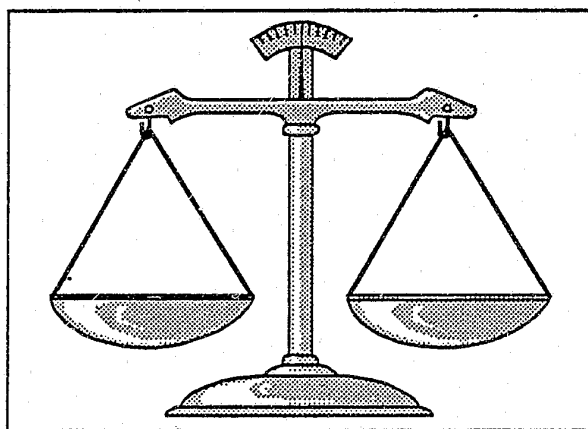


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**NORTH CAROLINA  
SENTENCING  
AND  
POLICY ADVISORY  
COMMISSION**



***SUMMARY OF NEW SENTENCING LAWS  
AND THE  
STATE-COUNTY CRIMINAL JUSTICE  
PARTNERSHIP ACT***

**AUGUST, 1993**

**THE HONORABLE THOMAS W. ROSS  
CHAIRMAN**

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## EXECUTIVE SUMMARY

New sentencing laws enacted during the 1993 Session of the General Assembly will change how offenders are sentenced in North Carolina. The new laws, primarily based on concepts developed by the North Carolina Sentencing and Policy Advisory Commission, create a system of structured sentencing in North Carolina coupled with a comprehensive community corrections plan. The new laws are found in Chapters 538, 539, and 534 of the 1993 Session Laws. Chapter 538 establishes structured sentencing, Chapter 539 classifies misdemeanors and reclassifies some felonies, and Chapter 534 creates a State-County Criminal Justice Partnership Act.

The new laws will replace the current Fair Sentencing Act and will apply to crimes committed on or after January 1, 1995.<sup>1</sup> The laws are intended to restore front-end control and rational planning to the criminal justice system. They are based on the following principles:

- **Sentencing policies should be consistent and certain: Offenders convicted of similar offenses, who have similar prior records, should generally receive similar sentences.**
- **Sentencing policies should be truthful: The sentence length imposed by the judge should bear a close and consistent relationship to the sentence length actually served.**
- **Sentencing policies should set resource priorities: Prisons and jails should be prioritized for violent and repeat offenders, and community-based programs should be used for non-violent offenders with little or no prior record.**
- **Sentencing policies should be supported by adequate prison, jail, and community resources.**

### STRUCTURED SENTENCING FOR FELONS

The new sentencing laws classify felons based on the severity of their crime and on the extent and gravity of their prior record. Based on these classifications the type and length of sentence is prescribed. The specific components of the structured sentencing law are as follows:

**Offense Classes.** Offenses are grouped into nine offense classes based on an underlying classification criteria which weighs the actual or potential harm to the victim created by the offender's criminal conduct. Generally, these new classifications raise the severity of violent and assaultive crimes relative to property and other types of offenses.<sup>2</sup>

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<sup>1</sup> The crimes of first degree murder and Driving While Impaired (DWI) are not covered by these new laws. Parole continues for these offenses, however, parole eligibility for first degree murder is raised from 20 to 25 years.

<sup>2</sup> Attempts and conspiracies are classified one class below the completed offense. Solicitations are classified two classes below the completed offense.

**Prior Record Levels.** Offenders are grouped into six Prior Record Levels based on the extent and gravity of their prior criminal histories. A point system is utilized to assess both the frequency and severity of an offender's prior record.

**Sentence Dispositions.** A sentence disposition is prescribed for each combination of Offense Class and Prior Record Level. Dispositions include Active Punishments, Intermediate Punishments, and Community Punishments. Intermediate Punishments bridge the gap between Active Punishments (prison or jail) and Community Punishments by requiring higher levels of supervision, control, and accountability.

**Sentence Lengths.** Ranges of sentence lengths are prescribed for each combination of Offense Class and Prior Record Level.<sup>3</sup> The length of the sentence is based on the following:

Minimum and Maximum Sentences: The judge imposes both a minimum and maximum sentence. Once the minimum sentence is selected, the maximum sentence is automatically set by statute. The judge may only activate or suspend the sentence based on the prescribed sentence disposition. If activated, the offender must serve all of the minimum sentence and may serve up to the maximum sentence.

Aggravation and Mitigation: The judge selects the minimum sentence from one of three possible sentence ranges provided for each combination of Offense Class and Prior Record Level. There is a Presumptive Sentence Range for usual cases, an Aggravated Range for use when the judge finds aggravating factors, and a Mitigated Range for use when the judge finds mitigating factors.<sup>4</sup>

Earned time: Good time and gain time are eliminated and replaced by earned time. An offender can earn time off the maximum sentence for good behavior, work performed, or for participation in training, educational, or rehabilitation programs, but the time served can never be reduced below the minimum sentence.

Parole and Post-Release Supervision: Parole is eliminated. The actual amount of time an offender serves (the minimum, maximum, or somewhere in between) depends solely on the amount of earned time awarded by the Department of Correction. However, offenders in Classes B through E receive six months of post-release supervision following release from prison. During this period, they are monitored in the community and provided with special services to assist with reintegration into society. They may be returned to prison (for up to nine months) for violating the conditions of supervision.

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<sup>3</sup> Drug Trafficking offenses are handled separately. A specific mandatory minimum and maximum sentence is prescribed for each trafficking offense.

<sup>4</sup> The new law includes several additions and deletions to the current statutory list of aggravating and mitigating factors.

**Probation.** If a community or intermediate punishment is imposed, then the minimum and maximum sentences are suspended. An intermediate punishment must include a term of probation. A community punishment may include a term of probation. The following provisions apply to terms of probation imposed as part of a community or intermediate punishment:

Probation Lengths: Ranges of probation lengths are prescribed for community and intermediate punishments. The court may impose a shorter or longer length if it makes a specific finding that a different length is necessary.

Delegation of Authority to Probation: The court may delegate to the Division of Adult Probation and Parole the power to add or remove certain conditions of probation. The exercise of this power is subject to review by the court.

Violations of Probation: Upon a violation, the court may modify the conditions (including raising a community punishment to an intermediate punishment), may impose up to thirty days of incarceration for criminal contempt of court, or may revoke probation and activate the suspended sentence (or activate a reduced sentence selected from the original sentence range).

**Appellate Review.** Both the state and the defendant may appeal if the sentence punishment or the sentence length was not authorized by the new sentencing law or if the law was applied incorrectly. The defense may appeal if the aggravating factors found by the judge were not supported by the record. The state may appeal any finding of extraordinary mitigation found by the court.<sup>5</sup>

## **STRUCTURED SENTENCING FOR MISDEMEANANTS**

The new sentencing laws prescribe a separate sentencing system for misdemeanants. The misdemeanor policy includes the following components:

**Misdemeanor Offense Classes.** Misdemeanor offenses are grouped into three Misdemeanor Classes based on the maximum penalties currently provided by statute.

**Prior Conviction Levels.** Misdemeanants are grouped into three Prior Conviction Levels based on their total number of prior convictions.

**Sentence Dispositions.** Sentence dispositions are based on a combination of the Misdemeanor Offense Class and the Prior Conviction Level. Possible dispositions for misdemeanants are the same as those prescribed for felons.

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<sup>5</sup> In certain limited circumstances, the court may impose an intermediate disposition even though an active disposition is prescribed. To do so the court must find "extraordinary mitigation".

**Sentence Lengths.** One sentence range is provided for each combination of Misdemeanor Offense Class and Prior Conviction Level. The judge may impose any sentence length from the sentence range. The offender must serve the sentence imposed less up to four days per month for "earned time".

**Parole and Post-Release Supervision.** Parole is eliminated and there is no post-release supervision.

**Probation.** The provisions of probation are the same as those specified for felons except a shorter range of probation lengths is prescribed.

**Appellate Review.** Both the state and the defendant may appeal if the sentence disposition or the sentence length was not authorized by the new sentencing law or if the law was applied incorrectly.

**Responsibility for Misdemeanants.** Counties are responsible for all misdemeanants with active sentences of ninety days or less. The state is responsible for all other sentenced misdemeanants.

## **STATE-COUNTY CRIMINAL JUSTICE PARTNERSHIP ACT**

In combination with the new sentencing laws, the General Assembly enacted a State-County Criminal Justice Partnership Act. The State-County Criminal Justice Partnership Act authorizes the Department of Correction to establish a voluntary community corrections grant program for counties. The purposes of the Act are to:

- implement recommendations of the N. C. Sentencing and Policy Advisory Commission by providing supplemental community-based corrections programs;
- expand sentencing options;
- promote coordination between State and county community corrections programs; and
- to improve public confidence in community-based corrections programs.

The Act establishes a twenty-one member State Advisory Board and directs the board to recommend program priorities and distribute an annual plan, review local plans and recommend funding, and coordinate State and county community corrections programs.

The Act authorizes boards of county commissioners to form Advisory Boards and to submit funding requests with an approved comprehensive community-based corrections plan. It directs the Department of Correction to: (1) provide technical assistance to counties; (2) review local comprehensive plans; (3) contract with county boards to operate programs; (4) develop policies for disbursement of grant funds and disburse funds; and (5) establish standards for programs.

The Act can be used to fund a variety of supplemental restrictive sanctions and treatment programs including: (1) residential facilities, day reporting centers, restitution centers, substance abuse services and employment services for offenders sentenced to intermediate punishments; (2) pretrial monitoring services and pretrial electronic surveillance programs for pretrial offenders who can be released from jail; and (3) aftercare services for offenders serving a term of post-release supervision after completing an active sentence of imprisonment. Funds from this Act cannot be used to fund programs currently funded with State, county, or federal dollars.

One-fifth of all funds will be awarded to selected counties on a discretionary basis and the remaining funds will be available to all counties based on a funding formula. Under the funding formula, each county will be eligible to apply for funds based on: (1) a fixed equal dollar amount for each county (20%); (2) the county's share of the State population (60%); and (3) the county's supervised probation admission rate (20%). The Department of Correction is authorized to use existing funds to begin administering the Act on January 1, 1994. Grants to counties will be effective on July 1, 1995; however, the General Assembly has not yet appropriated any funds for this Act. An annual allocation of \$13 million has been recommended.

## **IMPACT ON SENTENCING PRACTICES AND CORRECTIONAL RESOURCES**

Under the new sentencing laws, prison and jail resources will be prioritized for violent and repeat offenders, while less serious offenders will be channeled into less expensive intermediate and community programs. Imprisonment will increase for violent and career felons but decrease for less serious offenders. Overall, fewer felons will be incarcerated but those who are will generally serve more time than they do today. The same holds true for misdemeanants. Fewer misdemeanants will be sentenced to jail but those who are will serve significantly longer terms.

Because the new sentencing laws require offenders to serve a certain and predictable sentence, it is possible to project the correctional resources required to support the new policies. The new sentencing laws were formulated to be in balance with projected prison and jail resources. Over the next few years, it is estimated that no new prison construction will be required beyond that authorized during the recent legislative session. However, additional resources will be required to handle increased numbers of offenders sentenced to intermediate and community programs.

## **SUMMARY**

The new sentencing laws represent a comprehensive approach to solving the current crisis in the criminal justice system. The new laws are intended to:

- Set priorities for the use of correctional resources. Expensive prison and jail resources are prioritized for those violent and repeat offenders who pose the greatest threat to society. Less expensive intermediate and community resources are targeted for less serious offenders who pose the least threat to society.
- Provide an underlying rationale for the sentence. The sentence is directly related to the seriousness of the offense and the prior record of the offender. The basis for the sentence is clear and understandable.

