years of Age. (G.S. 90-95(e)(5))
First-Degree Burglary. (G.S. 14-51)	
First-Degree Arson. (G.S. 14-58)	
CLASS E	
Intercourse and Sexual Offenses with Certain Victims (Substitute Parent/Custodian). (G.S. 14-27.7)	Second-Degree Kidnapping. (G.S. 14-39)
Assault W/D/W/I/S/I. (G.S. 14-32(b))	Child Abuse Inflicting Serious Physical Injury. (G.S. 14-318.4(a))
Assault W/D/W/I/K. (G.S. 14-32(c))	Death by Vehicle. (G.S. 20-141.4(a)(1))
Discharging Weapon Into Occupied Property. (G.S. 14-34.1(a))	Sell or Deliver a Controlled Substance Within 1,000 Feet of a School. (G.S. 90-95(e)(8))
Assault W/Firearm on Law Enforcement Officer. (G.S. 14-34.5)	
CLASS F	
Involuntary Manslaughter. (G.S. 14-18)	Burning of Certain Other Buildings. (G.S. 14-62)
Assault Inflicting Serious Bodily Injury. (G.S. 14-32.4)	Participating in Prostitution of a Minor. (G.S. 14-190.19)
Assault W/D/W on Governmental Officer or Employee. (G.S. 14-34.2)	Taking Indecent Liberties with Children. (G.S. 14-202.1)
Assault I/S/I on a Law Enforcement Officer. (G.S. 14-34.7)	Possess Weapon of Mass Destruction. (G.S. 14-288.8)
Felonious Restraint. (G.S. 14-43.3)	Habitual Impaired Driving. (G.S. 20-138.5)
CLASS G	
Second-Degree Burglary. (G.S. 14-51)	Identity Theft. (G.S. 14-113.20)
Second-Degree Arson. (G.S. 14-58)	Possession of Firearms, etc., by Felon. (G.S. 14-415.1)
Common Law Robbery. (G.S. 14-87.1)	Sale of a Schedule I or II Controlled Substance. (G.S. 90-95(a)(1))
CLASS H	
Assault by Strangulation. (G.S. 14-32.4(b))	Embezzlement (amount involved less than \$100,000). (G.S. 14-90)
Habitual Misdemeanor Assault. (G.S. 14-33.2)	Obtaining Property by False Pretenses (amount involved less than \$100,000). (G.S. 14-100)
Breaking or Entering Buildings (w/felonious intent). (G.S. 14-54(a))	Hit and Run (resulting in injury). (G.S. 20-166(a1))
Fraudulently Setting Fire to Dwelling Houses. (G.S. 14-65)	Sale of a Schedule III, IV, V, or VI Controlled Substance. (G.S. 90-95(a)(1))
Possessing Stolen Goods. (G.S. 14-71.1)	Possession W/I/M/S/D Cocaine. (G.S. 90-95(a)(1))
Larceny of Property (worth more than \$1,000). (G.S. 14-72)	Escaping from State Prison System (felon). (G.S. 148-45(b))
CLASS I	
Breaking or Entering Motor Vehicles. (G.S. 14-56)	Possess Cocaine. (G.S. 90-95(a)(3))
Financial Transaction Card Theft. (G.S. 14-113.9)	Maintaining Dwelling or Motor Vehicle for Keeping or Selling a Controlled Substance. (G.S. 90-108(a)(7), (b))
Forgery of Notes, Checks, Securities. (G.S. 14-119(a))	Obtain a Controlled Substance by Fraud. (G.S. 90-108(a)(10), (b))
Uttering Forged Paper or Instrument. (G.S. 14-120)	
Possession W/I/M/S/D Marijuana. (G.S. 90-95(a)(1))	

Step 5. Determine the Maximum Sentence

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

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Maximum Sentences for Class F through I Felonies *G.S. 15A-1340.17(d)* (For offenses committed on or after December 1, 2011)

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

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

6-17	11-23	16-29	21-35	26-41	31-47	36-53	41-59
7-18	12-24	17-30	22-36	27-42	32-48	37-54	

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Example: Assume an offender convicted of a Class F offense with a Prior Record Level of II receives a minimum of 17 months from the presumptive range. Since this is a Class F felony, the corresponding maximum sentence is automatically set at 30 months. The maximum sentence is equivalent to 120% of the minimum (rounded to the next highest month) plus an additional nine months for post-release supervision.

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Maximum Sentences for Class B1 through E Felonies *G.S. 15A-1340.17(e) and (e1)* (For offenses committed on or after December 1, 2011)

The maximum sentence corresponding with each minimum sentence in Class B1 through E is shown in the top portion of the table of maximum sentences (**Figure B**). For Class B1 through E, the maximum term is set at 120% of the minimum term rounded to the next highest month plus an additional 12 months for post-release supervision. (See **Part I, Section III. Provisions Relating to Post-Release Supervision**).

