Article 81B.

Structured Sentencing of Persons Convicted of Crimes.

Part 1. General Provisions.

§ 15A-1340.10. Applicability of structured sentencing.

This Article applies to criminal offenses in North Carolina, other than impaired driving under G.S. 20-138.1 and failure to comply with control measures under G.S. 130A-25, that occur on or after October 1, 1994. This Article does not apply to violent habitual felons sentenced under Article 2B of Chapter 14 of the General Statutes. (1993, c. 538, s. 1; 1994, Ex. Sess., c. 22, s. 35; c. 24, s. 14(a), (b); 1993 (Reg. Sess., 1994), c. 767, s. 17.)

§ 15A-1340.11. Definitions.

The following definitions apply in this Article:

(1) Active punishment. – A sentence in a criminal case that requires an offender to serve a sentence of imprisonment and is not suspended. Special probation, as defined in G.S. 15A-1351, is not an active punishment.

(2) Community punishment. – A sentence in a criminal case that does not include an active punishment, assignment to a local judicially managed accountability and recovery court, or special probation as defined in G.S. 15A-1351(a). It may include any one or more of the conditions set forth in G.S. 15A-1343(a1).

(3) Repealed by Session Laws 2011-192, s. 1(h), effective December 1, 2011.

(3a) Repealed by Session Laws 2022-6, s. 8.2(e), effective March 17, 2022, and applicable to probation imposed on or after that date.

(4) Repealed by Session Laws 1997-57, s. 2.

(4a) House arrest with electronic monitoring. – Probation in which the offender is required to remain at his or her residence. The court, in the sentencing order, may authorize the offender to leave the offender's residence for employment, counseling, a course of study, vocational training, or other specific purposes and may modify that authorization. The probation officer may authorize the offender to leave the offender's residence for specific purposes not authorized in the court order upon approval of the probation officer's supervisor. The offender shall be required to wear a device which permits the supervising agency to monitor the offender's compliance with the condition.

(5) Repealed by Session Laws 2011-192, s. 1(i), effective December 1, 2011.

(6) Intermediate punishment. – A sentence in a criminal case that places an offender on supervised probation. It may include local judicially managed accountability and recovery court, special probation as defined in G.S. 15A-1351(a), and one or more of the conditions set forth in G.S. 15A-1343(a1).

(6c) Local judicially managed accountability and recovery court program. – Local program in which offenders are required, as a condition of probation, to comply with the rules adopted for the program as provided for in Article 62 of Chapter 7A of the General Statutes and to report on a regular basis for a specified time to participate in any of the following:

a. Court supervision.

b. Drug screening or testing.

c. Drug or alcohol treatment programs.
d. Mental, behavioral, or medical health-related treatment programs.

(7) Prior conviction. – A person has a prior conviction when, on the date a criminal judgment is entered, the person being sentenced has been previously convicted of a crime in either:
a. The district court, and the person has not given notice of appeal and the time for appeal has expired.
b. The superior court, regardless of whether the conviction is on appeal to the appellate division.
c. The courts of the United States, another state, the Armed Forces of the United States, or another country, regardless of whether the offense would be a crime if it occurred in North Carolina, regardless of whether the crime was committed before or after the effective date of this Article.

(8) Repealed by Session Laws 2011-192, s. 1(j), effective December 1, 2011. (1993, c. 538, s. 1; 1994, Ex. Sess., c. 14, s. 17; c. 24, s. 14(b); 1997-57, s. 2; 1997-80, s. 6; 1999-306, s. 2; 2004-128, s. 3; 2009-372, s. 5; 2009-547, s. 6; 2011-183, s. 17; 2011-192, s. 1(a), (b), (h)-(j); 2022-6, s. 8.2(e).)

§ 15A-1340.12. Purposes of sentencing.

The primary purposes of sentencing a person convicted of a crime are to impose a punishment commensurate with the injury the offense has caused, taking into account factors that may diminish or increase the offender's culpability; to protect the public by restraining offenders; to assist the offender toward rehabilitation and restoration to the community as a lawful citizen; and to provide a general deterrent to criminal behavior. (1993, c. 538, s. 1; 1994, Ex. Sess., c. 24, s. 14(b).)

Part 2. Felony Sentencing.

§ 15A-1340.13. Procedure and incidents of sentence of imprisonment for felonies.

(a) Application to Felonies Only. – This Part applies to sentences imposed for felony convictions.

(b) Procedure Generally; Requirements of Judgment; Kinds of Sentences. – Before imposing a sentence, the court shall determine the prior record level for the offender pursuant to G.S. 15A-1340.14. The sentence shall contain a sentence disposition specified for the class of offense and prior record level, and its minimum term of imprisonment shall be within the range specified for the class of offense and prior record level, unless applicable statutes require or authorize another minimum sentence of imprisonment. The kinds of sentence dispositions are active punishment, intermediate punishment, and community punishment.

(c) Minimum and Maximum Term. – The judgment of the court shall contain a minimum term of imprisonment that is consistent with the class of offense for which the sentence is being imposed and with the prior record level for the offender. The maximum term of imprisonment applicable to each minimum term of imprisonment is, unless otherwise provided, as specified in G.S. 15A-1340.17. The maximum term shall be specified in the judgment of the court.

(d) Service of Minimum Required; Earned Time Authorization. – An offender sentenced to an active punishment shall serve the minimum term imposed, except as provided in

G.S. 15A-1340.18. The maximum term may be reduced to, but not below, the minimum term by earned time credits awarded to an offender by the Division of Prisons of the Department of Adult Correction or the custodian of the local confinement facility, pursuant to rules adopted in accordance with law.

(e) Deviation from Sentence Ranges for Aggravation and Mitigation; No Sentence Dispositional Deviation Allowed. – The court may deviate from the presumptive range of minimum sentences of imprisonment specified for a class of offense and prior record level if it finds, pursuant to G.S. 15A-1340.16, that aggravating or mitigating circumstances support such a deviation. The amount of the deviation is in the court's discretion, subject to the limits specified in the class of offense and prior record level for mitigated and aggravated punishment. Deviations for aggravated or mitigated punishment are allowed only in the ranges of minimum and maximum sentences of imprisonment, and not in the sentence dispositions specified for the class of offense and prior record level, unless a statute specifically authorizes a sentence dispositional deviation.

(f) Suspension of Sentence. – Unless otherwise provided, the court shall not suspend the sentence of imprisonment if the class of offense and prior record level do not permit community or intermediate punishment as a sentence disposition. The court shall suspend the sentence of imprisonment if the class of offense and prior record level require community or intermediate punishment as a sentence disposition. The court may suspend the sentence of imprisonment if the class of offense and prior record level authorize, but do not require, active punishment as a sentence disposition.

(g) Dispositional Deviation for Extraordinary Mitigation. – Except as provided in subsection (h) of this section, the court may impose an intermediate punishment for a class of offense and prior record level that requires the imposition of an active punishment if it finds in writing all of the following:

(1) That extraordinary mitigating factors of a kind significantly greater than in the normal case are present.
(2) Those factors substantially outweigh any factors in aggravation.
(3) It would be a manifest injustice to impose an active punishment in the case.

The court shall consider evidence of extraordinary mitigating factors, but the decision to find any such factors, or to impose an intermediate punishment is in the discretion of the court. The extraordinary mitigating factors which the court finds shall be specified in its judgment.

(h) Exceptions When Extraordinary Mitigation Shall Not Be Used. – The court shall not impose an intermediate sanction pursuant to subsection (g) of this section if:

(1) The offense is a Class A or Class B1 felony;
(2) The offense is a drug trafficking offense under G.S. 90-95(h) or a drug trafficking conspiracy offense under G.S. 90-95(i); or
(3) The defendant has five or more points as determined by G.S. 15A-1340.14.