- Increase consistency in sentencing. Similar sentences are recommended for offenders who commit similar crimes and have similar prior criminal histories. The potential for disparate sentences is reduced.
  - Increase the certainty of the sentence. Once the offense and defendant classifications are determined, the sentence is clearly prescribed. The penalty for non-compliance with conditions of probation is clear and definite.
  - Establish truth in sentencing. The sentence imposed by the judge bears a close and consistent relationship to the time actually served. Judicial sentences are given real meaning.
  - Balance sentencing policies with corrections capacity. The new laws increase predictability in sentencing and thus enable more accurate projections of the resources needed to support sentencing policies.
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## I. FELONY SENTENCING POLICIES

The new sentencing system uses a Felony Punishment Chart as shown in Figure A. Along the left side of the chart are the nine Offenses Classes (A through I) and along the top of the chart are the six Prior Record Levels (I through VI). For each combination of Offense Class and Prior Record Level, a sentence disposition is prescribed ("A" for an Active Disposition requiring incarceration, "I" for an Intermediate Disposition, and "C" for a Community Disposition). Furthermore, for each combination of Offense Class and Prior Record Level, three sets of sentence ranges are provided; a Presumptive range for normal cases (the middle range), an Aggravated range (top range), and a Mitigated range (bottom range). The following steps are required to determine the sentence under the new system:

- 1) Determine the appropriate Offense Class for the conviction offense. See Section A.
- 2) Determine the appropriate Prior Record Level for the offender. See Section B.
- 3) Determine the appropriate sentence disposition (Active, Intermediate or Community). See Section C.
- 4) Select a minimum sentence length from the appropriate sentence range (Presumptive, Aggravated or Mitigated) and determine the corresponding maximum sentence. See Section D.
- 5) If probation is imposed pursuant to a Community or Intermediate Disposition, determine the appropriate probation provisions. See Section E.

### A. FELONY OFFENSE CLASSES

The appropriate Offense Class must be determined for each felony conviction.

1. Each felony offense is assigned to one of nine classes (A through I). With the exception of homicide offenses and drug offenses, these assignments are based on the Commission's classification criteria shown in Table 1. These criteria weigh the harm against person, property, and/or society which result or tend to result from the offense. See Appendix I for a complete listing of these classification assignments.
2. Conspiracies and attempts are classified one class lower than the substantive completed offense. For example, an attempt to commit a Class G offense is a Class H offense. See *G.S. §14-2.4, and §14-2.5.*
3. Solicitations are classified two classes lower than the substantive completed offense. For example, solicitation to commit a Class G offense is a Class I offense. See *G.S. §14-2.6.*

FIGURE A

FELONY PUNISHMENT CHART  
(Numbers shown are in months.)

PRIOR RECORD LEVEL

OFFENSE CLASS

	I 0 Pts	II 1-4 Pts	III 5-8 Pts	IV 9-14 Pts	V 15-18 Pts	VI 19+ Pts	
A	Mandatory Life or Death as Established by Statute						
B	A 135 - 169	A 163 - 204	A 190 - 238	A 216 - 270	A 243 - 304	A 270 - 338	DISPOSITION <i>Aggravated Range</i>
	108 - 135	130 - 163	152 - 190	173 - 216	194 - 243	216 - 270	PRESUMPTIVE RANGE
	81 - 108	98 - 130	114 - 152	130 - 173	146 - 194	162 - 216	<i>Mitigated Range</i>
C	A 63 - 79	A 86 - 108	A 100 - 125	A 115 - 144	A 130 - 162	A 145 - 181	
	50 - 63	69 - 86	80 - 100	92 - 115	104 - 130	116 - 145	
	38 - 50	52 - 69	60 - 80	69 - 92	78 - 104	87 - 116	
D	A 55 - 69	A 66 - 82	A 89 - 111	A 101 - 126	A 115 - 144	A 126 - 158	
	44 - 55	53 - 66	71 - 89	81 - 101	92 - 115	101 - 126	
	33 - 44	40 - 53	53 - 71	61 - 81	69 - 92	76 - 101	
E	I/A 25 - 31	I/A 29 - 36	A 34 - 42	A 46 - 58	A 53 - 66	A 59 - 74	
	20 - 25	23 - 29	27 - 34	37 - 46	42 - 53	47 - 59	
	15 - 20	17 - 23	20 - 27	28 - 37	32 - 42	35 - 47	
F	I/A 16 - 20	I/A 19 - 24	I/A 21 - 26	A 25 - 31	A 34 - 42	A 39 - 49	
	13 - 16	15 - 19	17 - 21	20 - 25	27 - 34	31 - 39	
	10 - 13	11 - 15	13 - 17	15 - 20	20 - 27	23 - 31	
G	I/A 13 - 16	I/A 15 - 19	I/A 16 - 20	I/A 20 - 25	A 21 - 26	A 29 - 36	
	10 - 13	12 - 15	13 - 16	16 - 20	17 - 21	23 - 29	
	8 - 10	9 - 12	10 - 13	12 - 16	13 - 17	17 - 23	
H	C/I 6 - 8	I 8 - 10	I/A 10 - 12	I/A 11 - 14	I/A 15 - 19	A 20 - 25	
	5 - 6	6 - 8	8 - 10	9 - 11	12 - 15	16 - 20	
	4 - 5	4 - 6	6 - 8	7 - 9	9 - 12	12 - 16	
I	C 6 - 8	C/I 6 - 8	I 6 - 8	I/A 8 - 10	I/A 9 - 11	I/A 10 - 12	
	4 - 6	4 - 6	5 - 6	6 - 8	7 - 9	8 - 10	
	3 - 4	3 - 4	4 - 5	4 - 6	5 - 7	6 - 8	

Note: A - Active Punishment I - Intermediate Punishment C - Community Punishment

4. Homicides are exempted from the classification criteria and are classified as follows:

*Class A: Murder in the first degree, G.S. §14-17*

*Class B: Murder in the second degree, G.S. §14-17*

*Class E: Voluntary manslaughter, G.S. §14-18*

*Class F: Involuntary manslaughter, G.S. §14-18*

*Class G: Felony death by vehicle (impaired), G.S. §20-141.4*

5. Drug offenses are exempted from the classification criteria and retain their current classifications under the Fair Sentencing Act. See G.S. §90-95.

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**EXAMPLES:** In accordance with the classification criteria, the Offense Class for first degree rape is "B" because the offense results in or tends to result in serious debilitating long-term personal injury. The Offense Class for second degree burglary is "G" because the offense results in or tends to result in serious property loss from the person or from the person's dwelling. An attempt or conspiracy to commit second degree burglary is classified as an "H" offense, but solicitation to commit second degree burglary is classified as an "I" offense.

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## TABLE 1

### FELONY OFFENSE CLASSIFICATION CRITERIA\*

#### CLASS CRITERIA

- A** • Reserved for First Degree Murder

*[Reasonably tends to result or does result in]:*

- B** • Serious debilitating long-term personal injury

- C** • Serious long-term personal injury  
• Serious long-term or widespread societal injury

- D** • Serious infringements on property interest which also implicate physical safety concerns by use of a deadly weapon or an offense involving an occupied dwelling

- E** • Serious personal injury

- F** • Significant personal injury  
• Serious societal injury

- G** • Serious property loss:  
Loss from the person or from the person's dwelling

- H** • Serious property loss:  
Loss from any structure designed to house or secure any activity or property  
Loss occasioned by the taking or removing of property  
Loss occasioned by breach of trust, formal or informal
- Personal injury
  - Significant societal injury

- I** • Serious property loss:  
All other felonious property loss
- Societal injury

- M** • All other misdemeanors

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\* Personal injury includes both physical and mental injury.

Societal injury includes violations of public morality, judicial or government operations, and/or public order and welfare.

Note: The criteria were not used in the classification of the homicide offenses or drug offenses.

## B. FELONY PRIOR RECORD LEVELS

Unless the conviction is for a Class A offense or drug trafficking, the appropriate Prior Record Level must be determined for each felon.

1. Felons are assigned to one of six Prior Record Levels based on a numerical point system which measures both the extent and gravity of the felon's criminal history. See Table 2 and *G.S. §15A-1340.14*.
2. Prior record points are assigned based on the Offense Class of each prior conviction. Each prior Class A conviction receives 10 points; each prior Class B, C, and D conviction receives 6 points; each prior Class E, F, and G conviction receives 4 points; each prior Class H and I conviction receives 2 points; and each prior misdemeanor conviction receives 1 point. See Table 2 and *G.S. §15A-1340.14(b)*.
3. One additional point is added if the offender is on probation or parole, serving an active sentence in jail or prison, or is an escapee at the time of arrest for the current conviction. See Table 2 and *G.S. §15A-1340.14(b)*.
4. One additional point is added if the offender has ever previously been convicted for the same offense. See Table 2 and *G.S. §15A-1340.14(b)*.
5. Felons are assigned to one of six Prior Record Levels based on the number of points they accrue as shown in Table 2. Level I represents the least serious prior record and Level VI represents the most serious prior record. See *G.S. §15A-1340.14(c)*.
6. An offender has a prior conviction when, on the date a criminal judgement has been entered, the offender has been convicted of a crime in the district court and has not given notice of appeal or the time for appeal has expired; or in the superior court, regardless of whether the conviction is on appeal to the appellate division; or in the courts of the United States, another state, the armed services of the United States, or any other country, regardless of whether the offense would be a crime if it occurred in North Carolina. See *G.S. §15A-1340.11(7)*.
7. The State bears the burden of proving prior record. Prior convictions can be proved by stipulation of the parties; by court records; by copy of records maintained by the Division of Criminal Information, Department of Motor Vehicles, or the Administrative Office of the Courts; or by any other method the court finds to be reliable. The standard of proof is by a preponderance of the evidence. See *G.S. §15A-1340.14(f)*.
8. The prosecutor must make all feasible efforts to obtain and present to the court the offender's full prior record. See *G.S. §15A-1340.14(f)*.
9. If an offender has been convicted of more than one offense in a single court during one calendar week, only the most serious conviction is counted (the one with the highest point total). See *G.S. §15A-1340.14(d)*.

**TABLE 2**

**PRIOR RECORD LEVELS**

Procedure: Multiply the number of convictions in each offense category times the assigned point value to arrive at a subtotal. Add extra points if indicated to determine the total prior criminal record score. Assign the defendant to Prior Criminal Record Level I through VI based on the total number of points.

Number	Offense Category		Points
_____	Prior Felony Class A Conviction	x 10	_____
_____	Prior Felony Class B or C or D Conviction	x 6	_____
_____	Prior Felony Class E or F or G Conviction	x 4	_____
_____	Prior Felony Class H or I Conviction	x 2	_____
_____	Prior Misdemeanor Conviction	x 1	_____
		<b>SUBTOTAL</b>	_____
	Criminal Justice Status at Time of Arrest	+ 1	_____
	Prior Conviction of Same Offense	+ 1	_____
		<b>TOTAL</b>	_____

<b>PRIOR RECORD LEVEL</b>
Level I = 0 Points
Level II = 1-4 Points
Level III = 5-8 Points
Level IV = 9-14 Points
Level V = 15-18 Points
Level VI = 19 + Points

10. Prior convictions from other jurisdictions (out-of-state convictions, federal convictions, foreign convictions, and military convictions) are included in the prior criminal record level subject to certain restrictions. See *G.S. §15A-1340.14(e)*.