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

46-68	83-112	120-156	157-201	194-245	231-290	268-334	305-378
47-69	84-113	121-158	158-202	195-246	232-291	269-335	306-380

Examples: Assume an offender convicted of a Class D offense with a Prior Record Level of IV receives a minimum sentence of 120 months from the aggravated range. Since this is a Class D offense, the corresponding maximum sentence is automatically set at 156 months. The maximum sentence is equivalent to 120% of the minimum (rounded to the next highest month) plus an additional 12 months for post-release supervision.

Assume an offender convicted of a Class B1 offense with a Prior Record Level of V receives a minimum sentence of 420 months from the presumptive range. For minimum sentences of 340 months and longer, the formula specified in G.S. 15A-1340.17(e1) must be applied: the maximum sentence is equal to the sum of the minimum sentence, plus 20% of the minimum sentence rounded to the next highest month, plus 12 months for post-release supervision. If the minimum sentence is 420 months, the maximum sentence is 516 months.

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Maximum Sentences for Class B1 through E Felony Sex Offenses G.S. 15A-1340.17(f) (For offenses committed on or after December 1, 2011)

For Class B1 through E felony offenses which result in reportable convictions subject to the registration requirement of Article 27A of Chapter 14 of the General Statutes (Sex Offender and Public Protection Registration Programs), the formula for calculating the maximum sentence corresponding with the minimum sentence is shown in the middle portion of the table of maximum sentences (**Figure B**). For these offenses, the maximum term is set at 120% of the minimum term rounded to the next highest month plus an additional 60 months for post-release supervision. (See **Part I, Section III. Provisions Relating to Post-Release Supervision**).

Example: Assume an offender convicted of second degree rape, a Class C offense, with a Prior Record Level of III receives a minimum sentence of 96 months from the presumptive range. For sex offenses which require registration, the formula specified in G.S. 15A-1340.17(f) must be applied: the maximum sentence is equal to the sum of the minimum sentence, plus 20% of the minimum sentence rounded to the next highest month, plus sixty months for post-release supervision. If the minimum sentence is 96 months, the maximum sentence is 176 months.

Step 6. Select the Sentence Disposition

A sentence disposition must be imposed for each felony offense.

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Active Punishment G.S. 15A-1340.11(1) (For pleas entered or findings of guilt on or after January 1, 2012)

An active punishment requires that the offender be sentenced to the custody of the Division of Adult Correction of the Department of Public Safety to serve the minimum and up to the maximum sentence imposed by the court. If the court orders the Division of Adult Correction to admit the offender to the Advanced Supervised Release (ASR) program as part of an active

punishment, the offender may be released after serving the ASR term. (See **Part I, Section II. Additional Sentencing Provisions Relating to Felonies**).

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Intermediate Punishment *G.S. 15A-1340.11(6)*
(For offenses committed on or after December 1, 2011)

An intermediate punishment requires a sentence of supervised probation. The sentence may include one or more of the following conditions:

1. Special probation. Defined in G.S. 15A-1351(a), special probation includes a period of active confinement followed by a period of probation. (This is sometimes referred to as a split sentence.)
2. Drug Treatment Court Program. Assignment that requires the offender to comply with the rules adopted for the program pursuant to Article 62 of Chapter 7A of the General Statutes and to report on a regular basis for a specified time to participate in court supervision, drug screening or testing, and drug or alcohol treatment programs.
3. House arrest with electronic monitoring. Assignment that requires the offender to remain at his or her residence unless the court or probation officer authorizes the offender to leave, and in which the offender shall wear a device which permits the supervising agency to monitor the offender's compliance with the condition.
4. Community service. Assignment that requires the offender to perform service to the local community in an effort to promote the offender's rehabilitation and to provide services that help restore or improve the community.
5. Period or periods of confinement in a local confinement facility. Submission to a period or periods of confinement in a local confinement facility for a total of no more than six days per month during any three separate months during the period of probation. The six days per month confinement may only be imposed as two-day or three-day consecutive periods.
6. Substance abuse assessment, monitoring, or treatment. (*This condition is not defined in statute.*)
7. Educational or vocational skills development program. (*This condition is not defined in statute.*)
8. Satellite-based monitoring. Submission to satellite-based monitoring, pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes (Sex Offender Monitoring), if the defendant is described by G.S. 14-208.40(a)(2).

An intermediate punishment may also include a fine, restitution, or any other conditions of probation.

Example: If the authorized disposition includes an "I," the court must place the offender on supervised probation for a specific term. It could also require the offender to submit to house

arrest with electronic monitoring. In addition, the offender could be required to pay a fine, pay restitution, receive outpatient drug treatment, and perform community service.