(1993, c. 538, s. 1; 1994, Ex. Sess., c. 14, ss. 18, 18.1, 19; c. 22, s. 9; c. 24, s. 14(b); 1995, c. 375, s. 1; 2011-145, s. 19.1(h); 2011-192, s. 5(d); 2017-186, s. 2(ggg); 2021-180, s. 19C.9(p).)

§ 15A-1340.14. Prior record level for felony sentencing.

(a) Generally. – The prior record level of a felony offender is determined by calculating the sum of the points assigned to each of the offender's prior convictions that the court, or with respect to subdivision (b)(7) of this section, the jury, finds to have been proved in accordance with this section.

(b) Points. – Points are assigned as follows:

(1) For each prior felony Class A conviction, 10 points.

(1a) For each prior felony Class B1 conviction, 9 points.

(2) For each prior felony Class B2, C, or D conviction, 6 points.

(3) For each prior felony Class E, F, or G conviction, 4 points.

(4) For each prior felony Class H or I conviction, 2 points.

(5) For each prior misdemeanor conviction as defined in this subsection, 1 point. For purposes of this subsection, misdemeanor is defined as any Class A1 and Class 1 nontraffic misdemeanor offense, impaired driving (G.S. 20-138.1), impaired driving in a commercial vehicle (G.S. 20-138.2), and misdemeanor death by vehicle (G.S. 20-141.4(a2)), but not any other misdemeanor traffic offense under Chapter 20 of the General Statutes.

(6) If all the elements of the present offense are included in any prior offense for which the offender was convicted, whether or not the prior offense or offenses were used in determining prior record level, 1 point.

(7) If the offense was committed while the offender was on supervised or unsupervised probation, parole, or post-release supervision, or while the offender was serving a sentence of imprisonment, or while the offender was on escape from a correctional institution while serving a sentence of imprisonment, 1 point.

For purposes of determining prior record points under this subsection, a conviction for a first degree rape or a first degree sexual offense committed prior to the effective date of this subsection shall be treated as a felony Class B1 conviction, and a conviction for any other felony Class B offense committed prior to the effective date of this subsection shall be treated as a felony Class B2 conviction. G.S. 15A-1340.16(a5) specifies the procedure to be used to determine if a point exists under subdivision (7) of this subsection. The State must provide a defendant with written notice of its intent to prove the existence of the prior record point under subdivision (7) of this subsection as required by G.S. 15A-1340.16(a6).

(c) Prior Record Levels for Felony Sentencing. – The prior record levels for felony sentencing are:

(1) Level I – Not more than 1 point.

(2) Level II – At least 2, but not more than 5 points.

(3) Level III – At least 6, but not more than 9 points.

(4) Level IV – At least 10, but not more than 13 points.

(5) Level V – At least 14, but not more than 17 points.

(6) Level VI – At least 18 points.

In determining the prior record level, the classification of a prior offense is the classification assigned to that offense at the time the offense for which the offender is being sentenced is committed.

(d) Multiple Prior Convictions Obtained in One Court Week. – For purposes of determining the prior record level, if an offender is convicted of more than one offense in a single superior court during one calendar week, only the conviction for the offense with the highest point total is used. If an offender is convicted of more than one offense in a single session of district court, only one of the convictions is used.

(e) Classification of Prior Convictions From Other Jurisdictions. – Except as otherwise provided in this subsection, a conviction occurring in a jurisdiction other than North Carolina is

classified as a Class I felony if the jurisdiction in which the offense occurred classifies the offense as a felony, or is classified as a Class 3 misdemeanor if the jurisdiction in which the offense occurred classifies the offense as a misdemeanor. If the offender proves by the preponderance of the evidence that an offense classified as a felony in the other jurisdiction is substantially similar to an offense that is a misdemeanor in North Carolina, the conviction is treated as that class of misdemeanor for assigning prior record level points. If the State proves by the preponderance of the evidence that an offense classified as either a misdemeanor or a felony in the other jurisdiction is substantially similar to an offense in North Carolina that is classified as a Class I felony or higher, the conviction is treated as that class of felony for assigning prior record level points. If the State proves by the preponderance of the evidence that an offense classified as a misdemeanor in the other jurisdiction is substantially similar to an offense classified as a Class A1 or Class 1 misdemeanor in North Carolina, the conviction is treated as a Class A1 or Class 1 misdemeanor for assigning prior record level points.

(f) Proof of Prior Convictions. – A prior conviction shall be proved by any of the following methods:

(1) Stipulation of the parties.

(2) An original or copy of the court record of the prior conviction.

(3) A copy of records maintained by the Department of Public Safety, the Department of Adult Correction, the Division of Motor Vehicles, or of the Administrative Office of the Courts.

(4) Any other method found by the court to be reliable.

The State bears the burden of proving, by a preponderance of the evidence, that a prior conviction exists and that the offender before the court is the same person as the offender named in the prior conviction. The original or a copy of the court records or a copy of the records maintained by the Department of Public Safety, the Department of Adult Correction, the Division of Motor Vehicle, or of the Administrative Office of the Courts, bearing the same name as that by which the offender is charged, is prima facie evidence that the offender named is the same person as the offender before the court, and that the facts set out in the record are true. For purposes of this subsection, "copy" includes, in addition to copy as defined in G.S. 15A-101.1, a paper writing containing a reproduction of a record maintained electronically on a computer or other data processing equipment, and a document produced by a facsimile machine. The prosecutor shall make all feasible efforts to obtain and present to the court the offender's full record. Evidence presented by either party at trial may be utilized to prove prior convictions. Suppression of prior convictions is pursuant to G.S. 15A-980. If a motion is made pursuant to that section during the sentencing stage of the criminal action, the court may grant a continuance of the sentencing hearing. If asked by the defendant in compliance with G.S. 15A-903, the prosecutor shall furnish the defendant's prior criminal record to the defendant within a reasonable time sufficient to allow the defendant to determine if the record available to the prosecutor is accurate. Upon request of a sentencing services program established pursuant to Article 61 of Chapter 7A of the General Statutes, the district attorney shall provide any information the district attorney has about the criminal record of a person for whom the program has been requested to provide a sentencing plan pursuant to G.S. 7A-773.1. (1993, c. 538, s. 1; 1994, Ex. Sess., c. 22, s. 10; c. 24, s. 14(b); 1993 (Reg. Sess., 1994), c. 767, ss. 11-13; 1995, c. 507, s. 19.5(f); 1995 (Reg. Sess., 1996), c. 742, s. 15; 1997-80, s. 7; 1997-486, s. 1; 1999-306, s. 3; 1999-408, s. 3; 2005-145, s. 2; 2009-555, s. 1; 2014-100, s. 17.1(q); 2021-180, s. 19C.9(ss); 2022-47, s. 16(o).)

§ 15A-1340.15. Multiple convictions.

(a) Consecutive Sentences. – This Article does not prohibit the imposition of consecutive sentences. Unless otherwise specified by the court, all sentences of imprisonment run concurrently with any other sentences of imprisonment.

(b) Consolidation of Sentences. – If an offender is convicted of more than one offense at the same time, the court may consolidate the offenses for judgment and impose a single judgment for the consolidated offenses. The judgment shall contain a sentence disposition specified for the class of offense and prior record level of the most serious offense, and its minimum sentence of imprisonment shall be within the ranges specified for that class of offense and prior record level, unless applicable statutes require or authorize another minimum sentence of imprisonment. (1993, c. 538, s. 1; 1994, Ex. Sess., c. 24, s. 14(b).)