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**EXAMPLES:** In accordance with this section, an offender with one prior "H" level conviction (two points) and two prior misdemeanor convictions (one point each) receives a total of four prior record points and falls into Prior Record Level II (1-4 points). However, if that same offender had a criminal justice status at the time of the offense (was on probation or parole), another point would be added and the offender would fall into Prior Record Level III (5-8 points). An offender with only one prior conviction for a Class A offense (ten points each), would fall into Prior Record Level IV (9-14 points).

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## TABLE 3

### DISPOSITIONAL CATEGORIES

**1. ACTIVE PRISON** -- Active sentences in the state prison system.

**2. INTERMEDIATE PUNISHMENT** -- Imposition of a suspended sentence to supervised probation which must include at least one of the following:

- Special Probation/Split Sentence, including IMPACT (Intensive Motivational Program of Alternative Correctional Treatment)
- Residential Facilities
- Electronic House Arrest
- Intensive Supervision
- Community Penalties Plan (Accepted by the Sentencing Judge)

*NOTE: In combination with the above, the offender may also receive any community punishment listed below and/or any other authorized condition of probation.*

**3. COMMUNITY PUNISHMENT** -- Imposition of a suspended sentence to supervised or unsupervised probation which may include:

- Out-Patient Treatment
- T. A. S. C. (Treatment Alternatives to Street Crime)
- Community Service
- Restitution
- Fines

*NOTE: The offender may also receive any authorized conditions of probation except those defined as Intermediate Punishments.*



## C. FELONY SENTENCE DISPOSITIONS

Unless the conviction is for a Class A offense or drug trafficking, the appropriate disposition must be determined for each felony conviction.

1. There are three categories of sentence dispositions as follows:
  - a. *Active Punishment*
  - b. *Suspended Sentence with Intermediate Punishment*
  - c. *Suspended Sentence with Community Punishment*See Table 3 and G.S. §15A-1340.17(c).
2. Intermediate Punishments include a community penalties plan accepted by the sentencing judge and/or at least one of the following conditions:
  - a. *Special Probation/Split Sentence (including IMPACT)*
  - b. *Assignment to a Residential Facility*
  - c. *Electronic House Arrest*
  - d. *Intensive Supervision Probation*An Intermediate Punishment may also include other special conditions and/or any sanction listed as a Community Punishment. See Table 3 and G.S. §15A-1340.11(6).
3. Community Punishments include at least one of the following:
  - a. *Supervised Probation*
  - b. *Unsupervised Probation*
  - c. *Out-patient Treatment*
  - d. *T.A.S.C. Program (Treatment Alternatives to Street Crime)*
  - e. *Community Service*
  - f. *Restitution*
  - g. *Fines*A Community Punishment may also include any other special conditions except those specifically listed as Intermediate Punishments. See Table 3 and G.S. §15A-1340.11(2).
4. Sentence dispositions are prescribed for each combination of Offense Class and Prior Record Level as specified in Figure A and G.S. §15A-1340.17(c).
5. For some combinations of Offense Class and Prior Record Level, two dispositions are available to the court. For these combinations (shown with a slash "/" in Figure A), the court has discretion to impose either disposition. See G.S. §15A-1340.17(c).
6. In limited instances, the court may impose an Intermediate Punishment when only an Active Punishment is prescribed. To do so, the court must find that extraordinary mitigating factors of a kind significantly greater than the normal case exist and that they substantially outweigh any factors in aggravation. The court must further find that imposition of an active sentence would be a "manifest injustice". Extraordinary mitigation is not authorized for Class A offenses, drug trafficking offenses, or for felons with five or more prior record points. See G.S. §15A-1340.13(g) and G.S. §15A-1340.13(g1).

7. Offenders convicted of drug trafficking must receive an Active Punishment unless the court finds that the offender provided substantial assistance in the identification, arrest, or conviction of any accomplices, accessories, co-conspirators or principals. If the court finds "substantial assistance", the court may impose an Active Punishment, Intermediate Punishment, or Community Punishment. *See G.S. §90-95(h).*

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**EXAMPLES:** In accordance with this section, an offender convicted of a Class I offense with no prior record could only receive a Community ("C") Disposition. If the offender had a Prior Record Level of II, then either a Community ("C") or Intermediate ("I") Disposition could be imposed. If the offender had a Prior Record Level of IV, then either an Intermediate ("I") or an Active ("A") Disposition could be imposed. If a Community or Intermediate Disposition is imposed, the minimum and maximum sentence must be suspended.

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#### D. FELONY SENTENCE LENGTHS

Unless the conviction is for a Class A offense, a minimum and maximum sentence length must be imposed for each felony conviction. Whether the minimum and maximum sentences are activated or suspended depends on the disposition as described in Section C.

1. The court must impose both a minimum and maximum sentence. See *G.S. §1340.13(c)*.
2. The minimum sentence establishes the absolute floor the offender must serve if the sentence is activated. Under no circumstances can an offender serve less than the minimum. See *G.S. §1340.13(d)*.
3. The maximum sentence establishes the absolute ceiling the offender can serve if the sentence is activated. Under no circumstances can an offender serve more than the maximum.
4. Except for drug trafficking offenses, the court selects a minimum sentence from one of three possible sentence ranges: the Presumptive Sentence Range, the Aggravated Sentence Range, or the Mitigated Sentence Range. The high end of the Aggravated Sentence Range is generally double the low end of the Mitigated Sentence Range. The three sentence ranges for each combination of Offense Class and Prior Record Level are shown in Figure A. See *G.S. §15A-1340.17*.
5. The court may select a minimum sentence from the Aggravated Sentence Range if aggravating factors are found which outweigh any mitigating factors. The court may select a minimum sentence from the Mitigated Sentence Range if mitigating factors are found which outweigh any aggravating factors. The list of authorized aggravating factors is shown in Table 4 and the list of mitigating factors is shown in Table 5. See *G.S. §15A-1340.16*.
6. Once the minimum sentence is selected, the maximum sentence is found by referring to Appendix III. For Offense Classes F through I, the maximum is set at 120% of the minimum (rounded to the next highest month). For Offense Classes B through E, the maximum is set at 120% of the minimum (rounded to the next highest month) plus an additional nine months. See *G.S. §15A-1340.17(d)* and *§15A-1340.17(e)*.
7. Offenders in Offense Classes F through I are released from prison after serving their maximum sentence less earned time. Offenders in Offense classes B through E are released from prison after serving their maximum sentence less earned time less nine months. In no instance can an offender be released from prison before serving the minimum sentence. See *G.S. §15A-1370.3*.
8. Good time is eliminated, but the maximum sentence may be reduced by "earned time credits" awarded by the Department of Correction. The actual amount of time an offender serves (the minimum, maximum or somewhere in between) depends on the amount of earned time awarded. For Offense Classes B through E, the offender will be released nine months before completing the maximum sentence (less credit for earned time) and will be placed on post-release supervision. See *G.S. §15A-1370.3*, *§15A-1340.13(d)* and *§15A-1355(c)*.

## TABLE 4

### AGGRAVATING FACTORS

1. The defendant induced others to participate in the commission of the offense or occupied a position of leadership or dominance of other participants.
- \*2. The defendant joined with more than one other person in committing the offense and was not charged with committing a conspiracy.
3. The offense was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody.
4. The defendant was hired or paid to commit the offense.
5. The offense was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws.
6. The offense was committed against a present or former: law enforcement officer, employee of the Department of Correction, jailer, fireman, emergency medical technician, ambulance attendant, justice or judge, clerk or assistant or deputy clerk of court, magistrate, prosecutor, juror, or witness against the defendant, while engaged in the performance of that person's official duties or because of the exercise of that person's official duties.
7. The offense was especially heinous, atrocious, or cruel.
8. The defendant knowingly created a great risk of death to more than one person by means of a weapon or device which would normally be hazardous to the lives of more than one person.
9. The defendant held public office at the time of the offense and the offense related to the conduct of the office.
10. The defendant was armed with or used a deadly weapon at the time of the crime.
- \*11. The victim was very young, or very old, or mentally or physically infirm, or handicapped.
- \*12. The defendant committed the offense while on pretrial release on another charge.
13. The defendant involved a person under the age of 16 in the commission of the crime.
14. The offense involved an attempted or actual taking of property of great monetary value or damage causing great monetary loss, or the offense involved an unusually large quantity of contraband.
15. The defendant took advantage of a position of trust or confidence to commit the offense.
16. The offense involved the sale or delivery of a controlled substance to a minor.
17. The offense for which the defendant stands convicted was committed against a victim because of the victim's race, color, religion, nationality, or country of origin.
- \*18. The defendant does not support the defendant's family.
- \*19. The serious injury inflicted upon the victim is permanent and debilitating.
20. Any other aggravating factor reasonably related to the purposes of sentencing.

\* - *New or revised Aggravating Factors*

## TABLE 5

### MITIGATING FACTORS

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

\* - *New or revised Mitigating Factors*

9. Offenders in Offense Classes B through E are required to serve a mandatory post-release supervision term of six months. During this supervision, certain "discretionary", "controlling" (see Table 6), and "reintegrative" conditions (see Table 7) may be imposed. The offender may be returned to prison for up to nine months for violating a "controlling" condition or for repeatedly violating a "reintegrative" condition. See *G.S. §15A-1370.1 through §15A-1370.7*.
10. The court retains discretion to consolidate multiple convictions for judgement or to impose concurrent or consecutive sentences. See *G.S. §15A-1340.15*.
11. Unless the court finds that the offender provided substantial assistance in the identification, arrest or conviction of any accomplices, accessories, co-conspirators or principals, offenders convicted for drug trafficking must receive the following minimum and maximum sentences:

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

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

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

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

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

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

If the court finds "substantial assistance", the court may impose any minimum and corresponding maximum sentence. See *G.S. §90-95(h)*.

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**EXAMPLES:** There are three sentence ranges prescribed for a felon convicted of a Class F offense with a Prior Record Level of II; a presumptive range from 15-19 months, an aggravated range from 19-24 months, and a mitigated range from 11-15 months. Assuming the judge finds no aggravating or mitigating factors and selects a minimum sentence of 17 months from the presumptive range, the corresponding maximum sentence is automatically set at 21 months (see Appendix III). The offender will serve no less than the minimum and no more than the maximum (less earned time credit).

For an offender convicted of a Class D offense with a Prior Record Level of IV, the presumptive range is 81 to 101 months, the aggravated range is 101-126 months, and the mitigated range is 61 to 81 months. Assuming the judge finds aggravation and selects a minimum sentence of 120 months, the corresponding maximum sentence is 153 months (see Appendix III). The offender will serve no less than the minimum and no more than the maximum (less earned time credits less nine months). Upon release, the offender must serve six months of post-release supervision and may be returned to prison for up to nine months.