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Community Punishment *G.S. 15A-1340.11(2)*
(For offenses committed on or after December 1, 2011)

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

1. House arrest with electronic monitoring. Assignment that requires the offender to remain at his or her residence unless the court or probation officer authorizes the offender to leave, and in which the offender shall wear a device which permits the supervising agency to monitor the offender's compliance with the condition.
2. Community service. Assignment that requires the offender to perform service to the local community in an effort to promote the offender's rehabilitation and to provide services that help restore or improve the community.
3. Period or periods of confinement in a local confinement facility. Submission to a period or periods of confinement in a local confinement facility for a total of no more than six days per month during any three separate months during the period of probation. The six days per month confinement may only be imposed as two-day or three-day consecutive periods.
4. Substance abuse assessment, monitoring, or treatment. *(This condition is not defined in statute.)*
5. Educational or vocational skills development program. *(This condition is not defined in statute.)*
6. Satellite-based monitoring. Submission to satellite-based monitoring, pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes (Sex Offender Monitoring), if the defendant is described by G.S. 14-208.40(a)(2).

A community punishment may also include a fine, restitution, or any other condition of probation.

Example: If the authorized disposition includes a "C," the court may place an offender on supervised or unsupervised probation for a specific term. In addition, the court may require the offender to pay a fine, pay restitution, receive outpatient drug treatment and perform community service. The court could not, however, assign the offender to drug treatment court.

Step 6a. Impose an Active Punishment

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

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

(For pleas entered or findings of guilt on or after January 1, 2012)

An offender sentenced to an active punishment must serve the entire minimum sentence imposed. The maximum sentence may be reduced to, but not below, the minimum term by earned time credits awarded to an offender by the Division of Adult Correction of the Department of Public Safety or the custodian of a local confinement facility. Parole is eliminated. If the court orders the Division of Adult Correction to admit the offender to the Advanced Supervised Release (ASR) program, the offender may be released on the court-ordered ASR date. (See **Part I, Section II. Additional Sentencing Provisions Relating to Felonies**).

Example: An offender with a Prior Record Level of III is convicted of a Class F offense and is given a minimum of 20 months and a maximum of 33 months and is not ordered to the Advanced Supervised Release program. The offender must serve at least 20 months and could serve up to 24 months if no earned time credits are awarded. Since this is a Class F offense, the offender will be released onto post-release supervision when he is within nine months of completing his maximum sentence less earned time credits.

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

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

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Concurrent Sentences

(For offenses committed on or after December 1, 2011)

Example: An offender, with a Prior Record Level of II, is convicted of a Class D felony and a Class E felony. If the court elects to run the sentences concurrently, the court must impose a separate judgment for each offense. For example, the longest possible sentence the court could impose from the presumptive range for the Class D felony would be a minimum of 73 months and a maximum of 100 months. The longest possible sentence the court could impose from the presumptive range for the Class E felony would be a minimum of 29 months and a maximum of 47 months. The offender would serve a minimum of 73 months and a maximum of 100 months.

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Consecutive Sentences

(For offenses committed on or after December 1, 2011)

If an offender is convicted of more than one offense, the court may impose sentences for each of the offenses and run the sentences consecutively. The minimum sentence length imposed for consecutive sentences is the sum of all active minimum terms imposed in the court's judgment. The offender cannot serve less than the sum of all the active minimum sentences imposed consecutively. The maximum term of imprisonment for sentences run consecutively is the sum of all active maximum terms imposed by the court, less nine months for each second and subsequent sentence imposed for a Class F through I felony, less 12 months for each second and subsequent sentence imposed for a Class B1 through E felony, and less 60 months for each second and subsequent sentence imposed for a Class B1 through E felony that is subject to the registration requirements of Article 27A of Chapter 14 of the General Statutes (Sex Offender and Public Protection Registration Programs)¹.

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Example: An offender, with a Prior Record Level of II, is convicted of a Class D offense and a Class E offense. If the court elects to impose consecutive sentences, the court must impose a separate judgment for each offense. For example, if the court sentences from the presumptive range, the court could impose a minimum of 73 months (and a maximum of 100 months) for the Class D offense and impose a minimum of 29 months (and a maximum of 47 months) for the Class E offense. If these sentences were run consecutively, the total minimum sentence which must be served would be 102 months (the sum of the two minimum sentences) and the maximum would be 135 months (the sum of the two maximum sentences less 12 months).

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Consolidated Offenses

(For offenses committed on or after December 1, 2011)

Example: An offender, with a Prior Record Level of II, is convicted of a Class D felony and a Class E felony. If the court elects to consolidate the offenses for judgment, the sentence imposed must conform to the sentence disposition and the sentence ranges prescribed for the most serious offense (the Class D felony). For example, if the court sentences from the presumptive range, the longest possible sentence the court could impose would be a minimum of 73 months and a maximum of 100 months.

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

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

(For offenses committed on or after December 1, 2011)

Offenders convicted of Class F through I felonies will be released from prison nine months before the expiration of their maximum sentence, less earned time credits, and will be placed on post-release supervision. Offenders convicted of Class B1 through E felonies will be released from prison 12 months before the expiration of their maximum sentence, less earned time credits, and will be placed on post-release supervision. Offenders convicted of Class B1 through E felonies that are subject to the registration requirements of Article 27A of Chapter 14 of the General Statutes (Sex Offender and Public Protection Registration Programs) will be released from prison 60 months before the expiration of their maximum sentence, less earned time credits, and will be placed on post-release supervision. Offenders convicted of Class D through H felonies who are ordered to and complete the Advanced Supervised Release (ASR) program will be released from prison on their ASR date and will be placed on post-release supervision. (See **Part I, Section II**. Additional Sentencing Provisions Relating to Felonies). An offender violating the conditions of post-release supervision can be returned to prison for up to the maximum sentence. A further explanation of post-release supervision is provided in **Part I, Section III**.