§ 15A-1340.16. Aggravated and mitigated sentences.

(a) Generally, Burden of Proof. – The court shall consider evidence of aggravating or mitigating factors present in the offense that make an aggravated or mitigated sentence appropriate, but the decision to depart from the presumptive range is in the discretion of the court. The State bears the burden of proving beyond a reasonable doubt that an aggravating factor exists, and the offender bears the burden of proving by a preponderance of the evidence that a mitigating factor exists.

(a1) Jury to Determine Aggravating Factors; Jury Procedure if Trial Bifurcated. – The defendant may admit to the existence of an aggravating factor, and the factor so admitted shall be treated as though it were found by a jury pursuant to the procedures in this subsection. Admissions of the existence of an aggravating factor must be consistent with the provisions of G.S. 15A-1022.1. If the defendant does not so admit, only a jury may determine if an aggravating factor is present in an offense. The jury impaneled for the trial of the felony may, in the same trial, also determine if one or more aggravating factors is present, unless the court determines that the interests of justice require that a separate sentencing proceeding be used to make that determination. If the court determines that a separate proceeding is required, the proceeding shall be conducted by the trial judge before the trial jury as soon as practicable after the guilty verdict is returned. If at any time prior to rendering a decision to the court regarding whether one or more aggravating factors exist, any juror dies, becomes incapacitated or disqualified, or is discharged for any reason, an alternate juror shall become a part of the jury and serve in all respects as those selected on the regular trial panel. An alternate juror shall become a part of the jury in the order in which the juror was selected. If an alternate juror replaces a juror after deliberations have begun, the court must instruct the jury to begin its deliberations anew. In no event shall more than 12 jurors participate in the jury's deliberations. If the trial jury is unable to reconvene for a hearing on the issue of whether one or more aggravating factors exist after having determined the guilt of the accused, the trial judge shall impanel a new jury to determine the issue. A jury selected to determine whether one or more aggravating factors exist shall be selected in the same manner as juries are selected for the trial of criminal cases.

(a2) Procedure if Defendant Admits Aggravating Factor Only. – If the defendant admits that an aggravating factor exists, but pleads not guilty to the underlying felony, a jury shall be impaneled to dispose of the felony charge. In that case, evidence that relates solely to the establishment of an aggravating factor shall not be admitted in the felony trial.

(a3) Procedure if Defendant Pleads Guilty to the Felony Only. – If the defendant pleads guilty to the felony, but contests the existence of one or more aggravating factors, a jury shall be

impaneled to determine if the aggravating factor or factors exist.

(a4) Pleading of Aggravating Factors. – Aggravating factors set forth in subsection (d) of this section need not be included in an indictment or other charging instrument. Any aggravating factor alleged under subdivision (d)(20) of this section shall be included in an indictment or other charging instrument, as specified in G.S. 15A-924.

(a5) Procedure to Determine Prior Record Level Points Not Involving Prior Convictions. – If the State seeks to establish the existence of a prior record level point under G.S. 15A-1340.14(b)(7), the jury shall determine whether the point should be assessed using the procedures specified in subsections (a1) through (a3) of this section. The State need not allege in an indictment or other pleading that it intends to establish the point.

(a6) Notice of Intent to Use Aggravating Factors or Prior Record Level Points. – The State must provide a defendant with written notice of its intent to prove the existence of one or more aggravating factors under subsection (d) of this section or a prior record level point under G.S. 15A-1340.14(b)(7) at least 30 days before trial or the entry of a guilty or no contest plea. A defendant may waive the right to receive such notice. The notice shall list all the aggravating factors the State seeks to establish.

(a7) Procedure When Jury Trial Waived. – If a defendant waives the right to a jury trial under G.S. 15A-1201, the trial judge shall make all findings that are conferred upon the jury under the provisions of this section.

(b) When Aggravated or Mitigated Sentence Allowed. – If the jury, or with respect to an aggravating factor under G.S. 15A-1340.16(d)(12a) or (18a), the court, finds that aggravating factors exist or the court finds that mitigating factors exist, the court may depart from the presumptive range of sentences specified in G.S. 15A-1340.17(c)(2). If aggravating factors are present and the court determines they are sufficient to outweigh any mitigating factors that are present, it may impose a sentence that is permitted by the aggravated range described in G.S. 15A-1340.17(c)(4). If the court finds that mitigating factors are present and are sufficient to outweigh any aggravating factors that are present, it may impose a sentence that is permitted by the mitigated range described in G.S. 15A-1340.17(c)(3).

(c) Written Findings; When Required. – The court shall make findings of the aggravating and mitigating factors present in the offense only if, in its discretion, it departs from the presumptive range of sentences specified in G.S. 15A-1340.17(c)(2). If the jury finds factors in aggravation, the court shall ensure that those findings are entered in the court's determination of sentencing factors form or any comparable document used to record the findings of sentencing factors. Findings shall be in writing. The requirement to make findings in order to depart from the presumptive range applies regardless of whether the sentence of imprisonment is activated or suspended.

(d) Aggravating Factors. – The following are aggravating factors:

(1) The defendant induced others to participate in the commission of the offense or occupied a position of leadership or dominance of other participants.

(2) The defendant joined with more than one other person in committing the offense and was not charged with committing a conspiracy.

(2a) The offense was committed for the benefit of, or at the direction of, any criminal gang as defined by G.S. 14-50.16A(1), with the specific intent to promote, further, or assist in any criminal conduct by gang members, and the defendant was not charged with committing a conspiracy.

(3) The offense was committed for the purpose of avoiding or preventing a lawful

arrest or effecting an escape from custody.

(4) The defendant was hired or paid to commit the offense.

(5) The offense was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws.

(6) The offense was committed against or proximately caused serious injury to a present or former law enforcement officer, employee of the Department of Public Safety or the Department of Adult Correction, jailer, fireman, emergency medical technician, ambulance attendant, social worker, justice or judge, clerk or assistant or deputy clerk of court, magistrate, prosecutor, juror, or witness against the defendant, while engaged in the performance of that person's official duties or because of the exercise of that person's official duties.

(6a) The offense was committed against or proximately caused serious harm as defined in G.S. 14-163.1 or death to a law enforcement agency animal, an assistance animal, or a search and rescue animal as defined in G.S. 14-163.1, while engaged in the performance of the animal'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 elected or appointed office or public employment at the time of the offense and the offense directly related to the conduct of the office or employment.

(9a) The defendant is a firefighter or rescue squad worker, and the offense is directly related to service as a firefighter or rescue squad worker.

(10) The defendant was armed with or used a deadly weapon at the time of the crime.

(11) The victim was very young, or very old, or mentally or physically infirm, or handicapped.

(12) The defendant committed the offense while on pretrial release on another charge.

(12a) The defendant has, during the 10-year period prior to the commission of the offense for which the defendant is being sentenced, been found by a court of this State to be in willful violation of the conditions of probation imposed pursuant to a suspended sentence or been found by the Post-Release Supervision and Parole Commission to be in willful violation of a condition of parole or post-release supervision imposed pursuant to release from incarceration.

(13) The defendant involved a person under the age of 16 in the commission of the crime.

(13a) The defendant committed an offense and knew or reasonably should have known that a person under the age of 18 who was not involved in the commission of the offense was in a position to see or hear the offense.

(14) The offense involved an attempted or actual taking of property of great monetary value or damage causing great monetary loss, or the offense involved an unusually large quantity of contraband.

