

SENTENCING IN (non-DWI) MISDEMEANOR CASES

OFFENSE CLASSES

- **Class 3** (least serious) → **Class 2** → **Class 1** → **Class A1** (most serious)
 - Class is usually set out in the statute describing the offense.
 - Sometimes the statute sets out a punishment but no class. Treat it as a:
 - Class 1 if punishable by more than 6 months imprisonment.
 - Class 2 if punishable by more than 30 days but no more than 6 months imprisonment.
 - Class 3 if punishable by 30 days or less imprisonment or a fine only.
 - Where no class or punishment is listed, treat it as a Class 1. GS 14-3(a).
 - Common-law offenses are also treated as Class 1 per GS 14-3(a).
 - Violations of local ordinances are treated as Class 3. GS 14-4.
 - Except parking violations, which are treated as infractions.
- **Enhancements** (must be set out in pleading)
 - If Class 2 or 3 is committed because of victim's race, color, religion, nationality, or country of origin, enhanced to Class 1. If Class A1 or 1 is committed because of victim's race, color, religion, nationality, or country of origin, enhanced to Class I felony. GS 14-3(c).
 - If no class or punishment is listed, and offense is infamous, done in secrecy and malice, or with deceit and intent to defraud, enhanced to Class H felony. GS 14-3(b).
- **Conspiracy or Attempt**-punished one class lower than the offense.
 - But if the offense is Class 3, conspiracy or attempt to commit it is still punished as a Class 3.
- **Solicitation**-punished as a Class 3.
- **Aid and Abet**-punished as provided for the offense (no reduction).

PRIOR CONVICTION LEVEL

- **Level 1** (no priors) → **Level 2** (1 to 4 priors) → **Level 3** (5 or more priors)
- **Prior Conviction**-before the date judgment is entered, D was convicted of a crime, it was not appealed, and time for appeal has expired. GS 15A-1340.11 (7).
 - Not a prior if it is on appeal.
 - Not a prior if D has not appealed but the time for appeal has not expired.
- **Each felony or misdemeanor conviction counts as one prior.**
 - Infractions do not count. GS 15A-1340.21 (b).
 - Where PJC was entered on a felony or misdemeanor, it counts as a prior.
- **Multiple Prior Convictions in One Session**
 - If D was convicted of more than one offense in a day in district court, only one counts. GS 15A-1340.21 (d).
 - If D was convicted of more than one offense in a week in superior court, only one counts. GS 15A-1340.21 (d).
 - But, if D was convicted of one offense in district court and one offense in superior court on the same day, both count. 632 SE2d 509.

- **Proof of Priors**-State must prove by the preponderance of the evidence that a prior exists and that D was the named offender. GS 15A-1340.21(c). Methods:
 - Stipulation of the parties
 - Original or copy of court record of prior conviction
 - Copy of records maintained by DCI, DMV, or AOC
 - Any other reliable method.

SENTENCE DISPOSITIONS

- **Active**-imprisonment
 - May consist of time served.
- **Intermediate**-Supervised probation plus at least one of the following:
 - Special probation (a “split” sentence where D has to serve a period of imprisonment while on probation)
 - Period of imprisonment can not exceed ¼ of the sentence imposed. GS 15A-1351(a).
 - Residential treatment program
 - House arrest with electronic monitoring (“EHA”)
 - Intensive Probation (a stepped up probation that typically requires more contacts with probation officer, curfew, and community service)
 - Day reporting center
 - Drug court
- **Community**-Probation (supervised or unsupervised) or just a fine
- **Selecting a Disposition**
 - Use the offense class and prior conviction level to determine which cell of the punishment chart applies. GS 15A-1340.23.
 - The court must impose the disposition that is listed for that cell.
 - But, where D falls in a C or I block, the court can still impose a sentence of time served. GS 15A-1340.20(c1).
 - **C/I/A**-If more than one disposition is listed for a cell, the court may choose which of the listed ones to impose.