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## TABLE 6

### CONTROLLING CONDITIONS OF POST-RELEASE SUPERVISION

**Controlling Conditions.** -- Appropriate controlling conditions, violation of which may result in revocation of post-release supervision, are:

- (1) Not use, possess, or control any illegal drug or controlled substance unless it has been prescribed for the supervisee by a licensed physician and is in the original container with the prescription number affixed on it; not knowingly associate with any known or previously convicted users, possessors, or sellers of any such illegal drugs or controlled substances; and not knowingly be present at or frequent any place where such illegal drugs or controlled substances are sold, kept, or used.
- (2) Comply with a court order to pay the costs of reintegrative treatment for a minor and a minor's parents or custodians where the offense involved evidence of physical, mental, or sexual abuse of a minor.
- (3) Comply with a court order to pay court costs and costs for appointed counsel or public defender in the case for which the supervisee was convicted.
- (4) Not possess a firearm, destructive device, or other dangerous weapon unless granted written permission by the Commission or a post-release supervision officer.
- (5) Report to a post-release supervision officer at reasonable times and in a reasonable manner, as directed by the Commission or a post-release supervision officer.
- (6) Permit a post-release supervision officer to visit at reasonable times at the supervisee's home or elsewhere.
- (7) Remain within the geographic limits fixed by the Commission unless granted written permission to leave by the Commission or the post-release supervision officer.
- (8) Answer all reasonable inquiries by the post-release supervision officer and obtain prior approval from the post-release supervision officer for any change in address or employment.
- (9) Promptly notify the post-release supervision officer of any change in address or employment.
- (10) Submit at reasonable times to searches of the supervisee's person by a post-release supervision officer for purposes reasonably related to the post-release supervision. The Commission shall not require as a condition of post-release supervision that the supervisee submit to any other searches that would otherwise be unlawful. Whenever the search consists of testing for the presence of illegal drugs, the supervisee may also be required to reimburse the Department of Correction for the actual cost of drug testing and drug screening, if the results are positive.
- (11) Make restitution or reparation to an aggrieved party as provided in G.S. 148-57.1.
- (12) Comply with an order from a court of competent jurisdiction regarding the payment of an obligation of the supervisee in connection with any judgment rendered by the court.

## TABLE 7

### REINTEGRATIVE CONDITIONS OF POST-RELEASE SUPERVISION

**Reintegrative Conditions.** -- Appropriate reintegrative conditions, for which a supervisee may receive earned time credits against the length of the supervision period, and repeated violation that may result in revocation of post-release supervision, are:

- (1) Work faithfully at suitable employment or faithfully pursue a course of study or vocational training that will equip the supervisee for suitable employment.
- (2) Undergo available medical or psychiatric treatment and remain in a specified institution if required for that purpose.
- (3) Attend or reside in a facility providing rehabilitation, instruction, recreation, or residence for persons on post-release supervision.
- (4) Support the supervisee's dependents and meet other family responsibilities.
- (5) In the case of a supervisee who attended a basic skills program during incarceration, continue attending a basic skills program in pursuit of a General Education Development Degree or adult high school diploma.
- (6) Satisfy other conditions reasonably related to reintegration into society.



## E. PROBATION PROVISIONS

If the sentence is suspended and an Intermediate Punishment is given, a term of probation must be imposed. If the sentence is suspended and a Community Punishment is given, a term of probation may be imposed.

1. Unless the court makes a specific finding that a longer or shorter term of probation is necessary, the court shall impose no less than 12 months and no more than 30 months for a Community Punishment, and no less than 18 months and no more than 36 months for an Intermediate Punishment. See G.S. §15A-1343.2(d).
2. If the court imposes a Community Punishment, it may delegate to the Division of Adult Probation and Parole the authority to require an offender to:
  - a) Perform up to 20 hours of community service and pay the fee prescribed for this supervision;
  - b) Report to the offender's probation officer on a frequency to be determined by the officer; or
  - c) Submit to substance abuse monitoring and treatment.

The above requirements may only be added if the Division finds the offender has failed to comply with the conditions of probation. The Division may subsequently remove these requirements. The offender has the right to file a motion with the court to review the exercise of any delegated authority and must be advised of that right. See G.S. 15A-§1343.2(e).

3. If an Intermediate Punishment is imposed, the court may delegate to the Division of Adult Probation and Parole the authority to require an offender to:
  - a) Perform up to 50 hours of community service, and pay the fee prescribed for this supervision;
  - b) Submit to electronic monitoring;
  - c) Submit to substance abuse monitoring and treatment;
  - d) Participate in an educational or vocational skills development program.

The above requirements may only be added if the Division finds the offender has failed to comply with the conditions of probation. The Division may subsequently remove these requirements. The offender has the right to file a motion with the court to review the exercise of any delegated authority and must be advised of that right. See G.S. §15A-1343.2(f).

4. If the court finds that the offender has failed to abide by the conditions of probation, the court may modify the conditions of probation; hold the offender in "criminal contempt of court" and impose up to 30 days of incarceration; or revoke probation. See G.S. §15A-1343.2(g) and §15A-1344.
5. If probation is revoked, the court may activate the suspended sentence or may activate a reduced sentence. Any such reduced sentence must fall within the initial sentence range used by the court (if the court did not originally find aggravating or mitigating factors, such factors may not be found upon revocation). See G.S. §15A-1344(d1).

**FIGURE B**

**MISDEMEANOR PUNISHMENT CHART**

<b>MISDEMEANOR OFFENSE CLASS</b>	<b>PRIOR CONVICTION LEVELS</b>		
	<b>I</b>	<b>II</b>	<b>III</b>
	<b>No Prior Convictions</b>	<b>One to Four Prior Convictions</b>	<b>Five or More Prior Convictions</b>
<b>1</b>	1 - 45 days C	1 - 45 days C/I/A	1 - 120 days C/I/A
<b>2</b>	1 - 30 days C	1 - 45 days C/I	1 - 60 days C/I/A
<b>3</b>	1 - 10 days C	1 - 15 days C/I	1 - 20 days C/I/A

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

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

## II. MISDEMEANOR SENTENCING POLICIES

The new sentencing system uses a Misdemeanor Punishment Chart as shown in Figure B. Along the left side of the chart are the three Misdemeanor Offense Classes and along the top of the chart are three Prior Conviction Levels. For each combination of Misdemeanor Class and Prior Conviction Level, a sentence disposition is prescribed ("A" for an Active Punishment requiring incarceration, "I" for an Intermediate Punishment, and "C" for a Community Punishment). Furthermore, for each combination of Misdemeanor Class and Prior Conviction Level, a range of sentence lengths is prescribed. The following steps are required to determine the sentence:

- 1) Determine the appropriate Misdemeanor Class for the conviction offense.
- 2) Determine the appropriate Prior Conviction Level for the misdemeanant.
- 3) Determine the appropriate sentence disposition.
- 4) Select the length of sentence from the sentence range.
- 5) If probation is imposed pursuant to a Community or Intermediate Punishment, determine the appropriate probation provisions (See Section E).

### MISDEMEANOR OFFENSES

1. Misdemeanor offenses are grouped into three classes of severity based on current statutory maximums. Class 1 includes misdemeanors with current maximum penalties of more than six months; Class 2 includes misdemeanors with current maximum penalties greater than 30 days but not more than six months; and Class 3 includes misdemeanors with current maximum penalties of 30 days or less. (*Note: Maximum penalties refer to the statutes in effect prior to effective date of the new structured sentencing law.*)
2. Some misdemeanors (mainly those now classified in accordance with *G.S. §14-3*) are assigned to different Misdemeanor Classes based on an assessment of their relative severity. See **Appendix II** for a list of these offenses.
3. Misdemeanants are grouped into three levels based on their number of prior convictions. Misdemeanants with no prior convictions are grouped in Misdemeanor Level I, misdemeanants with one to four prior convictions are grouped in Misdemeanor Level II, and misdemeanants with five or more prior convictions are grouped in Misdemeanor Level III. See *G.S. §15A-1340.21*.
4. Proof of prior convictions is the same as that required for felons. See *G.S. §15A-1340.21*.
5. Sentence dispositions are prescribed for each combination of Misdemeanor Class and Prior Conviction Level as shown in Figure B. Dispositions are Active Punishments "A", Intermediate Punishments "I", and Community Punishments "C". See *G.S. §15A-1340.23(c)*.

6. A sentence range is prescribed for each combination of Misdemeanor Offense Class and Prior Conviction Level. The judge may impose any length within the range, and the offender must serve that length, less up to four days per month for "Earned Time". The misdemeanor sentence ranges are shown in **Figure B**. See *G.S. §15A-1340.23(c) and §15A-1340.20(d)*.
7. Earned time for misdemeanants may be awarded by the Department of Correction or the custodian of a local confinement facility pursuant to rules adopted in accordance with law. No more than four days of earned time may be credited per month of incarceration. See *G.S. §15A-1340.20(d)*.
8. Consecutive sentences are permitted if the most serious offense is a Class 1 or Class 2 misdemeanor, but the total sentence imposed cannot exceed double the longest sentence allowed for the most serious offense. See *G.S. §15A-1340.22*.
9. A maximum fine of \$200 is authorized for a Class 3 Misdemeanor and a maximum fine of \$1,000 is authorized for a Class 2 Misdemeanor. For Class 1 Misdemeanors, the amount of the fine is in the discretion of the court. See *G.S. §15A-1340.23(b)*.
10. Unless the court makes a specific finding that a longer or shorter term of probation is necessary, the court must impose no less than 6 months and no more than 18 months for a Community Punishment, and no less than 12 months and no more than 24 months for an Intermediate Punishment. See *G.S. §15A-1343.2(d)*.
11. The new misdemeanor sentencing laws do not apply to Driving While Impaired offenses.
12. Counties are responsible for sentenced misdemeanants who receive a total active sentence of 90 days or less. The State is responsible for all other misdemeanants. See *G.S. §15A-1352*.

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**EXAMPLES:** In accordance with this section, a judge sentencing an offender with no prior convictions (Prior Conviction Level I) and convicted of a Class 1 misdemeanor, may select any sentence from 1 to 45 days but must suspend the sentence and impose a Community Punishment. If, however, the offender has five or more prior convictions (Prior Conviction Level III), the judge may impose any sentence from 1 to 120 days and has the option of activating the sentence or suspending the sentence and imposing either an Intermediate or Community Disposition. If the offender is being sentenced for multiple misdemeanor convictions, the judge may impose consecutive sentences, but the total sentence may not exceed 240 days (double the longest sentence permitted for a single conviction). If activated, the offender must serve the entire term less up to 4 days per month for earned time credits.

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### III. OTHER SENTENCING PROVISIONS

1. **Death and Life Sentences:** Class A offenses are punishable by death or life imprisonment consistent with current law. However, parole eligibility for life sentences is increased from 20 to 25 years and the judge must instruct the jury that a life sentence includes parole eligibility. See *G.S. §15A-2002*.
2. **Committed Youthful Offenders:** Committed Youthful Offender Status is eliminated.
3. **Sentencing of Habitual Felons:** Habitual felon status is maintained but is made a Class D felony. No more than one of the three prior convictions necessary to establish habitual felon status can be for a Class H, I, or J felony. Furthermore, prior felony convictions used to establish habitual felon status cannot be used in the calculation of the Prior Record Level. See *G.S. §14-7*.
4. **Appellate Review:** Both the defendant and the state may appeal if the sentence results from an incorrect finding of the defendant's prior record level or contains a sentence disposition or sentence length not authorized by the structured sentencing law. The defense may appeal whether a sentence imposed outside the presumptive range (within the aggravated range) is supported by the evidence. The state may appeal whether a finding of "extraordinary mitigation" is supported by the evidence or is sufficient as a matter of law. See *G.S. §15A-1415(b), §15A-1441, §15A-1444, and §15A-1445*.
5. **Parole:** Parole is eliminated for all offenses except First Degree Murder and Driving While Impaired. The Parole Commission is renamed the Post-Release Supervision and Parole Commission. See *G.S. §15A-1371 and §15A-1372*.
6. **Probation Caseload Goals:** Subject to the availability of funds, by July 1, 1998, the average caseload size for probation officers supervising offenders receiving Community Punishments should not exceed ninety, and the average caseload size for probation officers supervising offenders receiving Intermediate Punishments should not exceed sixty. See *G.S. 15A-1343.2(c)*.
7. **Offense Changes:** The General Assembly repealed a number of antiquated and seldom charged misdemeanor offenses and also repealed offenses specifically relating to attempt, conspiracy and solicitation (these offenses are now covered by general rules as prescribed in *G.S. §14-2.4, §14-2.5 and §14-2.6*). Furthermore the General Assembly raised the threshold amount for felony possession of cocaine to one gram or more.