Example: An offender with a Prior Record Level of I is convicted of a Class E offense and is given a minimum of 20 months and a maximum of 36 months. Since this is a Class E offense, the offender will be released when he is within 12 months of completing his maximum sentence less earned time credits. If the offender is awarded all possible earned time credits (four months or 20% of the minimum sentence) the earliest the offender can be released is after serving 20 months. If the offender is awarded no earned time credits, the latest the offender can be released is after serving 24 months.

Step 6b. Impose an Intermediate Punishment

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

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

(For offenses committed on or after December 1, 2011)

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

1. Special probation. The active portion of special probation cannot exceed one-fourth the maximum sentence imposed for the offense. Following release from the active portion of the sentence, the offender must serve the remaining period of probation. (This is sometimes referred to as a split sentence.)

2. Drug Treatment Court Program. The length of assignment to a drug treatment court program is approximately one year. To graduate, the offender must successfully complete all phases of clinical treatment, receive clean drug screens during the prior 4 to 6 months, be employed, be paying regularly towards his/her legal obligations, and be nominated for graduation by the drug treatment court team. Following completion of the assignment to the drug treatment court program, the offender must continue to serve any remaining period of probation.
3. House arrest with electronic monitoring. The length of assignment to house arrest with electronic monitoring is in the discretion of the court. The length can be less than, but not greater than, the total term of probation imposed. The current average length of house arrest with electronic monitoring is 3.4 months. Following completion of house arrest with electronic monitoring, the offender must continue to serve any remaining period of probation.
4. Community service. The number of hours of community service assigned is in the discretion of the court. The length of time allowed to complete the hours can be less than, but not greater than, the total term of probation imposed. Following completion of the community service hours, the offender must continue to serve any remaining period of probation.
5. Period or periods of confinement in a local confinement facility. The length of a period of confinement can be either two or three consecutive days, in the discretion of the court. The court may impose no more than six days total per month for three separate months during the period of probation. Following completion of a period of confinement, the offender must continue to serve any remaining period of probation.
6. Substance abuse assessment, monitoring, or treatment. (*This condition is not defined in statute.*)
7. Educational or vocational skills development program. (*This condition is not defined in statute.*)
8. Satellite-based monitoring. Submission to satellite-based monitoring, pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes (Sex Offender Monitoring), if the defendant is described by G.S. 14-208.40(a)(2).

An intermediate punishment may also include a fine, restitution, or any other conditions of probation.

Step 6c. Impose a Community Punishment

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

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Selecting Community Punishments/Setting Lengths *G.S. 15A-1340.11(2)* (For offenses committed on or after December 1, 2011)

For a community punishment, a term of supervised probation or unsupervised probation may be imposed at the discretion of the court and consistent with statute. The court may also impose a fine only. If the court imposes probation, one or more of the following conditions of probation may be imposed:

1. House arrest with electronic monitoring. The length of assignment to house arrest with electronic monitoring is in the discretion of the court. The length can be less than, but not greater than, the total term of probation imposed. The current average length of house arrest with electronic monitoring is 3.4 months. Following completion of house arrest with electronic monitoring, the offender must continue to serve any remaining period of probation.
2. Community service. The number of hours of community service assigned is in the discretion of the court. The length of time allowed to complete the hours can be less than, but not greater than, the total term of probation imposed. Following completion of the community service hours, the offender must continue to serve any remaining period of probation.
3. Period or periods of confinement in a local confinement facility. The length of a period of confinement can be either two or three consecutive days. The court may impose no more than six days total per month for three separate months during the period of probation. Following completion of a period of confinement, the offender must continue to serve any remaining period of probation.
4. Substance abuse assessment, monitoring, or treatment. *(This condition is not defined in statute.)*
5. Educational or vocational skills development program. *(This condition is not defined in statute.)*
6. Satellite-based monitoring. Submission to satellite-based monitoring, pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes (Sex Offender Monitoring), if the defendant is described by G.S. 14-208.40(a)(2).

A community punishment may also include a fine, restitution, or any other conditions of probation. A community punishment may not include assignment to a drug treatment court or special probation.

Section II. Additional Sentencing Provisions Relating to Felonies

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Habitual Felons

(For principal felony offenses committed on or after December 1, 2011)

An offender convicted as an habitual felon (fourth conviction for a felony) is sentenced at a felony class that is four classes higher than the principal felony for which the person was convicted, but under no circumstances higher than Class C. Prior felony convictions used to establish habitual felon status cannot also be used in the calculation of the prior record level. See *G.S. 14-7.1 to 14-7.6*.