SENTENCE LENGTH

- The court chooses a sentence (ie, 30 days) from the range (ie, 1-45 days) in the applicable cell of the punishment chart. GS 15A-1340.23.
 - There is no maximum or minimum.
 - Any sentence within the range set out in the cell is permissible. GS 15A-1340.23(c)(2).
 - For community punishments, the court may impose a fine only. GS 15A-1340.23(b).

MULTIPLE SENTENCES

- When sentencing D for multiple offenses, the court may:
 - Consolidate them. GS 15A-1340.22(b).
 - The court lumps them together and imposes a single judgment.
 - The sentence length will be that of the most serious offense.
 - Run them concurrently

- If not specified, they run concurrently. GS 15A-1354(a).
- Run them consecutively (“box car”)
 - The cumulative length of the sentences shall not exceed twice the maximum authorized for the class and prior conviction level of the most serious offense. GS 15A-1340.22(a).
 - No consecutive sentences for all Class 3 misdemeanors. GS 15A-1340.22(a).

PROBATION LENGTH

- Unless the court makes specific findings that a longer or shorter period is necessary, the period of probation shall be:
 - 6-18 months for community punishment
 - 12-24 months for intermediate punishment. GS 15A-1343.2(d).
- The court cannot impose more than five years. GS 15A-1342(a).

RESTITUTION

- The court must impose restitution for misdemeanors subject to the Crime Victim’s Rights Act. GS 15A-1340.34(b).
 - The Act applies only if D and the victim were in a personal relationship as defined in GS 50B-1(b), and D has been convicted of:
 - Assault on a female
 - Assault by pointing a gun
 - Assault with a deadly weapon
 - Assault inflicting serious injury
 - Domestic criminal trespass
 - Stalking
- For misdemeanors that do not fall under the Crime Victim’s Rights Act, the court may, but is not required to order restitution. GS 15A-1340.34(c).
- In ordering any restitution, the Court shall consider D’s ability to pay and damage that is supported by the record. GS 15A-1340.36; GS 15A-1340.35.

FINES

- Unless otherwise provided by statute, the maximum allowable fine is:
 - \$200 for Class 3 misdemeanor
 - \$1,000 for Class 2 misdemeanor
 - Discretion of the court for Class 1 or A1 misdemeanor. GS 15A-1340.23(b).

JAIL CREDIT

- **Credits Allowed**-the court must impose credit for all time D spent in custody for the charge, including:
 - Pending trial, appeal, or probation revocation hearing. GS 15-196.1.
 - In NC state or local correctional facility. GS 15-196.1.
 - In another state if D was held on NC charge. 558 F. Supp. 1284.
 - DART-Cherry. 177 NCA 140
 - IMPACT. 356 NC 132.

- Mental hospital for pretrial evaluation. GS 15-196.1.
- Time served pursuant to special probation. 111 NCA 254.
- Time served for criminal contempt (at least where contempt is based on violation of probation). 173 NCA 620.
- **No Credit** for days in custody that have already been credited on a previously imposed sentence. GS 15-196.1.
 - No credit if D was serving another sentence while awaiting trial.
 - No credit if D was not being held for this charge. 15-196.1.
 - ie, D posted bond on this charge but was still under secured bond for another pending matter.
 - No credit if D was not confined.
 - No credit for house arrest with or without electronic monitoring. 140 NCA 198.
 - No credit for private rehabilitation centers. GS 15-196.1.
- **Calculating Credit**-Exclude the first day and include the last. 295 NC 309.
- **Consecutive Sentences**-Where D was held for multiple offenses that have been run consecutively, apply the jail credit one time to the cumulative sentence.
- **Concurrent Sentences**-Apply the credit to each offense D was held on.
- **Special probation**-The judge chooses whether to apply credit towards the period of imprisonment or towards the suspended sentence. GS 15A-1351(a).

MISDEMEANOR CONVICTIONS THAT COUNT TOWARDS PRIOR RECORD LEVEL FOR FELONY SENTENCING

- Class A1 and Class 1 nontraffic, misdemeanors
- Impaired driving, impaired driving in a commercial vehicle, and misdemeanor death by vehicle.
 - No other misdemeanor traffic offenses. GS 15A-1340.14(b)(5).