## **IV. STATE-COUNTY CRIMINAL JUSTICE PARTNERSHIP ACT**

The General Assembly enacted a State-County Criminal Justice Partnership Act (Chapter 534 of the 1993 Session Laws) to encourage counties to establish community-based corrections programs which address local criminal justice problems. This Act is one component of the Commission's overall community corrections strategy which also includes expansion of community corrections programs administered by state agencies. Under the Act, counties or groups of counties may elect to apply for a grant from the Department of Correction. The following steps are required in the grant application process:

- 1) The board of county commissioners from a participating county or from a group of participating counties form a County Criminal Justice Partnership Advisory Board to develop a local community-based corrections plan. See Section A.
- 2) The board of county commissioners approves the local community-based corrections plan, and submits it to the Department of Correction with a grant application for funding. See Section B.
- 3) The State Criminal Justice Partnership Advisory Board and the Department of Correction review the local community-based corrections plan and the grant application. The Advisory Board makes funding recommendations to the Secretary of the Department of Correction. See Section C.
- 4) The Secretary of the Department of Correction enters into a contractual agreement with the county board(s) to administer and/or operate the community-based corrections program. See Section D.
- 5) The county board of commissioners authorizes the county to operate the community-based corrections program or to contract with a non-profit agency to operate the program. The county board of commissioners may request continuation funding annually by submitting an updated community-based corrections plan, application, and monitoring reports. See Section E.

### **A. COUNTY CRIMINAL JUSTICE ADVISORY BOARD**

**Within 60 days of notification of the availability of funds, a county or group of counties may apply for funding by: (a) voting to apply; and (b) appointing a County Criminal Justice Partnership Advisory Board.**

The duties of the County Criminal Justice Advisory Board are to develop a comprehensive community-based corrections plan; submit the plan to the Board of County Commissioners; review and revise the plan on an annual basis; and monitor and evaluate the plan. The purpose of the planning process is to examine the local criminal justice system, identify problem areas, identify offenders needs, propose strategies for improving the system, devise methods for

integrating the new community-based programs into the system, develop criteria for monitoring and evaluating the impact of the proposed community-based program, and improve coordination between local and state community-based programs. The community-based corrections plan should include detailed information concerning local court processing practices, sentencing practices, the use of jail resources, and the use of existing community corrections resources. The plan will include a detailed description of the need for the proposed community-based corrections program; the targeted offender population; expected changes in local policies and procedures to accommodate the proposed program; how the program will be integrated into the local criminal justice system; and the criteria for evaluating the impact of the plan.

The Act can be used for restrictive sanctions and treatment programs for adult offenders who are: (a) appropriate for release from jail prior to trial under the supervision of a pretrial monitoring program; (b) convicted and received an Intermediate Punishment in the community; or (c) serving a term of post-release supervision after completing an active sentence of imprisonment.

Technical assistance to counties to complete the community-based corrections plan may be provided directly by the Department of Correction or through a special allowance from the Department of Correction. Counties receiving technical assistance allowances must provide twenty-five percent of the amount needed for technical assistance.

*See G.S. §143B-272.4, §143B-272.9, §143B-272.11, and §143B-272.12.*

## **B. COUNTY BOARD OF COMMISSIONERS**

**The County Board of Commissioners: (a) reviews and approves the community-based corrections plan and grant application; and (b) submits them to the Department of Correction.**

The County Advisory Board has up to twelve months after it is formed to submit a community-based corrections plan and grant application to the board of county commissioners. The board of county commissioners will review the community-based corrections plan and upon approval will submit an application for funding. Among other things, the application should include a description of the local problem, a description of the proposed program, a description of the program's goals and objectives, a description of the operation of the program, a description of the monitoring criteria, and a description of the evaluation strategy.

The Act can be used to fund a variety of restrictive sanctions and treatment programs including: (1) residential facilities, day reporting centers, restitution centers, substance abuse services, and employment services for offenders sentenced to Intermediate Punishments; (2) pretrial monitoring services and pretrial electronic surveillance programs for pretrial offenders who can be released from jail; and (3) aftercare services for offenders serving a term of post-release supervision after completing an active sentence of imprisonment.

*See G.S. §143B-272.11, §143B-272.13 and §143B-272.14.*

### **C. STATE CRIMINAL JUSTICE PARTNERSHIP ADVISORY BOARD**

**The State Criminal Justice Partnership Advisory Board and the Department of Correction review the community-based corrections plan and the grant application. The State Criminal Justice Advisory Board makes recommendations for funding to the Secretary of the Department of Correction.**

The duties of the State Criminal Justice Partnership Advisory Board are to recommend community corrections program priorities; establish an annual plan and application process; review applications from counties; coordinate community-based programs; make recommendations to the Secretary of the Department of Correction for funding; review program standards and evaluate categories of programs.

*See G.S. §143B-272.7.*

### **D. SECRETARY OF THE DEPARTMENT OF CORRECTION**

**The Secretary of the Department of Correction approves and awards the grant to the county board of commissioners.**

Based on recommendations from the State Criminal Justice Partnership Advisory Board, the Secretary of the Department of Correction awards the grant and enters into a contractual relationship with the county board of commissioners to administer a community-based corrections program.

The amount available for counties is based on the amount of funds appropriated by the Legislature. Twenty percent of the total funds will be available to counties at the discretion of the Secretary of the Department of Correction to be used to encourage multi-county projects; to encourage cooperation and collaboration among existing services; to encourage renovation of existing facilities; and to encourage innovative substance abuse programs. Remaining funds will be available to counties based on a set funding formula as follows; twenty percent based on an equal fixed dollar amount for each county; sixty percent based on the county's share of the state population; and twenty percent based on the county's admission rate to supervised probation.

*See G.S. §143B-272.8 and §143B-272.15.*

### **E. COUNTY BOARD OF COMMISSIONERS**

**When the county board of commissioners receives a grant award from the Department of Correction, the community-based corrections program may be initiated.**

The county board of commissioners receives a grant award from the Secretary of the Department of Correction. The board authorizes the county or a non-profit agency to operate the program. The County Criminal Justice Partnership Advisory Board monitors the impact of the program and prepares a written report, updates the community-based corrections plan



annually, and recommends continuation funding to the board of county commissioners. The county board of commissioners may submit a request for continuation funding annually by submitting an updated community-based corrections plan, an application, and monitoring reports.

*See G.S. §143B-272.16 and §143B-272.18.*

#### **F. EFFECTIVE DATE OF ACT**

**The Department of Correction is authorized to use existing funds to begin administering the Act on January 1, 1994. Grants to counties will be effective on July 1, 1995; however, the General Assembly has not yet appropriated funds for this Act. An annual allocation of \$13 million has been recommended.**

## V. IMPACT OF RECOMMENDATIONS

As part of its statutory mandate, the Sentencing and Policy Advisory Commission developed a correctional population simulation model to project future offender populations in prisons, jails, and community-based programs. The ability to generate these projections was central to the Commission's goal of balancing sentencing policies with correctional resources.

With the enactment of the new sentencing laws, computer simulations were generated to estimate the need for additional state and local correctional resources. The new felony and misdemeanor sentencing laws will change the number and type of offenders sentenced to prison, jail, intermediate programs, and community programs. Furthermore, the new sentencing laws will also change the average length of time actually served. It is estimated that no new prison construction will be required over the next few years to implement the new laws beyond that which is now authorized. However, additional resources will be needed to handle expected increases in the number of offenders sentenced to intermediate and community programs.

### A. IMPACT ON ACTIVE SENTENCE RATES

The new sentencing laws are expected to change the percentage and type of offenders receiving active sentences. The new laws prioritize active resources (prison, jail and local confinement facilities) for violent or career offenders; prioritize community resources for non-violent first time offenders; and prioritize intermediate resources for all others. As a consequence of this policy, fewer offenders are expected to receive Active Punishments, more are expected to receive Intermediate Punishments, and less are expected to receive Community Punishments.

As shown in Table 8, imprisonment rates are projected to increase for offenders convicted of the most serious crime classes (Classes A through G) and decrease for offenders convicted of the least serious crime classes (Classes H and I). As further shown in Table 9, imprisonment rates are expected to increase for offenders with more serious prior criminal histories (Prior Record Levels IV, V, and VI) and decrease for offenders with less serious criminal histories (Prior Record Levels I, II, and III).

Table 10 summarizes changes in the rate of Active Punishments, Intermediate Punishments, and Community Punishments for both felons and misdemeanors.

### B. IMPACT ON AVERAGE TIME SERVED

Although fewer offenders will receive active sentences under the new felony and misdemeanor sentencing laws, most who do will, on average, serve longer terms. Table 11 shows the estimated average time served for each Offense Class for all offenders receiving an active sentence when initially sentenced. Also shown for comparison purposes is the average time served under the Fair Sentencing Act for offenders released from the Department of Correction during 1992. Estimated time served is expected to increase for Offense Classes A through E, H and I; decrease slightly for Class G; and remain about the same for Class F.

**TABLE 8**

**PERCENT RECEIVING ACTIVE SENTENCE BY FELONY OFFENSE CLASS**

OFFENSE CLASS	CURRENT PRACTICE: PERCENT ACTIVE	ESTIMATED UNDER STRUCTURED SENTENCING: PERCENT ACTIVE*
A	100%	100%
B	98%	100%
C	84%	100%
D	93%	100%
E	52%	65%
F	47%	51%
G	65%	66%
H	45%	30%
I	31%	10%
<b>TOTAL</b>	<b>47%</b>	<b>36%</b>

**TABLE 9**

**PERCENT RECEIVING ACTIVE SENTENCE BY FELONY PRIOR RECORD LEVEL**

PRIOR RECORD LEVEL	CURRENT PRACTICE: PERCENT ACTIVE	ESTIMATED UNDER STRUCTURED SENTENCING: PERCENT ACTIVE*
I	28%	16%
II	36%	15%
III	61%	49%
IV	73%	75%
V	71%	76%
VI	76%	88%
<b>TOTAL</b>	<b>47%</b>	<b>36%</b>

\* - Does not account for possible "extraordinary mitigation".

**TABLE 10**

**ESTIMATED CHANGES IN RATES OF ACTIVE, INTERMEDIATE AND COMMUNITY PUNISHMENTS**

Disposition	FELONIES		MISDEMEANORS	
	Current	New Law	Current	New Law
Active	46.7%	35.7%	13.1%	9.9%
Intermediate	27.6%	45.9%	2.4%	4.2%
Community	25.7%	18.4%	84.5%	85.9%

**TABLE 11**

**AVERAGE ESTIMATED TIME SERVED BY OFFENSE CLASS ASSUMING INITIAL ACTIVE SENTENCE**

*(TIME SERVED IN MONTHS)*

COMMISSION OFFENSE CLASSES		
OFFENSE CLASS	AVERAGE TIME SERVED IN 1992*	ESTIMATED AVERAGE TIME SERVED UNDER STRUCTURED SENTENCING
A	<i>Death or Life with parole eligibility after 20 years</i>	<i>Death or Life with parole eligibility after 25 years</i>
B	92 months	172 months
C	55 months	104 months
D	73 months	83 months
E	25 months	38 months
F	23 months	23 months
G	22 months	19 months
H	12 months	13 months
I	7 months	8 months

\* Based on offenders released from the Department of Correction during 1992.