(15) The defendant took advantage of a position of trust or confidence, including a domestic relationship, to commit the offense.
(16) The offense involved the sale or delivery of a controlled substance to a minor.
(16a) The offense is the manufacture of methamphetamine and was committed where a person under the age of 18 lives, was present, or was otherwise endangered by exposure to the drug, its ingredients, its by-products, or its waste.
(16b) The offense is the manufacture of methamphetamine and was committed in a dwelling that is one of four or more contiguous dwellings.
(17) The offense for which the defendant stands convicted was committed against a victim because of the victim's race, color, religion, nationality, or country of origin.
(18) The defendant does not support the defendant's family.
(18a) The defendant has previously been adjudicated delinquent for an offense that would be a Class A, B1, B2, C, D, or E felony if committed by an adult.
(19) The serious injury inflicted upon the victim is permanent and debilitating.
(19a) The offense is a violation of G.S. 14-43.11 (human trafficking), G.S. 14-43.12 (involuntary servitude), or G.S. 14-43.13 (sexual servitude) and involved multiple victims.
(19b) The offense is a violation of G.S. 14-43.11 (human trafficking), G.S. 14-43.12 (involuntary servitude), or G.S. 14-43.13 (sexual servitude), and the victim suffered serious injury as a result of the offense.
(20) Any other aggravating factor reasonably related to the purposes of sentencing.

Evidence necessary to prove an element of the offense shall not be used to prove any factor in aggravation, and the same item of evidence shall not be used to prove more than one factor in aggravation. Evidence necessary to establish that an enhanced sentence is required under G.S. 15A-1340.16A may not be used to prove any factor in aggravation.

The judge shall not consider as an aggravating factor the fact that the defendant exercised the right to a jury trial.

Notwithstanding the provisions of subsection (a1) of this section, the determination that an aggravating factor under G.S. 15A-1340.16(d)(18a) is present in a case shall be made by the court, and not by the jury. That determination shall be made in the sentencing hearing.

(e) Mitigating Factors. – The following are 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 Armed Forces of the United States.

(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 either (i) a drug treatment program, (ii) an alcohol treatment program, or (iii) a mental, behavioral, or medical health-related 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.

(f) Notice to State Treasurer of Finding. – If the court determines that an aggravating factor under subdivision (9) of subsection (d) of this section has been proven, the court shall notify the State Treasurer of the fact of the conviction as well as the finding of the aggravating factor. The indictment charging the defendant with the underlying offense must include notice that the State seeks to prove the defendant acted in accordance with subdivision (9) of subsection (d) of this section and that the State will seek to prove that as an aggravating factor. (1993, c. 538, s. 1; 1994, Ex. Sess., c. 7, s. 6; c. 22, s. 22; c. 24, s. 14(b); 1995, c. 509, s. 13; 1997-443, ss. 19.25(w), 19.25(ee); 2003-378, s. 6; 2004-178, s. 2; 2004-186, s. 8.1; 2005-101, s. 1; 2005-145, s. 1; 2005-434, s. 4; 2007-80, s. 2; 2008-129, ss. 1, 2; 2009-460, s. 2; 2011-145, s. 19.1(h); 2011-183, s. 18; 2012-193, s. 9, 10; 2013-284, s. 2(b); 2013-368, s. 14; 2015-62, s. 4(a); 2015-264, s. 6; 2015-289, s. 3; 2017-186, s. 2(hhh); 2017-194, s. 17; 2021-94, s. 3; 2021-180, s. 19C.9(tt); 2022-6, s. 8.2(f); 2022-47, s. 17(a); 2022-58, s. 18(a); 2022-74, s. 19A.1(d).)

§ 15A-1340.16A. Enhanced sentence if defendant is convicted of a Class A, B1, B2, C, D, or E felony and the defendant used, displayed, or threatened to use or display a firearm or deadly weapon during the commission of the felony.

(a), (b) Repealed by Session Laws 2003-378, s. 2, effective August 1, 2003.

(c) If a person is convicted of a felony and it is found as provided in this section that: (i) the person committed the felony by using, displaying, or threatening the use or display of a firearm or deadly weapon and (ii) the person actually possessed the firearm or deadly weapon about his or her person, then the person shall have the minimum term of imprisonment to which the person is sentenced for that felony increased as follows:

(1) If the felony is a Class A, B1, B2, C, D, or E felony, the minimum term of imprisonment to which the person is sentenced for that felony shall be increased by 72 months. The maximum term of imprisonment shall be the maximum term that corresponds to the minimum term after it is increased by 72 months, as specified in G.S. 15A-1340.17(e) and (e1).

(2) If the felony is a Class F or G felony, the minimum term of imprisonment to which the person is sentenced for that felony shall be increased by 36 months. The maximum term of imprisonment shall be the maximum term that corresponds to the minimum term after it is increased by 36 months, as specified in G.S. 15A-1340.17(d).

(3) If the felony is a Class H or I felony, the minimum term of imprisonment to which the person is sentenced for that felony shall be increased by 12 months. The maximum term of imprisonment shall be the maximum term that corresponds to the minimum term after it is increased by 12 months, as specified in G.S. 15A-1340.17(d).

(d) An indictment or information for the felony shall allege in that indictment or information the facts set out in subsection (c) of this section. The pleading is sufficient if it alleges that the defendant committed the felony by using, displaying, or threatening the use or display of a firearm or deadly weapon and the defendant actually possessed the firearm or deadly weapon about the defendant's person. One pleading is sufficient for all felonies that are tried at a single trial.

(e) The State shall prove the issues set out in subsection (c) of this section beyond a reasonable doubt during the same trial in which the defendant is tried for the felony unless the defendant pleads guilty or no contest to the issues. If the defendant pleads guilty or no contest to the felony but pleads not guilty to the issues set out in subsection (c) of this section, then a jury shall be impaneled to determine the issues.

(f) Subsection (c) of this section does not apply if the evidence of the use, display, or threatened use or display of the firearm or deadly weapon is needed to prove an element of the felony or if the person is not sentenced to an active term of imprisonment. (1994, Ex. Sess., c. 22, s. 20; 2003-378, s. 2; 2008-214, s. 5; 2013-369, s. 5.)

§ 15A-1340.16B. Life imprisonment without parole for a second or subsequent conviction of a Class B1 felony if the victim was 13 years of age or younger and there are no mitigating factors.

(a) If a person is convicted of a Class B1 felony and it is found as provided in this section that: (i) the person committed the felony against a victim who was 13 years of age or younger at the time of the offense and (ii) the person has one or more prior convictions of a Class B1 felony, then the person shall be sentenced to life imprisonment without parole.

(b), (c) Repealed by Session Laws 2003-378, s. 3, effective August 1, 2003.

(d) An indictment or information for the Class B1 felony shall allege in that indictment or information or in a separate indictment or information the facts set out in subsection (a) of this

section. The pleading is sufficient if it alleges that the defendant committed the felony against a victim who was 13 years of age or younger at the time of the felony and that the defendant had one or more prior convictions of a Class B1 felony. One pleading is sufficient for all Class B1 felonies that are tried at a single trial.

(e) The State shall prove the issues set out in subsection (a) of this section beyond a reasonable doubt during the same trial in which the defendant is tried for the felony unless the defendant pleads guilty or no contest to the issues. The issues shall be presented in the same manner as provided in G.S. 15A-928(c). If the defendant pleads guilty or no contest to the felony but pleads not guilty to the issues set out in subsection (a) of this section, then a jury shall be impaneled to determine the issues.