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Habitual Breaking and Entering Status Offense

(For principal felony offenses committed on or after December 1, 2011)

An offender convicted of a second or subsequent felony breaking and entering offense may be charged with the status offense of habitual breaking and entering. For purposes of this offense, the term “breaking and entering” refers to the following offenses: first degree burglary, second degree burglary, breaking out of dwelling house burglary, breaking or entering buildings generally, and breaking or entering a building that is a place of religious worship. An offender convicted of the status offense of habitual breaking and entering is sentenced as a Class E felon. Prior felony convictions used to establish habitual breaking and entering status cannot also be used in the calculation of the prior record level. A conviction as a status offender does not constitute commission of a felony for purposes of the habitual felon or violent habitual felon statutes. See *G.S. 14-7.25 to 14-7.31*.

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Advanced Supervised Release

(For pleas entered or findings of guilt on or after January 1, 2012)

An offender who is sentenced from any of the following offense classes and prior record levels is eligible to be considered for Advanced Supervised Release (ASR):

- Class D, Prior Record Level I through III
- Class E, Prior Record Level I through IV
- Class F, Prior Record Level I through V
- Class G or H, Prior Record Level I through VI

When imposing an active punishment on an eligible offender, the court may, in its discretion and without objection from the prosecutor, order the Division of Adult Correction of the Department of Public Safety to admit the offender to the ASR program. The offender will be notified at sentencing that if the offender completes the risk reduction incentives identified by the Division

of Adult Correction pursuant to the ASR program, the offender will be released on the ASR date. If the court imposes a sentence from the presumptive or aggravated minimum sentence range, the ASR date is the shortest mitigated sentence for the offense at the offender's prior record level. If the court imposes a sentence from the mitigated minimum sentence range, the ASR date is eighty percent (80%) of the minimum sentence imposed. If the offender completes the risk reduction incentives identified by the Division of Adult Correction as part of the ASR program, or is unable to complete the incentives by the ASR date through no fault of the offender, then the offender will be released at the ASR date and placed on post-release supervision. (See **Part I, Section III. Provisions Relating to Post-Release Supervision.**) See *G.S. 15A-1340.18*.

Section III. Provisions Relating to Post-Release Supervision

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Eligibility and Procedures *G.S. 15A-1368.2 and 15A-1340.18*

(For offenses committed on or after December 1, 2011)

All felony offenders who receive an active sentence or whose probation is revoked are subject to a mandatory period of post-release supervision. An offender may not refuse post-release supervision.

An offender imprisoned for a Class F through I felony shall be released and placed on post-release supervision on the date equivalent to the maximum prison sentence, less nine months, less any earned time awarded by the Division of Adult Correction of the Department of Public Safety or the custodian of a local confinement facility.

An offender imprisoned for a Class B1 through E felony shall be released onto post-release supervision 12 months prior to the expiration of the maximum sentence, less any earned time awarded by the Division of Adult Correction or the custodian of a local confinement facility.

An offender imprisoned for a Class B1 through E felony that is subject to the registration requirement of Article 27A of Chapter 14 of the General Statutes (Sex Offender and Public Protection Registration Programs) shall be released onto post-release supervision on the date that is equal to 60 months prior to the expiration of the offender's maximum sentence, less any earned time awarded by the Division of Adult Correction or the custodian of a local confinement facility.

An exception exists for offenders who are ordered by the sentencing court into the Advanced Supervised Release (ASR) program. If an offender admitted to the ASR program successfully completes the risk reduction incentive(s) identified by the Division of Adult Correction, the offender shall be released onto post-release supervision on the court-ordered ASR date. An offender shall also be released onto post-release supervision on the ASR date if unable to complete the Division's risk reduction incentive(s) through no fault of the offender. (See **Part I, Section II**. Additional Sentencing Provisions Relating to Felonies).

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

(For offenses committed on or after December 1, 2011)

The period of post-release supervision is nine months for a Class F through I felony, 12 months for a Class B1 through E felony, and five years for an offense for which registration is required pursuant to Article 27A of Chapter 14 of the General Statutes (Sex Offender and Public Protection Registration Programs). The period may be reduced while the offender is under supervision by earned time awarded by the Division of Adult Correction. An offender is eligible to receive earned credits toward the period of supervision for compliance with reintegrative conditions of supervision. When the offender completes the period of post-release supervision, the sentence(s) for which the offender was placed on post-release supervision is (are) terminated.

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

(For offenses committed on or after December 1, 2011)

The conditions of post-release supervision may be reintegrative or designed to control the offender's behavior and to enforce compliance with law or judicial order. All offenders are subject to the controlling condition not to commit a new crime during the period of supervision. Additional conditions are required for offenders who were convicted of a reportable sex offense or an offense involving the physical, mental or sexual abuse of a minor.

The Post-Release Supervision and Parole Commission, in consultation with the Section of Community Corrections of the Division of Adult Correction, may impose additional controlling and reintegrative conditions as it believes necessary to ensure that the offender lives a law-abiding life. Among the controlling conditions which may be imposed by the Commission is the requirement that the offender not abscond, by willfully avoiding supervision or willfully making the offender's whereabouts unknown to the supervising probation officer.