**TABLE 12**

**PROJECTED SENTENCED INMATE POPULATIONS**

End of Fiscal Year	Sentenced Inmates Held by <u>State</u>	Sentenced Inmates Held by <u>Counties</u>	Total Sentenced Inmates
94/95	21,963	3,006	24,969
95/96	24,069	3,107	27,176
96/97	25,200	3,243	28,443
97/98	25,502	3,321	28,823
98/99	26,502	3,421	29,923

**TABLE 13**

**PROJECTED SENTENCED INMATE CAPACITY**

End of Fiscal Year	Estimated State Capacity for Sentenced Inmates	Estimated County Capacity for Sentenced Inmates	Estimated Total Capacity for Sentenced Inmates
94/95	23,504	3,022	26,526
95/96	24,582	3,286	27,868
96/97	26,248	3,286	29,534
97/98	26,248	3,286	29,534
98/99	26,248	3,286	29,534

**NOTES:**

- Counties are responsible for misdemeanants sentenced to 90 days or less. State is responsible for all others.
- Capacity estimates are based on information provided by the DOC to the General Assembly Fiscal Research Division during August 1993. These estimates may change over time.
- County estimates are based on information provided by Jails and Detention and based on a telephone survey of selected counties conducted during August 1993. These estimates may change over time.
- County estimates assume that 25.2% of the total available capacity will be allocated for sentenced inmates. This figure is based on historical practice.
- County estimates show total statewide available space. In most instances, all space cannot be fully utilized due to the need to sometimes segregate inmates by sex, medical condition, or behavior. Furthermore, at any given time, some counties may have excess space and some counties may have insufficient space.

### **C. IMPACT ON PRISON AND JAIL POPULATIONS**

The new sentencing laws are not expected to require additional prison construction over the next few years beyond that which was authorized during the 1993 Regular Session of the General Assembly. **Table 12** shows the projected prison and jail sentenced inmate populations from Fiscal Year 94/95 through Fiscal Year 98/99. By comparison, **Table 13** shows the projected capacity for sentenced inmates in prison and jails over the same time period.

The new sentencing laws were designed to maintain the current share of responsibility for misdemeanants between the state and the counties. At present, about sixty to sixty-five percent of all sentenced misdemeanants are housed in county facilities. Under the new sentencing laws, it is projected that from sixty to sixty-five percent of all sentenced misdemeanants will continue to be housed in county facilities. However, the total number of misdemeanants held in both state and county facilities is projected to increase due to expected future growth in the number of misdemeanants arrested and convicted.

### **D. IMPACT ON ADMISSIONS TO INTERMEDIATE/COMMUNITY PROGRAMS**

The new sentencing laws coupled with expected future growth in felony and misdemeanor arrests and convictions are expected to increase the number of offenders receiving Intermediate and Community Punishments. **Table 14** shows expected increases in the number of combined entries into Intermediate Punishments and supervised Community Punishments over the next ten years. These increases will require additional resources for the Department of Correction and may impact on other state agencies.

TABLE 14

PROJECTED ADDITIONAL ADMISSIONS TO INTERMEDIATE AND  
COMMUNITY PUNISHMENT PROGRAMS

*OVER AND ABOVE FISCAL YEAR 93/94*

End of Fiscal Year	Total Additional Community and Intermediate Admissions	Additional Intermediate Admissions Only	Additional Community Admissions Only
94/95	4,293	3,576	717
95/96	8,489	7,188	1,301
96/97	10,121	7,680	2,441
97/98	11,803	8,188	3,615
98/99	13,535	8,701	4,825

## APPENDIX I

### FELONY OFFENSE CLASSIFICATION

ADOPTED CLASS	OFFENSE
A <sup>1</sup>	* Murder in the 1st degree. 14-17
B	* 1st degree rape. 14-27.2
B	* 1st degree sexual offense. 14-27.4
B <sup>1</sup>	* Murder in the 2nd degree. 14-17
B <sup>1</sup>	* Killing adversary in duel. 14-20
C	* Patient abuse and neglect, intentional conduct proximately causes death. 14-32.2(b)(1)
C	* Adulterated or misbranded food, drugs, etc.; intent to extort. 14-34.4(b)
C	* Adulterated or misbranded food, drugs, etc.; Intent to cause serious injury or death. 14-34.4(a)
C	* 2nd degree rape. 14-27.3
C	* 2nd degree sexual offense. 14-27.5
C	* Malicious castration. 14-28
C	* Kidnapping in the 1st degree. 14-39
C	* Distribution of certain food at Halloween and all other times prohibited (poisonous chemical/foreign substance). 14-401.11(b)(3)
C	* Assault with deadly weapon with intent to kill inflicting serious injury. 14-32(a)
C	* Assault with deadly weapon with intent to kill inflicting serious injury on handicapped person. 14-32.1(b)
C	* Malicious maiming. 14-30
C	* Enforcement procedures: criminal penalties (Oil pollution and hazardous substance control). 143-215.88B(f1)
C	* Enforcement procedures: criminal penalties (Air pollution control). 143-215.114B(h1)
C	* Contaminating a public water system. 14-159.1
D	* Sentencing of habitual felons. 14-7.6

<sup>1</sup>The criteria were not applied for classifying the homicide offenses.



ADOPTED CLASS	OFFENSE
D	* Malicious damage of occupied property by use of explosive or incendiary. 14-49.1
D	* Burglary in the 1st degree. 14-51
D	* Arson in the 1st degree. 14-58
D	* Burning of mobile home, manufactured-type house or recreational trailer home. 14-58.2
D	* Breaking out of dwelling house burglary. 14-53
D	* Robbery with firearms or other dangerous weapons. 14-87
D	* Malicious use of explosive or incendiary. 14-49(a)
D	* Burglary with explosives. 14-57
D	* Train robbery. 14-88
E	* Kidnapping in the 2nd degree. 14-39
E <sup>1</sup>	* Selling or delivering a controlled substance by a person 18 or over to a person under 16. 90-95(c)(5)
E <sup>1</sup>	* Manufacture, sell or deliver, or possess with intent to manufacture, sell or deliver a controlled substance within 300 feet of an elementary or secondary school. 90-95(c)(8)
E <sup>2</sup>	* Voluntary manslaughter. 14-18
E	* Maliciously assaulting in a secret manner. 14-31
E	* Intercourse and sexual offense with certain victims (Parent, Custodian). 14-27.7
E	* Assault with deadly weapon with intent to kill on handicapped person. 14-32.1(d)
E	* Assault with deadly weapon inflicting serious injury on handicapped person. 14-32.1(c)
E	* Patient abuse and neglect, culpably negligent conduct proximately causes death. 14-32.2(b)(2)
E	* 1st degree sexual exploitation of a minor. 14-190.16
E	* Castration or other maiming without malice aforethought. 14-29
E	* Malicious throwing of corrosive acid or alkali. 14-30.1

<sup>1</sup>The criteria were not applied for classifying the drug offenses.

<sup>2</sup>The criteria were not applied for classifying the homicide offenses.

ADOPTED CLASS	OFFENSE
E	* Assault with deadly weapon inflicting serious injury. 14-32(b)
E	* Assault with deadly weapon with intent to kill. 14-32(c)
E	* Discharging certain barreled weapons or a firearm into occupied property. 14-34.1
E	* Child abuse inflicting serious injury. 14-318.4(a)
E	* Child abuse - prostitution. 14-318.4(a1)
E	* Child abuse - sexual act. 14-318.4(a2)
F	* Burning of certain public buildings. 14-59
F	* Burning of schoolhouses or buildings of educational institutions. 14-60
F	* Burning of certain bridges and buildings. 14-61
F	* Burning of churches and certain other buildings. 14-62
F	* Assault inflicting serious bodily injury on executive or legislative officer. 14-16.6(c)
F	* Embezzlement of state property by public officers and employees. 14-91
F	* Rebellion against the state. 14-8
F	* Assault with a deadly weapon on executive or legislative officer. 14-16.6(b)
F	* Abduction of children. 14-41
F	* Incest between certain near relatives. 14-178
F	* Promoting prostitution of a minor. 14-190.18
F	* Breaking or entering jails with intent to injure prisoners. 14-221
F	* False testimony as to any material fact by any person examined under the Racketeer Influenced and Corrupt Organizations Chapter. 75D-7
F	* Conveying messages and weapons to or trading with convicts and other prisoners resulting in murder, assault or escape. 14-258
F <sup>1</sup>	* Involuntary manslaughter. 14-18
F	* Patient abuse and neglect, conduct proximately causes serious bodily injury. 14-32.2(b)(3)
F	* Embezzlement of funds by public officers and trustees. 14-92

<sup>1</sup>The criteria were not applied for classifying the homicide offenses.

ADOPTED CLASS	OFFENSE
F	* Infliction of serious bodily injury by operation of an aircraft while impaired. 63-28
F	* Extortion. 14-118.4
F	* 2nd degree sexual exploitation of a minor. 14-190.17
F	* Participating in prostitution of a minor. 14-190.19
F	* Taking indecent liberties with children. 14-202.1
F	* Perjury. 14-209
F	* Bribery of jurors. 14-220
F	* Possession of dangerous weapon in prison resulting in bodily injury or escape. 14-258.2
F	* Dumping of toxic substances. 14-284.2
F	* Inciting to riot (property damage greater than \$1500 or serious bodily injury). 14-288.2(e)
F	* Manufacturing, trafficking in, transporting, or possessing poisonous alcoholic beverages. 14-329(b)
F	* Distribution of certain food at Halloween and all other times prohibited (any controlled substance). 14-401.11(b)(2)
F	* Manufacture, assembly, possession, storage, transportation, sale, purchase, delivery, or acquisition of weapon of mass death and destruction. 14-288.8
F	* Aggravated assault/assault and battery on handicapped person. 14-32.1(e)
F	* Assault with a firearm or other deadly weapon upon law-enforcement officer, fireman, or EMS personnel. 14-34.2
F	* Involuntary servitude. 14-43.2
F	* Embezzlement of taxes by officers. 14-99
F	* Penalties (Boat Safety Act). 75A-18
F	* Navigable waters; certain practices regulated (Navigation). 76-40
F	* Bribing of legislators. 120-86
F	* Bribery of officials. 14-217(a)
F	* Offering bribes. 14-218
F	* Taking of hostage, etc., by prisoner. 14-258.3
F	* Assault on emergency personnel with a dangerous weapon or substance. 14-288.9
F	* Prohibited disposal of medical waste. 143-214.2A

ADOPTED CLASS	OFFENSE
F	* Felonious restraint. 14-43.3
F	* Financial interest of officers in sources of supply; acceptance of bribes (Secretary of Administration). 143-63
G	* Burglary in the 2nd degree. 14-51
G	* Arson in the 2nd degree. 14-58
G	* Malicious use of explosive or incendiary. 14-49(b)
G	* Common law robbery. 14-87.1
G <sup>1</sup>	* Felony death by vehicle (impaired). 20-141.4
H	* Burning of building or structure in process of construction. 14-62.1
H	* Misapplication of bank funds by officer or employee. 53-129
H	* Malfeasance of corporation officers and agents. 14-254
H	* Furnishing poison, controlled substances, deadly weapons, cartridges, ammunition or alcoholic beverages to inmates of charitable, mental or penal institutions or local confinement facilities. 14-258.1(a)
H	* Distribution of certain food at Halloween and all other times prohibited (greater than mild physical discomfort without any lasting effect). 14-401.11(b)(1)b
H	* Combinations in restraint of trade illegal. 75-1
H	* Activities aimed at overthrow of government; Use of public buildings (second offense). 14-11
H	* Certain subversive activities made unlawful. 14-12.1
H	* Using drugs or instruments to destroy unborn child. 14-44
H	* Breaking or entering buildings. 14-54
H	* Burning of boats and barges. 14-63
H	* Burning of ginhouses and tobacco houses. 14-64
H	* Fraudulently setting fire to dwelling houses. 14-65
H	* Burning of personal property. 14-66
H	* Burning other buildings. 14-67.1

<sup>1</sup>The criteria were not applied for classifying the Homicide offenses.