(f) Subsection (a) of this section does not apply if there are mitigating factors present under G.S. 15A-1340.16(e). (1998-212, s. 17.16(a); 2003-378, s. 3.)

§ 15A-1340.16C. Enhanced sentence if defendant is convicted of a felony and the defendant was wearing or had in his or her immediate possession a bullet-proof vest during the commission of the felony.

(a) If a person is convicted of a felony and it is found as provided in this section that the person wore or had in his or her immediate possession a bullet-proof vest at the time of the felony, then the person is guilty of a felony that is one class higher than the underlying felony for which the person was convicted.

(b) Repealed by Session Laws 2003-378, s. 4, effective August 1, 2003.

(b1) This section does not apply to law enforcement officers, unless the State proves beyond a reasonable doubt, pursuant to subsection (d) of this section, both of the following:

(1) That the law enforcement officer was not performing or attempting to perform a law enforcement function.

(2) That the law enforcement officer knowingly wore or had in his or her immediate possession a bulletproof vest at the time of the commission of the felony for the purpose of aiding the law enforcement officer in the commission of the felony.

(c) An indictment or information for the felony shall allege in that indictment or information or in a separate indictment or information the facts set out in subsection (a) of this section. The pleading is sufficient if it alleges that the defendant committed the felony while wearing or having in the defendant's immediate possession a bulletproof vest. One pleading is sufficient for all felonies that are tried at a single trial.

(d) The State shall prove the issue set out in subsection (a) of this section beyond a reasonable doubt during the same trial in which the defendant is tried for the felony unless the defendant pleads guilty or no contest to that issue. If the defendant pleads guilty or no contest to the felony but pleads not guilty to the issue set out in subsection (a) of this section, then a jury shall be impaneled to determine that issue.

(e) Subsection (a) of this section does not apply if the evidence that the person wore or had in the person's immediate possession a bulletproof vest is needed to prove an element of the felony. (1999-263, s. 1; 2003-378, s. 4.)

§ 15A-1340.16D. Manufacturing methamphetamine; enhanced sentence.

(a) If a person is convicted of the offense of manufacture of methamphetamine under G.S. 90-95(b)(1a) and it is found as provided in this section that a law enforcement officer,

probation officer, parole officer, emergency medical services employee, or a firefighter suffered serious injury while discharging or attempting to discharge his or her official duties and that the injury was directly caused by one of the hazards associated with the manufacture of methamphetamine, then the person shall have the minimum term of imprisonment to which the person is sentenced for that felony increased by 24 months. The maximum term of imprisonment shall be the maximum term that corresponds to the minimum term after it is increased by 24 months, as specified in G.S. 15A-1340.17(e) and (e1).

(a1) If a person is convicted of the offense of manufacture of methamphetamine under G.S. 90-95(b)(1a) and it is found as provided in this section that:

(1) A minor under 18 years of age resided on the property used for the manufacture of methamphetamine, or was present at a location where methamphetamine was being manufactured, then the person shall have the minimum term of imprisonment to which the person is sentenced for that felony increased by 24 months. The maximum term of imprisonment shall be the maximum term that corresponds to the minimum term after it is increased by 24 months, as specified in G.S. 15A-1340.17(e) and (e1).

(2) A disabled or elder adult resided on the property used for the manufacture of methamphetamine, or was present at a location where methamphetamine was being manufactured, then the person shall have the minimum term of imprisonment to which the person is sentenced for that felony increased by 24 months. The maximum term of imprisonment shall be the maximum term that corresponds to the minimum term after it is increased by 24 months, as specified in G.S. 15A-1340.17(e) and (e1).

(3) A minor and a disabled or elder adult resided on the property, or were present at a location where methamphetamine was being manufactured, then the person shall have the minimum term of imprisonment to which the person is sentenced for that felony increased by 48 months. The maximum term of imprisonment shall be the maximum term that corresponds to the minimum term after it is increased by 48 months, as specified in G.S. 15A-1340.17(e) and (e1).

(a2) For the purposes of this section, the terms "disabled adult" and "elder adult" shall be defined as set forth in G.S. 14-32.3(d).

(a3) The penalties set forth in this section are cumulative. The minimum sentence shall be increased by the sum of the number of months for convictions under subsections (a) and (a1) of this section, and the maximum term of imprisonment shall be the maximum term that corresponds to the total number of months, as specified in G.S. 15A-1340.17(e) and (e1).

(b) An indictment or information for the offense of manufacture of methamphetamine under G.S. 90-95(b)(1a) shall allege in that indictment or information the facts set out in subsection (a) or (a1) of this section. The pleading is sufficient if it alleges any or all of the following:

(1) The defendant committed the offense of manufacture of methamphetamine and that as a result of the offense a law enforcement officer, probation officer, parole officer, emergency medical services employee, or firefighter suffered serious injury while discharging or attempting to discharge his or her official duties.

(2) The defendant committed the offense of manufacture of methamphetamine

and that a minor resided on the property used for manufacturing the methamphetamine, or was present at a location where methamphetamine was being manufactured.

(3) The defendant committed the offense of manufacture of methamphetamine and that a disabled or elder adult resided on the property used for manufacturing the methamphetamine, or was present at a location where methamphetamine was being manufactured.

(4) The defendant committed the offense of manufacture of methamphetamine and that a minor and a disabled or elder adult resided on the property used for manufacturing the methamphetamine, or were present at a location where methamphetamine was being manufactured.

One pleading is sufficient for all felonies that are tried at a single trial.

(c) The State shall prove the issue or issues set out in subsection (b) of this section beyond a reasonable doubt during the same trial in which the defendant is tried for the offense of manufacture of methamphetamine unless the defendant pleads guilty or no contest to the issue. If the defendant pleads guilty or no contest to the offense of manufacture of methamphetamine but pleads not guilty to the issue or issues set out in subsection (b) of this section, then a jury shall be impaneled to determine the issue.

(d) This section does not apply if the offense is packaging or repackaging methamphetamine, or labeling or relabeling the methamphetamine container. (2004-178, s. 8; 2013-124, s. 2.)

§ 15A-1340.16E. Enhanced sentence for offenses committed by criminal gang members as a part of criminal gang activity.

(a) Except as otherwise provided in subsection (b) of this section, if a person is convicted of any felony other than a Class A, B1, or B2 felony, and it is found that the offense was committed as part of criminal gang activity as defined in G.S. 14-50.16A(2), then the person shall be sentenced at a felony class level one class higher than the principal felony for which the person was convicted.

(b) If subsection (a) of this section applies and the person is found to be a criminal gang leader or organizer as defined in G.S. 14-50.16A(3), the person shall be sentenced at a felony class level two classes higher than the principal felony for which the person was convicted.

(c) No defendant sentenced pursuant to this section shall be sentenced at a level higher than a Class C felony. Any sentence imposed under this section shall run consecutively with and shall commence at the expiration of any sentence being served by the person sentenced under this section.

(d) An indictment or information for the felony shall allege in that indictment or information the facts that qualify the offense for an enhancement under this section. One pleading is sufficient for all felonies that are tried at a single trial.

(e) The State shall prove the issues set out under subsection (a) or (b) of this section beyond a reasonable doubt. The issues shall be proven and found in the same manner as provided for aggravating factors in G.S. 15A-1340.16(a1), (a2), or (a3) as applicable.

(f) This section shall not apply to any gang offense included under Article 13A of Chapter 14 of the General Statutes. (2017-194, s. 5.)

§ 15A-1340.17. Punishment limits for each class of offense and prior record level.

(a) Offense Classification; Default Classifications. – The offense classification is as specified in the offense for which the sentence is being imposed. If the offense is a felony for which there is no classification, it is a Class I felony.