The Post-Release Supervision and Parole Commission may revoke the supervision period for any violation of a controlling condition or for repeated violation of a reintegrative condition. An offender may be entitled to earned time credits against the supervision period for complying with reintegrative conditions.

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

(For offenses committed on or after December 1, 2011)

Post-release supervision is conditional and subject to revocation. The Post-Release Supervision and Parole Commission may for good cause shown modify the conditions of post-release supervision at any time before the termination of the supervision period. If the offender violates a condition, the Commission may continue the existing supervision, modify the conditions of supervision, or revoke post-release supervision.

If an offender violates the conditions of post-release supervision by committing a new crime or by absconding supervision, or if the offender is on post-release supervision for an offense that requires registration pursuant to Article 27A of Chapter 14 of the General Statutes (Sex Offender and Public Protection Registration Programs), revocation will result in the offender's reimprisonment for up to the time remaining on the maximum sentence. For all other revocations, the offender will be returned to prison for three months. An offender who is reimprisoned prior to completing post-release supervision may again be released on post-release supervision subject to the provisions that governed the initial release. The offender may be returned to prison for three months on each of two subsequent revocations, after which an offender sentenced for a Class B1 through E felony may be reimprisoned for up to the remainder of the maximum sentence. Offenders shall receive no credit against the maximum sentence for time spent on post-release supervision. However, they will be eligible to receive earned time credit against the maximum prison term for time served in prison following revocation, and will be awarded credit against any period of imprisonment while in custody as a result of revocation proceedings.

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Willful Refusal or Delay of Post-Release Supervision *G.S. 15A-1368.2(b)*

(For offenses committed on or after December 1, 2011)

An offender who is subject to a period of post-release supervision for a reportable conviction under Article 27A of Chapter 14 of the General Statutes (Sex Offender and Public Protection Registration Programs) and who willfully refuses to accept post-release supervision or comply with the terms thereof may be found in criminal contempt of court under G.S. 5A-11, which may result in imprisonment under G.S. 5A-12. No credit against the offender's maximum sentence will be awarded for a period of imprisonment imposed for contempt under this provision.

If an offender is subject to post-release supervision for a reportable conviction under Article 27A of Chapter 14 of the General Statutes (Sex Offender and Public Protection Registration Programs), any delay in the offender's release from prison onto post-release supervision which is caused by the offender's resistance to the release shall toll the running of the supervision period.

Part II. Structured Sentencing for Misdemeanors

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The State's structured sentencing laws went into effect on October 1, 1994, and apply to all misdemeanor offenses committed on or after that date (except for "driving while impaired," "driving while impaired in a commercial vehicle," and "failure to comply with control conditions by persons with communicable diseases"). This supplement includes changes that are in effect on December 1, 2011, and apply to all misdemeanor offenses committed on or after that date. The laws are codified in Chapters 14 and 15A of the North Carolina General Statutes.

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

Imposing Sentences for Misdemeanors

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

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

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

Step 1. Determine the Misdemeanor Class

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

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Misdemeanor Offense Class Enhancements

Injury to a Pregnant Woman G.S. 14-18.2(c)
(For offenses committed on or after December 1, 2011)

This subsection is repealed.

Step 4. Select the Sentence Disposition

A sentence disposition must be imposed for each misdemeanor offense.

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Active Punishment G.S. 15A-1340.11(1)
(For sentences imposed on or after January 1, 2012)

An active punishment requires the offender to serve the specified term of imprisonment in a local confinement facility (jail) or in a state prison. A misdemeanant who receives an active punishment of 90 days or less serves the sentence in the local confinement facility. A misdemeanant who receives an active punishment of more than 90 days and up to 180 days is committed to the Statewide Misdemeanant Confinement Program and serves the sentence in a local confinement facility designated by the program.¹

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Intermediate Punishment G.S. 15A-1340.11(6)
(For offenses committed on or after December 1, 2011)

An intermediate punishment requires a sentence of supervised probation. The sentence may include one or more of the following conditions:

1. Special probation. Defined in G.S. 15A-1351(a), special probation includes a period of active confinement followed by a period of probation. (This is sometimes referred to as a split sentence.)
2. Drug Treatment Court Program. Assignment that requires the offender to comply with the rules adopted for the program pursuant to Article 62 or Chapter 7A of the General Statutes and to report on a regular basis for a specified time to participate in court supervision, drug screening or testing, and drug or alcohol treatment programs.

¹ G.S. 15A-1352 and 148-32.1.