ADOPTED CLASS	OFFENSE
H	* Larceny of property worth more than \$1,000. 14-72
H	* Receiving stolen goods (14-71) or possessing stolen goods (14-71.1) worth more than \$1,000. 14-72
H	* Larceny by servants and other employees. 14-74
H	* Larceny of chose in action. 14-75
H	* Larceny of secret technical processes. 14-75.1
H	* Larceny of wood and other property from land (with felonious intent). 14-80
H	* Larceny of horses, mules, swine or cattle. 14-81(a)
H	* Pursuing livestock with intent to steal. 14-85
H	* Embezzlement of property received by virtue of office or employment. 14-90
H	* Embezzlement by officers of railroad companies. 14-94
H	* Embezzlement by surviving partner. 14-98
H	* Taking of aircraft made crime of larceny (intent to deprive). 63-25
H	* Penalties (knowingly acquire human skeletal remains removed from unmarked burials in North Carolina). 70-40
H	* Government contracts; violations of G.S. 75-1 and 75-2. 133-24
H	* Falsifying highway inspection reports. 136-13.2
H	* Obtaining property by false pretenses. 14-100
H	* Conversion by bailee, lessee, tenant or attorney-in-fact for more than \$400.00. 14-168.1
H	* Altering court documents or entering unauthorized judgments. 14-221.2
H	* Assisting a prisoner in attempting to escape and committing an assault resulting in bodily injury or effecting the escape. 14-258.2(b)
H	* Manufacturing, trafficking in, transporting, or possessing poisonous alcoholic beverages. 14-329(a)
H	* Altering the brands of and misbranding another's livestock (Larceny). 14-367
H	* Theft or destruction of property of public libraries, museums, etc. worth more than \$50.00. 14-398
H	* Accessing computers. 14-454
H	* Damaging computers and related materials. 14-455
H	* Extortion (maliciously threatens to commit an act described in G.S. 14-455). 14-457

ADOPTED CLASS	OFFENSE
H	* Criminal penalties (fraud under Securities Act). 78A-57
H	* Criminal penalties (fraudulent practices of investment advisors). 78C-39
H <sup>1</sup>	* Manufacture, sell, or deliver, or possess with intent to manufacture, sell, or deliver a Schedule I or II Controlled Substance. 90-95(b)(1)
H	* Penalties. 90-210.70
H	* Denial, revocation, and suspension of license; penalties for violations. 106-145.6
H	* Embezzlement by insurance agents, brokers, or administrators. 58-2-162
H	* Duty to report insurer impairment; violations; penalties. 58-30-12
H	* Conviction; punishment (violation of 133-24). 133-25
H	* Malfeasance of officers and employees of Department of Transportation, members of Board of Transportation, contractors, and others. 136-13
H	* Examiner making false report. 53-124
H	* Making false entries in banking accounts; misrepresenting assets and liabilities of banks. 53-130
H	* Damaging dipping vats a felony. 106-363
H	* Unauthorized use of an aircraft. 14-72.2
H	* Larceny of ginseng. 14-79
H	* Protection of patient property (Medical Assistance Program; willfully embezzle, convert, appropriate). 108A-60
H	* Obtaining signatures by false pretenses. 14-101
H	* Selling of certain forged securities. 14-121
H	* Forgery of deeds, wills and certain other instruments. 14-122
H	* Harassment of and communication with jurors. 14-225.2(a)(1)
H	* Riot (property damage greater than \$1500 or serious bodily injury). 14-288.2(c)
H	* Training on certain weapons for use in a civil disorder. 14-288.20(b)
H	* Looting. 14-288.6(b)
H	* Possession of firearms, etc., by felon prohibited. 14-415.1
H	* Receiving or transferring stolen vehicles. 20-106

<sup>1</sup>The criteria were not applied for classifying the drug offenses.

ADOPTED CLASS	OFFENSE
H	* Duty to stop in event of accident or collision. 20-166(a)
H	* Enforcement procedures: criminal penalties (Air pollution control). 143-215.114B(g)
H	* Enforcement procedures: criminal penalties (Oil pollution and hazardous substance control). 143-215.88B(e)
H	* Willful failure to pay group insurance premiums; notice to persons insured; penalty; restitution; examination of insurance transactions. 58-50-40
H	* Compensation for placing or arranging placement of child for adoption prohibited (second offense). 48-37
H	* Embezzlement of C.O.D. shipments. 62-273
H	* Embezzlement by treasurers of charitable and religious organizations. 14-93
H	* Appropriation of partnership funds by partner to personal use. 14-97
H	* Intimidating or interfering with witnesses. 14-226
H	* Conveying messages and weapons to or trading with convicts and other prisoners. 14-258
H	* Possession of dangerous weapon in prison. 14-258.2
I	* Counterfeiting coin and uttering coin that is counterfeit. 14-13
I	* Possessing tools for counterfeiting. 14-14
I	* Assault on executive or legislative officer. 14-16.6(a)
I	* Abduction of married women. 14-43
I	* Concealing birth of child. 14-46
I	* Preparation to commit burglary or other housebreakings. 14-55
I	* Breaking into or forcibly opening coin- or currency-operated machines. 14-56.1
I	* Breaking into paper currency machines. 14-56.3
I	* Safecracking. 14-89.1
I	* False taking of debtor's oath. 23-43
I	* False swearing by person responding to investigation of trusts and monopolies. 75-12
I	* Fraudulent misrepresentation (Food Stamp Program in amount more than \$2,000) as if Larceny. 108A-53
I	* Perjury; punishment (Public works). 133-31
I	* Crime against nature. 14-177

ADOPTED CLASS	OFFENSE
I	* Bigamy. 14-183
I	* Dissemination to minors under the age of 13 years. 14-190.8
I	* Subornation of perjury. 14-210
I	* Perjury before legislative committees. 14-211
I	* Perjury in court-martial proceedings. 14-212
I	* Making of false report by bank examiners; Accepting bribes. 14-233
I	* Willful injury to property of railroads. 14-278
I	* Displaying false lights on seashore. 14-282
I	* Beach bingo (with a prize of \$50.00 or greater). 14-309.14
I	* Bingo. 14-309.5(b)
I	* False certification that bids are submitted without collusion. 143-54
I	* Bribery of players, managers, coaches, referees, umpires or officials. 14-373
I	* Acceptance of bribes by players, managers, coaches, referees, umpires or officials. 14-374
I	* Intentional losing of athletic contest or limiting margin of victory or defeat. 14-377
I	* Inflicting or assisting in infliction of self injury to prisoner resulting in incapacity to perform assigned duties. 148-46.1
I	* Smoke screens. 20-136
I	* Making false affidavit perjury (Motor Vehicle Safety and Financial Responsibility Act of 1953). 20-279.31(c1)
I	* Making false affidavits perjury (Uniform Driver's License Act). 20-31
I	* Making false affidavit perjury (Anti-theft Provisions, Motor Vehicle Act of 1937). 20-112
I	* False statement under oath in any verified report/declaration required by law from fraternal benefit societies, perjury. 58-24-180(e)
I	* Recording of live concerts or recorded sounds and distribution, etc., of such recordings unlawful in certain circumstances (at least 1000 unauthorized sound recordings or 100 unauthorized audio visual recordings; second offense). 14-433
I	* Retailing, etc., of certain recorded devices unlawful (1000 unauthorized sound recordings/100 unauthorized audio visual recordings; second offense). 14-434
I	* Recorded devices to show true name and address of manufacturer (1000 unauthorized sound recordings/100 unauthorized audio visual recordings; second offense). 14-435
I	* Filing of application for compensation award; contents (more than \$400.00). 15B-7



ADOPTED CLASS	OFFENSE
I	* Placing burning/flaming cross on property of another or on public street or highway. 14-12.12(b)
I	* Placing exhibit with intention of intimidating, etc., another. 14-12.13
I	* Placing exhibit while wearing mask, hood, or other disguise. 14-12.14
I	* Using drugs or instruments to produce miscarriage or injure pregnant woman. 14-45
I	* Breaking or entering into/out of railroad cars, motor vehicles, trailers, etc. 14-56
I	* Making a false report concerning destructive device. 14-69.1
I	* Perpetrating hoax by use of false bomb or other device. 14-69.2
I	* Altering or forging certificate of title, registration card or application. 20-71
I	* Issuing false bills or violating Chapter made felony. 21-42
I	* Registration required of time share projects; real estate salesmen license required. 93A-40
I	* Registrar required; criminal penalties; project broker. 93A-58
I	* Fraudulent misrepresentation (AFDC in amount of more than \$400.00). 108A-39
I	* Medical assistance provider fraud. 108A-63
I	* Medical assistance recipient fraud (value of assistance is more than \$400.00). 108A-64
I	* Criminal violation of Article 9 (transporting hazardous waste to a facility which does not have a permit). 130A-26.1
I	* Forgery of notes, checks, and other securities. 14-119
I	* Uttering forged paper or instrument containing a forged endorsement. 14-120
I	* Forging names to petitions and uttering forged petitions. 14-123
I	* Forging certificate of corporate stock and uttering forged certificates. 14-124
I	* Forgery of bank notes and other instruments by connecting genuine parts. 14-125
I	* Intentionally setting fire to grass and brushlands and woodlands. 14-136
I	* Burning or otherwise destroying crops in the field. 14-141
I	* Desecrating, plowing over or covering up graves. 14-149
I	* Poisoning livestock. 14-163
I	* Employing or permitting minor to assist in obscenity offense. 14-190.6

ADOPTED CLASS	OFFENSE
I	* Dissemination to minors under the age of 16 years. 14-190.7
I	* Altering, destroying, or stealing evidence of criminal conduct. 14-221.1
I	* Failure of certain railroad officers to account with successors. 14-253
I	* Harboring or aiding certain persons charged or convicted of a felony. 14-259
I	* Abandonment of child or children for six months. 14-322.1
I	* Fraudulent misrepresentation (Housing Assistance for more than \$400.00). 157-29.1
I	* Making false affidavit perjury (Elections). 163-90.3
I	* Unlawful manufacturing of alcoholic beverage (second offense). 18B-307(c)
I	* Fraud in connection with rental of motor vehicles. 20-106.1
I	* Altering or changing engine or other numbers (intent to conceal). 20-109(b)
I	* Penalty for felony (Motor Vehicle Act of 1937). 20-177
I	* Criminal penalties (Securities Act). 78A-57
I	* Criminal penalties (Investment Advisors). 78C-39
I	* Criminal penalties (Commodities). 78D-24
I <sup>1</sup>	* Manufacture, sell, or deliver, or possess with intent to manufacture, sell or deliver, a Schedule III, IV, V, or VI Controlled Substance. 90-95(b)(2)
I <sup>1</sup>	* Possession of a Schedule I Controlled Substance. 90-95(d)(1)
I <sup>1</sup>	* Possession of more than four dosage units of Hydromorphone. 90-95(d)(2)
I <sup>1</sup>	* Possession of more than 100 dosage units of any controlled substance. 90-95(d)(2)
I <sup>1</sup>	* Possession of one gram or more of Cocaine, or any amount of Phencyclidine or derivative thereof. 90-95(d)(2)
I <sup>1</sup>	* Possession of more than 1.5 ounces of Marijuana or .15 ounces of Hashish. 90-95(d)(4)
I <sup>1</sup>	* Drug offense punishable by not more than two years and offender has been previously convicted of drug offenses. 90-95(e)(3)
I <sup>1</sup>	* Prohibited acts; penalties (Controlled Substance Act). 90-108
I <sup>1</sup>	* Manufacture or delivery of drug paraphernalia (from person over 18 to person under 18). 90-113.23(c)

<sup>1</sup>The criteria were not applied for classifying the drug offenses.