(b) Fines. – Any judgment that includes a sentence of imprisonment may also include a fine. If a community punishment is authorized, the judgment may consist of a fine only. Additionally, when the defendant is other than an individual, the judgment may consist of a fine only. Unless otherwise provided, the amount of the fine is in the discretion of the court.

(c) Punishments for Each Class of Offense and Prior Record Level; Punishment Chart Described. – The authorized punishment for each class of offense and prior record level is as specified in the chart below. Prior record levels are indicated by the Roman numerals placed horizontally on the top of the chart. Classes of offense are indicated by the letters placed vertically on the left side of the chart. Each cell on the chart contains the following components:

(1) A sentence disposition or dispositions: "C" indicates that a community punishment is authorized; "I" indicates that an intermediate punishment is authorized; "A" indicates that an active punishment is authorized; and "Life Imprisonment Without Parole" indicates that the defendant shall be imprisoned for the remainder of the prisoner's natural life.

(2) A presumptive range of minimum durations, if the sentence of imprisonment is neither aggravated or mitigated; any minimum term of imprisonment in that range is permitted unless the court finds pursuant to G.S. 15A-1340.16 that an aggravated or mitigated sentence is appropriate. The presumptive range is the middle of the three ranges in the cell.

(3) A mitigated range of minimum durations if the court finds pursuant to G.S. 15A-1340.16 that a mitigated sentence of imprisonment is justified; in such a case, any minimum term of imprisonment in the mitigated range is permitted. The mitigated range is the lower of the three ranges in the cell.

(4) An aggravated range of minimum durations if the court finds pursuant to G.S. 15A-1340.16 that an aggravated sentence of imprisonment is justified; in such a case, any minimum term of imprisonment in the aggravated range is permitted. The aggravated range is the higher of the three ranges in the cell.

PRIOR RECORD LEVEL

	I 0-1 Pt	II 2-5 Pts	III 6-9 Pts	IV 10-13 Pts	V 14-17 Pts	VI 18+ Pts	
A	Life Imprisonment With Parole or Without Parole, or Death, as Established by Statute						
	A 240-300	A 276-345	A 317-397	A 365-456	A Life Imprisonment Without Parole	A	DISPOSITION Aggravated
B1	192-240 144-192	221-276 166-221	254-317 190-254	292-365 219-292	336-420 252-336	386-483 290-386	PRESUMPTIVE Mitigated
	A 157-196	A 180-225	A 207-258	A 238-297	A 273-342	A 314-393	DISPOSITION Aggravated
B2	125-157 94-125	144-180 108-144	165-207 124-165	190-238 143-190	219-273 164-219	251-314 189-251	PRESUMPTIVE Mitigated
	A 73-92	A 83-104	A 96-120	A 110-138	A 127-159	A 146-182	DISPOSITION Aggravated

C	58-73	67-83	77-96	88-110	101-127	117-146	PRESUMPTIVE
	44-58	50-67	58-77	66-88	76-101	87-117	Mitigated
	A	A	A	A	A	A	DISPOSITION
	64-80	73-92	84-105	97-121	111-139	128-160	Aggravated
D	51-64	59-73	67-84	78-97	89-111	103-128	PRESUMPTIVE
	38-51	44-59	51-67	58-78	67-89	77-103	Mitigated
	I/A	I/A	A	A	A	A	DISPOSITION
	25-31	29-36	33-41	38-48	44-55	50-63	Aggravated
E	20-25	23-29	26-33	30-38	35-44	40-50	PRESUMPTIVE
	15-20	17-23	20-26	23-30	26-35	30-40	Mitigated
	I/A	I/A	I/A	A	A	A	DISPOSITION
	16-20	19-23	21-27	25-31	28-36	33-41	Aggravated
F	13-16	15-19	17-21	20-25	23-28	26-33	PRESUMPTIVE
	10-13	11-15	13-17	15-20	17-23	20-26	Mitigated
	I/A	I/A	I/A	I/A	A	A	DISPOSITION
	13-16	14-18	17-21	19-24	22-27	25-31	Aggravated
G	10-13	12-14	13-17	15-19	17-22	20-25	PRESUMPTIVE
	8-10	9-12	10-13	11-15	13-17	15-20	Mitigated
	C/I/A	I/A	I/A	I/A	I/A	A	DISPOSITION
	6-8	8-10	10-12	11-14	15-19	20-25	Aggravated
H	5-6	6-8	8-10	9-11	12-15	16-20	PRESUMPTIVE
	4-5	4-6	6-8	7-9	9-12	12-16	Mitigated
	C	C/I	I	I/A	I/A	I/A	DISPOSITION
	6-8	6-8	6-8	8-10	9-11	10-12	Aggravated
I	4-6	4-6	5-6	6-8	7-9	8-10	PRESUMPTIVE
	3-4	3-4	4-5	4-6	5-7	6-8	Mitigated

(d) Maximum Sentences Specified for Class F through Class I Felonies. – Unless provided otherwise in a statute establishing a punishment for a specific crime, for each minimum term of imprisonment in the chart in subsection (c) of this section, expressed in months, the corresponding maximum term of imprisonment, also expressed in months, is as specified in the table below for Class F through Class I felonies. The first figure in each cell in the table is the minimum term and the second is the maximum term.

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

(e) Maximum Sentences Specified for Class B1 through Class E Felonies for Minimum Terms up to 339 Months. Unless provided otherwise in a statute establishing a punishment for a specific crime, for each minimum term of imprisonment in the chart in subsection (c) of this section, expressed in months, the corresponding maximum term of imprisonment, also expressed in months, is as specified in the table below for Class B1 through Class E felonies. The first figure in each cell of the table is the minimum term and the second is the maximum term.

15-30	16-32	17-33	18-34	19-35	20-36	21-38	22-39
23-40	24-41	25-42	26-44	27-45	28-46	29-47	30-48

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

(e1) Maximum Sentences Specified for Class B1 through Class E Felonies for Minimum Terms of 340 Months or More. – Unless provided otherwise in a statute establishing a punishment for a specific crime, when the minimum sentence is 340 months or more, the corresponding maximum term of imprisonment shall be equal to the sum of the minimum term of imprisonment and twenty percent (20%) of the minimum term of imprisonment, rounded to the next highest month, plus 12 additional months.

(f) Maximum Sentences Specified for Class B1 Through Class E Sex Offenses. – Unless

provided otherwise in a statute establishing a punishment for a specific crime, for offenders sentenced for a Class B1 through E felony that is a reportable conviction subject to the registration requirement of Article 27A of Chapter 14 of the General Statutes, the maximum term of imprisonment shall be equal to the sum of the minimum term of imprisonment and twenty percent (20%) of the minimum term of imprisonment, rounded to the next highest month, plus 60 additional months. (1993, c. 538, s. 1; 1994, Ex. Sess., c. 14, ss. 20, 21; c. 22, s. 7; c. 24, s. 14(b); 1995, c. 507, s. 19.5(l); 1997-80, s. 3; 2009-555, s. 2; 2009-556, s. 1; 2011-192, s. 2(e)-(g); 2011-307, s. 1; 2011-412, s. 2.4(a); 2013-101, s. 6; 2013-410, s. 3(b).)

§ 15A-1340.18. Advanced supervised release.

(a) Definitions. – For the purposes of this section, the following definitions apply:

(1) "Advanced supervised release" or "ASR" means release from prison and placement on post-release supervision under this section if an eligible defendant is sentenced to active time.