3. House arrest with electronic monitoring. Assignment that requires the offender to remain at his or her residence unless the court or probation officer authorizes the offender to leave, and in which the offender shall wear a device which permits the supervising agency to monitor the offender's compliance with the condition.
4. Community service. Assignment that requires the offender to perform service to the local community in an effort to promote the offender's rehabilitation and to provide services that help restore or improve the community.
5. Period or periods of confinement in a local confinement facility. Submission to a period or periods of confinement in a local confinement facility for a total of no more than six days per month during any three separate months during the period of probation. The six days per month confinement may only be imposed as two-day or three-day consecutive periods.
6. Substance abuse assessment, monitoring, or treatment. *(This condition is not defined in statute.)*
7. Educational or vocational skills development program. *(This condition is not defined in statute.)*
8. Satellite-based monitoring. Submission to satellite-based monitoring, pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes (Sex Offender Monitoring), if the defendant is described by G.S. 14-208.40(a)(2).

An intermediate punishment may also include a fine, restitution, or any other conditions of probation.

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Community Punishment *G.S. 15A-1340.11(2)* **(For offenses committed on or after December 1, 2011)**

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

1. House arrest with electronic monitoring. Assignment that requires the offender to remain at his or her residence unless the court or probation officer authorizes the offender to leave, and in which the offender shall wear a device which permits the supervising agency to monitor the offender's compliance with the condition.
2. Community service. Assignment that requires the offender to perform service to the local community in an effort to promote the offender's rehabilitation and to provide services that help restore or improve the community.
3. Period or periods of confinement in a local confinement facility. Submission to a period or periods of confinement in a local confinement facility for a total of no more than six

days per month during any three separate months during the period of probation. The six days per month confinement may only be imposed as two-day or three-day consecutive periods.

4. Substance abuse assessment, monitoring, or treatment. *(This condition is not defined in statute.)*
5. Educational or vocational skills development program. *(This condition is not defined in statute.)*
6. Satellite-based monitoring. Submission to satellite-based monitoring, pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes (Sex Offender Monitoring), if the defendant is described by G.S. 14-208.40(a)(2).

Step 4b. Imposing an Intermediate Punishment

If the court imposes an intermediate punishment, the term of imprisonment must be suspended and the court must impose a period of supervised probation.

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Selecting Intermediate Punishments/Setting Lengths *G.S. 15A-1340.11(6)* (For offenses committed on or after December 1, 2011)

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

1. Special probation. The active portion of special probation cannot exceed one-fourth of the term of imprisonment imposed for the misdemeanor offense. Following release from the active portion of the sentence, the offender must serve the remaining period of probation. (This is sometimes referred to as a split sentence.)
2. Drug Treatment Court Program. The length of assignment to a drug treatment court program is approximately one year. To graduate, the offender must successfully complete all phases of clinical treatment, receive clean drug screens during the prior 4 to 6 months, be employed, be paying regularly towards his/her legal obligations, and be nominated for graduation by the drug treatment court team. Following completion of the assignment to the drug treatment court program, the offender must continue to serve any remaining period of probation.
3. House arrest with electronic monitoring. The length of assignment to house arrest with electronic monitoring is in the discretion of the court. The length can be less than, but not greater than, the total term of probation imposed. The current average length of house arrest with electronic monitoring is 3.4 months. Following completion of house arrest with electronic monitoring, the offender must continue to serve any remaining period of probation.

4. Community service. The number of hours of community service assigned is in the discretion of the court. The length of time allowed to complete the hours can be less than, but not greater than, the total term of probation imposed. Following completion of the community service hours, the offender must continue to serve any remaining period of probation.
5. Period or periods of confinement in a local confinement facility. The length of a period of confinement can be either two or three consecutive days, in the discretion of the court. The court may impose no more than six days per month for three separate months during the period of probation. Following completion of a period of confinement, the offender must continue to serve any remaining period of probation.
6. Substance abuse assessment, monitoring, or treatment. (*This condition is not defined in statute.*)
7. Educational or vocational skills development program. (*This condition is not defined in statute.*)
8. Satellite-based monitoring. Submission to satellite-based monitoring, pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes (Sex Offender Monitoring), if the defendant is described by G.S. 14-208.40(a)(2).

An intermediate punishment may also include a fine, restitution, or any other conditions of probation.

Step 4c. Imposing a Community Punishment

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

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Selecting Community Punishments/Setting Lengths *G.S. 15A-1340.11(2)* (For offenses committed on or after December 1, 2011)

For a community punishment, a term of supervised probation or unsupervised probation may be imposed at the discretion of the court and consistent with statute. The court may also impose a fine only. If the court imposes probation, one or more of the following conditions of probation may be imposed:

1. House arrest with electronic monitoring. The length of assignment to house arrest with electronic monitoring is in the discretion of the court. The length can be less than, but not greater than, the total term of probation imposed. The current average length of house arrest with electronic monitoring is 3.4 months. Following completion of house arrest with electronic monitoring, the offender must continue to serve any remaining period of probation.