ADOPTED CLASS	OFFENSE
I	* Excise tax on controlled substances. 105-113.107
I	* Violations of Article a felony (Possess controlled substance upon which tax has not been paid). 105-113.110
I	* Taking polluted shellfish at night or with prior conviction forbidden; penalty. 113-209
I	* Certain acts declared felonies (Elections). 163-226.3
I	* Certain acts declared felonies (Elections). 163-275
I	* Criminal punishment (Elections). 163-278.53
I	* False statement to procure benefit of insurance policy or certificate. 58-2-161
I	* Penalties (attempt to evade or defeat tax). 105-236(7)
I	* Violating 58-24-65: Consolidations and mergers of fraternal benefit societies. 58-24-180(d)
I	* Registration by mail (willfully giving false information). 163-72.4
I	* Driver license examiners to accept applications to register voters (willfully giving false information). 163-81
I	* Unlawful to issue licenses for anything of value except prescribed fees. 20-34.1
I	* False certification of a check. 53-131
I	* Receiving deposits in insolvent banks. 53-132
I	* Forging or counterfeiting revenue stamps. 105-113.34
I	* Sale of tubercular animal a felony. 106-350
I	* Issuance of false receipt a felony; punishment. 106-443
I	* Class 1 misdemeanor offense committed because of the victim's race, color, religion, nationality, or country of origin. 14-3(c)
I	* Financial transaction card fraud. 14-113.13(a) and (b) if over \$500.00
I	* Penalties. 10A-12C
I	* Threats against executive or legislative officers by mail. 14-16.7(b)
I	* Threats against executive or legislative officers. 14-16.7(a)
I	* Operation of aircraft while impaired (second conviction). 63-27
I	* Penalties (Cemeteries). 65-71
I	* Remedies for violation; criminal penalty (athlete agents). 78C-78

ADOPTED CLASS	OFFENSE
I	* Registrar required; criminal penalties; project broker. 93A-58
I	* Criminal violation of Article 9 (handling hazardous waste without required documents). 130A-26.1
I	* Worthless checks (amount more than \$2,000). 14-107
I	* Forgery of financial transaction card. 14-113.11
I	* Criminal possession of financial transaction card forgery devices. 14-113.14
I	* Criminal factoring of financial transaction card records. 14-113.15A
I	* Criminal receipt of goods and services fraudulently obtained worth more than \$500.00. 14-113.15
I	* Financial transaction card theft. 14-113.9
I	* Interference with animal research (if the animal released has an infectious disease). 14-159.2
I	* Obscene literature and exhibitions. 14-190.1
I	* 3rd degree sexual exploitation of a minor. 14-190.17A
I	* Prison breach and escape from county/municipal confinement facilities/officers by convicted felons. 14-256
I	* Transporting child outside the state with intent to violate custody order. 14-320.1
I	* Animal fights, other than cock fights, and animal baiting (second offense). 14-362.1(d)
I	* Littering in an amount exceeding 500 pounds or 100 cubic feet for commercial purposes. 14-399(e)
I	* Larceny of dogs. 14-81(a1)
I	* Escaping or attempting escape from state prison system. 148-45(b)
I	* Failure to appear (if released in connection with a felony charge or conviction). 15A-543(b)
I	* Sublease and loan assumption arranging regulated. 20-106.2(d)
I	* Altering or changing engine or other numbers (wilful). 20-109(a)
I	* Habitual impaired driving. 20-138.5
I	* Violations of License or Learner's Permit provisions. 20-30(7)
I	* Unlawful change of mileage. 20-343
I	* Criminal offense (unlawful change of mileage). 20-350
I	* Permit from Commissioner of Insurance; penalty for violation; exception. 58-70-1

ADOPTED CLASS	OFFENSE
I	* Maintenance and removal of records and assets. 58-7-50
I	* Bond and trust account required. 66-135
I	* Violations (Credit Repair Services Act). 66-225
I	* Withholding hazardous substance trade secret information. 95-197
I	* Certain vaccine diversions made felony. 130A-431
I	* Enforcement procedures: criminal penalties (Pollution control). 143-215.6B
I	* Sanctions (Insurance holding companies). 58-19-50
I	* Penalties (aid or assist in filing fraudulent returns). 105-236(9a)
I	* Monthly report required. 58-71-165
I	* Inspection of establishment; bribery of or malfeasance of inspector. 106-549.26
I	* Members not eligible for other employment with Department; no sales to Department by employees; members not to sell or trade property with Department; profiting from official position. 136-14
I	* Harassment of and communication with jurors. 14-225.2(a)(2)
I	* Buying and selling offices. 14-228
I	* Shooting or throwing at trains or passengers. 14-280
I	* Machine guns and other like weapons. 14-409.9
I	* Escaping or attempting escape from state prison system (first offense). 148-45(a)
I	* Forgery of signature on absentee ballot. 163-237(c)
I	* Distribution of certain food at Halloween and all other times prohibited (limited to mild physical discomfort without any lasting effect). 14-401.11(b)(1)a

**NOTE:** Specific conspiracy, attempt, and solicitation offenses have been repealed. According to the rules contained in G.S. 14-2.4, 14-2.5, and 14-2.6, conspiracy or attempt to commit an offense will be punished one class lower than the substantive offense; solicitation to commit an offense will be punished two classes lower than the substantive offense.

## APPENDIX II

### MISDEMEANOR OFFENSE CLASSIFICATION

1. Misdemeanor offenses currently punishable by more than six months are Class 1 misdemeanors;
2. Misdemeanor offenses currently punishable by 31 days to six months are Class 2 misdemeanors;
3. Misdemeanor offenses currently punishable by 1 to 30 days are Class 3 misdemeanors;
4. Exceptions to these rules are listed below.

ADOPTED CLASS	OFFENSE
1	* Simple assault/assault and battery/affray. 14-33(a) {30 days}
1	* Assaulting by pointing gun. 14-34 {not more than 6 months}
1	* Worthless check from closed account. 14-107(4) {not more than 5 months}
1	* Injury to trees, crops, lands, etc., of another. 14-128 {not more than 6 months}
1	* Domestic criminal trespass. 14-134.3 {not more than 6 months}
1	* Defacing or desecrating grave sites. 14-148 {60 days to 1 year}
1	* Communicating threats. 14-277.1 {not more than 6 months}
2	* Obtaining advances under promise to work and pay for same. 14-104 {not more than 30 days}
2	* Obtain property in return for worthless check, draft or order. 14-106
2	* Worthless check for less than \$100. 14-107(1) {not more than 30 days}
2	* Financial transaction card fraud. 14-113.13 {not more than 1 year}
2	* Criminal receipt of goods and services fraudulently obtained totalling less than \$500. 14-113.15 {not more than 1 year}
2	* Fraudulent entry of horses at fairs. 14-116 {not more than 5 years}
2	* Willfully trespassing upon or damaging a public school bus (forbidden entry). 14-132.2(b) {not more than 30 days}
2	* Willfully trespassing upon or damaging a public school bus (refuse to leave). 14-132.2(c) {not more than 30 days}

ADOPTED CLASS	OFFENSE
2	* Setting fire to grass and brushlands and woodlands. 14-136 (not more than 4 months)
2	* Willfully or negligently setting fire to woods and fields. 14-137
2	* Removing, altering or defacing landmarks. 14-147
2	* Interfering with gas, electric and steam appliances. 14-151
2	* Tampering with engines and boilers. 14-153
2	* Injuring fixtures and other property of electric-power companies. 14-156 (not more than 1 year)
2	* Malicious or willful injury to hired personal property. 14-165
2	* Using profane, indecent or threatening language to any person over telephone; annoying/harassing by repeated telephoning or making false statements over telephone. 14-196
2	* Unlawful injury to property of railroads. 14-279
2	* Unlawful impairment of operation of railroads. 14-279.1
2	* Advertising lotteries. 14-289
2	* Selling "numbers" tickets. 14-291.1
2	* Gambling. 14-292
2	* Allowing gambling in houses of public entertainment. 14-293 (not less than 6 months)
2	* Gambling with faro banks and tables. 14-294 (not less than 3 months)
2	* Keeping gaming tables, illegal punchboards or slot machines, or betting thereat. 14-295 (not less than 30 days)
2	* Allowing gaming tables, illegal punchboards or slot machines on premises. 14-297
2	* Opposing destruction of gaming tables and seizure of property. 14-300
2	* Operation or possession of slot machine. 14-301
2	* Punchboards, vending machines, and other gambling devices. 14-302
2	* Manufacture, sale, etc., of slot machines and devices. 14-304
2	* Agreements with reference to slot machines or devices made unlawful. 14-305

ADOPTED CLASS	OFFENSE
2	* Bingo violations by licensed exempt organization. 14-309.5
2	* Accounting and use of proceeds (furnishing false information in audit). 14-309.11
2	* Beach bingo. 14-309.14(a)
2	* Raffle violations by recognized nonprofit organization. 14-309.15(a)
2	* Permitting young children to use dangerous firearms. 14-316(a) (not more than 30 days)
2	* Animal fights, other than cock fights, and animal baiting (facilitating the fight). 14-362.1(a)
2	* Animal fights, other than cock fights, and animal baiting (providing the animal). 14-362.1(b) (not more than 1 year)
2	* Animal fights, other than cock fights, and animal baiting (participating as a spectator). 14-362.1(c) (not more than 6 months)
2	* Wrongfully obtaining or divulging knowledge of telephonic messages. 14-370
2	* Violating privacy of telegraphic messages; failure to transmit and deliver same promptly. 14-371
2	* Unauthorized opening, reading or publishing of sealed letters and telegrams. 14-372
3	* Concealment of merchandise in mercantile establishments. 14-72.1(a) and (d) (first offense) (not more than 60 days)
3	* Obtaining certificate of registration of animals by false representation. 14-103 (not exceeding 3 months)
3	* Theft of cable television service (sells decoder). 14-118.5(b) (not more than 6 months)
3	* Operating motor vehicle upon utility easements after being forbidden to do so. 14-134.2 (not more than 6 months)
3	* Unauthorized connections with telephone or telegraph. 14-155 (ten days)
3	* Felling trees on telephone and electric-power wires. 14-157 (not more than 6 months)
3	* Vandalism to caves. 14-159.21 (not more than 6 months)
3	* Sale of speleothems unlawful. 14-159.22 (not more than 6 months)
3	* Restrictions as to adult establishments (1st offense). 14-202.11 (not more than 3 months)
3	* Failing to attend as witness before legislative committees. 14-227



### APPENDIX III: 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 B THROUGH E

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

#### FOR OFFENSE CLASSES F THROUGH I

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

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