(2) "Eligible defendant" means a defendant convicted and sentenced based upon any of the following felony classes and prior record levels:

a. Class D, Prior Record Level I-III.

b. Class E, Prior Record Level I-IV.

c. Class F, Prior Record Level I-V.

d. Class G, Prior Record Level I-VI.

e. Class H, Prior Record Level I-VI.

(3) "Risk reduction incentive" is a sentencing condition which, upon successful completion during incarceration, results in a prisoner being placed on ASR.

(b) The Division of Prisons of the Department of Adult Correction is authorized to create risk reduction incentives consisting of treatment, education, and rehabilitative programs. The incentives shall be designed to reduce the likelihood that the prisoner who receives the incentive will reoffend.

(c) When imposing an active sentence for an eligible defendant, the court, in its discretion and without objection from the prosecutor, may order that the Department of Adult Correction admit the defendant to the ASR program. The Department of Adult Correction shall admit to the ASR program only those defendants for which ASR is ordered in the sentencing judgment.

(d) The court shall impose a sentence calculated pursuant to Article 81B of the General Statutes. The ASR date shall be the shortest mitigated sentence for the offense at the offender's prior record level. If the court utilizes the mitigated range in sentencing the defendant, then the ASR date shall be eighty percent (80%) of the minimum sentence imposed.

(e) The defendant shall be notified at sentencing that if the defendant completes the risk reduction incentives as identified by the Department, then he or she will be released on the ASR date, as determined by the Department pursuant to the provisions of subsection (d) of this section. If the Department determines that the defendant is unable to complete the incentives by the ASR date, through no fault of the defendant, then the defendant shall be released at the ASR date.

(f) Termination from the risk reduction incentive program shall result in the nullification of the ASR date, and the defendant's release date shall be calculated based upon the adjudged sentence. A prisoner who has completed the risk reduction incentives prior to the ASR date may have the ASR date nullified due to noncompliance with Division rules or regulations.

(g) A defendant released on the ASR date is subject to post-release supervision under this Article. Notwithstanding the provisions in G.S. 15A-1368.3(c), if the defendant has been returned to prison for three, three-month periods of confinement, a subsequent violation shall result in the defendant returning to prison to serve the time remaining on the maximum imposed term, and is ineligible for further post-release supervision regardless of the amount of time remaining to be served.

(h) The Division shall adopt policies and procedures for the assessment to occur at diagnostic processing, for documentation of the inmate's progress, and for termination from the incentive program due to a lack of progress or a pattern of noncompliance in the program or with other Division rules or regulations. (2011-145, s. 19.1(h); 2011-192, s. 5(c); 2011-412, ss. 2.7, 2.8; 2017-186, s. 2(iii); 2021-180, s. 19C.9(uu).)

§ 15A-1340.19. Reserved for future codification purposes.

Part 2A. Sentencing for Minors Subject to Life Imprisonment Without Parole.

§ 15A-1340.19A. Applicability.

Notwithstanding the provisions of G.S. 14-17, a defendant who is convicted of first degree murder, and who was under the age of 18 at the time of the offense, shall be sentenced in accordance with this Part. For the purposes of this Part, "life imprisonment with parole" shall mean that the defendant shall serve a minimum of 25 years imprisonment prior to becoming eligible for parole. (2012-148, s. 1.)

§ 15A-1340.19B. Penalty determination.

(a) In determining a sentence under this Part, the court shall do one of the following:

(1) If the sole basis for conviction of a count or each count of first degree murder was the felony murder rule, then the court shall sentence the defendant to life imprisonment with parole.

(2) If the court does not sentence the defendant pursuant to subdivision (1) of this subsection, then the court shall conduct a hearing to determine whether the defendant should be sentenced to life imprisonment without parole, as set forth in G.S. 14-17, or a lesser sentence of life imprisonment with parole.

(b) The hearing under subdivision (2) of subsection (a) of this section shall be conducted by the trial judge as soon as practicable after the guilty verdict is returned. The State and the defendant shall not be required to resubmit evidence presented during the guilt determination phase of the case. Evidence, including evidence in rebuttal, may be presented as to any matter that the court deems relevant to sentencing, and any evidence which the court deems to have probative value may be received.

(c) The defendant or the defendant's counsel may submit mitigating circumstances to the court, including, but not limited to, the following factors:

(1) Age at the time of the offense.

(2) Immaturity.

(3) Ability to appreciate the risks and consequences of the conduct.

(4) Intellectual capacity.

(5) Prior record.

(6) Mental health.

(7) Familial or peer pressure exerted upon the defendant.

(8) Likelihood that the defendant would benefit from rehabilitation in confinement.

(9) Any other mitigating factor or circumstance.

(d) The State and the defendant or the defendant's counsel shall be permitted to present argument for or against the sentence of life imprisonment with parole. The defendant or the defendant's counsel shall have the right to the last argument.

(e) The provisions of Article 58 of Chapter 15A of the General Statutes apply to proceedings under this Part. (2012-148, s. 1.)

§ 15A-1340.19C. Sentencing; assignment for resentencing.

(a) The court shall consider any mitigating factors in determining whether, based upon all the circumstances of the offense and the particular circumstances of the defendant, the defendant should be sentenced to life imprisonment with parole instead of life imprisonment without parole. The order adjudging the sentence shall include findings on the absence or presence of any mitigating factors and such other findings as the court deems appropriate to include in the order.

(b) All motions for appropriate relief filed in superior court seeking resentencing under the provisions of this Part may be heard and determined in the trial division by any judge (i) who is empowered to act in criminal matters in the superior court district or set of districts as defined in G.S. 7A-41.1, in which the judgment was entered and (ii) who is assigned pursuant to this section to review the motion for appropriate relief and take the appropriate administrative action to dispense with the motion.

(c) The judge who presided at the trial of the defendant is empowered to act upon the motion for appropriate relief even though the judge is in another district or even though the judge's commission has expired; however, if the judge who presided at the trial is still unavailable to act, the senior resident superior court judge shall assign a judge who is empowered to act under subsection (b) of this section.

(d) All motions for appropriate relief filed in superior court seeking resentencing under the provisions of this Part shall, when filed, be referred to the senior resident superior court judge, who shall assign the motion as provided by this section for review and administrative action, including, as may be appropriate, dismissal, calendaring for hearing, entry of a scheduling order for subsequent events in the case, or other appropriate actions. (2012-148, s. 1.)

§ 15A-1340.19D. Incidents of parole.

(a) Except as otherwise provided in this section, a defendant sentenced to life imprisonment with parole shall be subject to the conditions and procedures set forth in Article 85 of Chapter 15A of the General Statutes, including the notification requirement in G.S. 15A-1371(b)(3).

(b) The term of parole for a person released from imprisonment from a sentence of life imprisonment with parole shall be five years and may not be terminated earlier by the Post-Release Supervision and Parole Commission.

(c) A defendant sentenced to life imprisonment with parole who is paroled, and then violates a condition of parole and is returned to prison to serve the life sentence, shall not be eligible for parole for five years from the date of the return to confinement.

(d) Life imprisonment with parole under this Part means that unless the defendant

receives parole, the defendant shall remain imprisoned for the defendant's natural life. (2012-148, s. 1.)

Part 3. Misdemeanor Sentencing.

§ 15A-1340.20. Procedure and incidents of sentence of imprisonment for misdemeanors.

(a) Application to Misdemeanors Only. – This Part applies to sentences imposed for misdemeanor convictions.