2. Community service. The number of hours of community service assigned is in the discretion of the court. The length of time allowed to complete the hours can be less than, but not greater than, the total term of probation imposed. Following completion of the community service hours, the offender must continue to serve any remaining period of probation.
3. Period or periods of confinement in a local confinement facility. The length of a period of confinement can be either two or three consecutive days, in the discretion of the court. The court may impose no more than six days per month for three separate months during the period of probation. Following completion of a period of confinement, the offender must continue to serve any remaining period of probation.
4. Substance abuse assessment, monitoring, or treatment. (*This condition is not defined in statute.*)
5. Educational or vocational skills development program. (*This condition is not defined in statute.*)
6. Satellite-based monitoring. Submission to satellite-based monitoring, pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes (Sex Offender Monitoring), if the defendant is described by G.S. 14-208.40(a)(2).

A community punishment may also include a fine, restitution, or any other conditions of probation. A community punishment may not include assignment to a drug treatment court or special probation.

Part III. Additional Provisions Relating to Probation

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Delegation of Authority

Delegation of Authority to Section of Community Corrections G.S. 15A-1343.2(e) and (f) (For offenses committed on or after December 1, 2011)

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

1. Perform up to 20 hours of community service and pay the fee prescribed for this supervision.
2. Report to the offender's probation officer on a frequency to be determined by the officer.
3. Submit to substance abuse assessment, monitoring or treatment.
4. Submit to house arrest with electronic monitoring.
5. Submit to a period or periods of confinement in a local confinement facility for a total of no more than six days per month during any three separate months during the period of probation. The six days per month confinement provided for in this subdivision may only be imposed as two-day or three-day consecutive periods.
6. Submit to a curfew with electronic monitoring.
7. Participate in an educational or vocational skills development program.

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

1. Perform up to 50 hours of community service and pay the fee prescribed for this supervision.
2. Submit to a curfew with electronic monitoring.
3. Submit to substance abuse assessment, monitoring or treatment.
4. Participate in an educational or vocational skills development program.
5. Submit to satellite-based monitoring if the offender is a sex offender who meets the criteria set out in G.S. 14-208.40(a)(2).
6. Submit to a period or periods of confinement in a local confinement facility for a total of no more than six days per month during any three separate months during the period of probation. The six days per month confinement provided for in this subdivision may only be imposed as two-day or three-day consecutive periods.
7. Submit to house arrest with electronic monitoring.
8. Report to the offender's probation officer on a frequency to be determined by the officer.

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

Except for the imposition of one or more periods of confinement in a local facility, the probation officer may exercise delegated authority, with approval by the Chief Probation Officer, if (1) the Section determines that the offender has failed to comply with one or more conditions of

probation imposed by the court, or (2) the offender is determined to be high risk based on a departmental risk assessment performed with a validated instrument. The offender may not be required to submit to a period or periods of confinement unless the Section first determines that the offender has failed to comply with one or more conditions of probation imposed by the court, and the offender is both advised and signs a waiver of the right to a hearing before a court on the alleged violation.

If the Section imposes any of the above requirements, then it may subsequently reduce or remove those same requirements.

If the probation officer exercises the above authority, the offender may file a motion with the court to review the action taken. The offender must be given notice of the right to seek such review. The offender shall have no right of review if the offender has signed a written waiver of rights as required for the imposition of periodic confinement in a local confinement facility.

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Court Responses to Violations of Probation

(For probation violations occurring on or after December 1, 2011)

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

- Alter probation, or
- Find the offender in criminal contempt of court, or
- Order that a felony offender be confined for a period of 90 days, or that a misdemeanor offender be confined for a period up to 90 days, or
- In limited circumstances, revoke probation and impose an active sentence.

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

(For offenses occurring on or after December 1, 2011)

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

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Confinement in Response to Violation G.S. 15A-1344(d2)

(For probation violations occurring on or after December 1, 2011)

For felonies: When a felony offender violates a condition of probation other than by committing a new crime or absconding supervision, the court may impose a 90-day period of confinement. The offender may receive only two 90-day confinement periods, after which the court may revoke probation for any violation. If the time remaining on the offender's maximum sentence is

less than 90 days, the period of confinement is for the remaining sentence. Periods of confinement shall be credited against the offender's sentence.

For misdemeanors: When a misdemeanor offender violates a condition of probation other than by committing a new crime or absconding supervision, the court may impose a period of confinement of up to 90 days. The offender may receive only two such periods of confinement, after which the court may revoke probation. If the time remaining on the offender's maximum sentence is less than 90 days, the period of confinement is for the remaining sentence. Periods of confinement shall be credited against the offender's sentence.

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Revoke Probation G.S. 15A-1344(a) through (d2)
(For probation violations occurring on or after December 1, 2011)

For offenses committed prior to December 1, 2011: The court may only revoke probation if the offender commits a violation of the condition that the offender not commit a new crime, or if the offender has previously received two periods of confinement in response to a violation under G.S. 15A-1344(d2).

For offenses committed on or after December 1, 2011: The court may only revoke probation if the offender commits a violation of the condition that the offender not commit a new crime or the condition that the offender not abscond probation or if the offender has previously received two periods of confinement in response to a violation under G.S. 15A-1344(d2).

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

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

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

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Tolling the Period of Probation G.S. 15A-1344(g)
(For persons placed on probation on after December 1, 2011)

This subsection is repealed.