(b) Procedure Generally; Term of Imprisonment. – A sentence imposed for a misdemeanor shall contain a sentence disposition specified for the class of offense and prior conviction level, and any sentence of imprisonment shall be within the range specified for the class of offense and prior conviction level, unless applicable statutes require otherwise. The kinds of sentence dispositions are active punishment, intermediate punishment, and community punishment. Except for the work and earned time credits authorized by G.S. 162-60, or earned time credits authorized by G.S. 15A-1355(c), if applicable, an offender whose sentence of imprisonment is activated shall serve each day of the term imposed.

(c) Suspension of Sentence. – Unless otherwise provided, the court shall suspend a sentence of imprisonment if the class of offense and prior conviction level requires community or intermediate punishment as a sentence disposition.

(c1) Active Punishment Exception. – The court may impose an active punishment for a class of offense and prior conviction level that does not otherwise authorize the imposition of an active punishment if the term of imprisonment is equal to or less than the total amount of time the offender has already spent committed to or in confinement in any State or local correctional, mental, or other institution as a result of the charge that culminated in the sentence.

(d) Earned Time Authorization. – An offender sentenced to a term of imprisonment that is activated is eligible to receive earned time credit for misdemeanant offenders awarded by the Division of Prisons of the Department of Adult Correction or the custodian of a local confinement facility, pursuant to rules adopted in accordance with law and pursuant to G.S. 162-60. These rules and statute combined shall not award misdemeanant offenders more than four days of earned time credit per month of incarceration. (1993, c. 538, s. 1; 1994, Ex. Sess., c. 24, s. 14(b); 1993 (Reg. Sess., 1994), c. 767, s. 1; 1997-79, s. 1; 2011-145, s. 19.1(h); 2017-186, s. 2(jjj); 2021-180, s. 19C.9(p).)

§ 15A-1340.21. Prior conviction level for misdemeanor sentencing.

(a) Generally. – The prior conviction level of a misdemeanor offender is determined by calculating the number of the offender's prior convictions that the court finds to have been proven in accordance with this section.

(b) Prior Conviction Levels for Misdemeanor Sentencing. – The prior conviction levels for misdemeanor sentencing are:

(1) Level I – 0 prior convictions.

(2) Level II – At least 1, but not more than 4 prior convictions.

(3) Level III – At least 5 prior convictions.

In determining the prior conviction level, a prior offense may be included if it is either a felony or a misdemeanor at the time the offense for which the offender is being sentenced is committed.

(c) Proof of Prior Convictions. – A prior conviction shall be proved by any of the following methods:

(1) Stipulation of the parties.

(2) An original or copy of the court record of the prior conviction.
(3) A copy of records maintained by the Department of Public Safety, the Department of Adult Correction, the Division of Motor Vehicles, or of the Administrative Office of the Courts.
(4) Any other method found by the court to be reliable.

The State bears the burden of proving, by a preponderance of the evidence, that a prior conviction exists and that the offender before the court is the same person as the offender named in the prior conviction. The original or a copy of the court records or a copy of the records maintained by the Department of Public Safety, the Department of Adult Correction, the Division of Motor Vehicles, or of the Administrative Office of the Courts, bearing the same name as that by which the offender is charged, is prima facie evidence that the offender named is the same person as the offender before the court, and that the facts set out in the record are true. For purposes of this subsection, "copy" includes, in addition to copy as defined in G.S. 15A-101.1, a paper writing containing a reproduction of a record maintained electronically on a computer or other data processing equipment, and a document produced by a facsimile machine. Evidence presented by either party at trial may be utilized to prove prior convictions. Suppression of prior convictions is pursuant to G.S. 15A-980. If a motion is made pursuant to that section during the sentencing stage of the criminal action, the court may grant a continuance of the sentencing hearing.

(d) Multiple Prior Convictions Obtained in One Court Week. – For purposes of this section, if an offender is convicted of more than one offense in a single session of district court, or in a single week of superior court or of a court in another jurisdiction, only one of the convictions may be used to determine the prior conviction level. (1993, c. 538, s. 1; 1994, Ex. Sess., c. 24, s. 14(b); 1993 (Reg. Sess., 1994), c. 767, s. 13.1; 1997-80, s. 8; 2014-100, s. 17.1(q); 2021-180, s. 19C.9(vv); 2022-47, s. 16(p).)

§ 15A-1340.22. Multiple convictions.

(a) Limits on Consecutive Sentences. – If the court elects to impose consecutive sentences for two or more misdemeanors and the most serious misdemeanor is classified in Class A1, Class 1, or Class 2, the cumulative length of the sentences of imprisonment shall not exceed twice the maximum sentence authorized for the class and prior conviction level of the most serious offense. Consecutive sentences shall not be imposed if all convictions are for Class 3 misdemeanors.

(b) Consolidation of Sentences. – If an offender is convicted of more than one offense at the same session of court, the court may consolidate the offenses for judgment and impose a single judgment for the consolidated offenses. Any sentence imposed shall be consistent with the appropriate prior conviction level of the most serious offense. (1993, c. 538, s. 1; 1994, Ex. Sess., c. 24, s. 14(b); 1995 (Reg. Sess., 1996), c. 742, s. 16.)

§ 15A-1340.23. Punishment limits for each class of offense and prior conviction level.

(a) Offense Classification; Default Classifications. – The offense classification is as specified in the offense for which the sentence is being imposed. If the offense is a misdemeanor for which there is no classification, it is as classified in G.S. 14-3.

(b) Fines. – Any judgment that includes a sentence of imprisonment may also include a fine. Additionally, when the defendant is other than an individual, the judgment may consist of a fine only. If a community punishment is authorized, the judgment may consist of a fine only. Unless otherwise provided for a specific offense, the maximum fine that may be imposed is two

hundred dollars ($200.00) for a Class 3 misdemeanor and one thousand dollars ($1,000) for a Class 2 misdemeanor. The amount of the fine for a Class 1 misdemeanor and a Class A1 misdemeanor is in the discretion of the court.

(c) Punishment for Each Class of Offense and Prior Conviction Level; Punishment Chart Described. – Unless otherwise provided for a specific offense, the authorized punishment for each class of offense and prior conviction level is as specified in the chart below. Prior conviction levels are indicated by the Roman numerals placed horizontally on the top of the chart. Classes of offenses are indicated by the Arabic numbers placed vertically on the left side of the chart. Each grid on the chart contains the following components:

(1) A sentence disposition or dispositions: "C" indicates that a community punishment is authorized; "I" indicates that an intermediate punishment is authorized; and "A" indicates that an active punishment is authorized; and

(2) A range of durations for the sentence of imprisonment: any sentence within the duration specified is permitted.

	PRIOR CONVICTION LEVELS		
MISDEMEANOR OFFENSE CLASS	LEVEL I No Prior Convictions	LEVEL II One to Four Prior Convictions	LEVEL III Five or More Prior Convictions
A1	1-60 days C/I/A	1-75 days C/I/A	1-150 days C/I/A
1	1-45 days C	1-45 days C/I/A	1-120 days C/I/A
2	1-30 days C	1-45 days C/I	1-60 days C/I/A
3	1-10 days C	1-15 days C if one to three prior convictions 1-15 days C/I if four prior convictions	1-20 days C/I/A.

(d) Fine Only for Certain Class 3 Misdemeanors. – Unless otherwise provided for a specific offense, the judgment for a person convicted of a Class 3 misdemeanor who has no more than three prior convictions shall consist only of a fine. (1993, c. 538, s. 1; 1994, Ex. Sess., c. 24, s. 14(b); 1995, c. 507, s. 19.5(g); 2013-360, s. 18B.13(a).)

§§ 15A-1340.24 through 15A-1340.33. Reserved for future codification purposes.