

SENTENCING AND JAIL CREDIT

SENTENCING (NON-DWI)

Cheat Sheet (common classes of offenses/sentencing rules/collateral consequences)

- Grid under §15A-1340.23.
- Structured Sentencing (best to worst) Level 1, Level 2, Level 3.
- Fair Sentencing Act (DWI) Level 5, Level 4, Level 3, Level 2, Level 1.
- For DWI, you would rather be high, for everything else low is the way to go!
- Simple as 1, 2, 3.
- 1 = Class of Offense; 2 = Prior Conviction Level; 3 = Sentencing Disposition.

I. Class of Offense (see cheat sheet)

- District Attorney's discretion as to what a defendant pleads to and what is dismissed or reduced. For Superior Court statutes, see §15A-1023(b) & 1024.
 - DA may remain silent, not oppose, recommend or agree to a particular sentence.
 - Judge's discretion as to sentence, as long as within sentencing grid and agreement. See §15A-1023(b) & 1024 as to Superior Court agreements and remedy.
- Motor Vehicle Offenses -Unless a specific penalty is otherwise provided by law, a person convicted of a misdemeanor contained in this Article is guilty of a Class 2 misdemeanor. §20-176(b)
- ABC Laws -Unless a different punishment is otherwise expressly stated, any person who violates any provision of this Chapter shall be guilty of a Class 1 misdemeanor. §18B-102
- General Misdemeanors -Any misdemeanor for which no specific classification and no specific punishment are prescribed by statute shall be punishable as a Class 1 misdemeanor. §14-3(a)
 - Any misdemeanor that has a specific punishment, but is not assigned a classification by the General Assembly pursuant to law is classified as follows, based on the maximum punishment allowed by law for the offense as it existed on the effective date of Article 81B of Chapter 15A of the General Statutes:
 - (1) If that maximum punishment is more than six months imprisonment, it is a Class 1 misdemeanor;
 - (2) If that maximum punishment is more than 30 days but not more than six months imprisonment, it is a Class 2 misdemeanor; and
 - (3) If that maximum punishment is 30 days or less imprisonment or only a fine, it is a Class 3 misdemeanor.
- Infractions -An infraction is a noncriminal violation of law not punishable by imprisonment. Unless otherwise provided by law, the sanction for a person found responsible for an infraction is a penalty of not more than one hundred dollars. §14-3.1(a)

- Local Ordinance -. . . if any person shall violate an ordinance of a county, city, town . . . he shall be guilty of a Class 3 misdemeanor and shall be fined not more than \$500.00. No fine shall exceed \$50.00 unless the ordinance expressly states that the maximum fine is greater than \$50.00. §14-4(a)
- Local Ordinance Regulating to Vehicles -If any person shall violate an ordinance of a county, city, or town regulating the operation or parking of vehicles, he shall be responsible for an infraction and shall be required to pay a penalty of not more than \$50.00. §14-4(b)
- ITPP -Depends on the value. If greater than \$200 = Class 1. If less than \$200 = Class 2. §14-160
- Possession of M/J -Depends on the amount. If greater than ½ ounce = Class 1. If less than ½ ounce = Class 3. Class 3 M/J MUST be given a suspended sentence. §90-95(d)(4)
- Open Container under Chapter 20 -If driver and 1st offense = Class 3. If driver and has prior conviction = Class 2. If passenger = infraction and is NOT a moving violation. §20-138.7(e)
- Unlawful Concealment -Can be a Class 1, 2 or 3, depending on prior convictions. Class 2 and 3 require community service if sentence is suspended, unless judge makes specific finding that defendant is unable to perform. Class 1 requires minimum split sentence of 11 days. §14-72.1(e)
- Worthless Check -
 - Greater Than \$2000 = Felony. §14-107(d)
 - Nonexistent Account = Class 1. §14-107(d)(3)
 - Closed Account = Class 1. §14-107(d)(4)
 - Three or More Convictions = Class 1 and banned from checking. §14-107(d)(1)
 - Otherwise = Class 2. §14-107(d)(1)
- Secret Peeping -
 - If by using a photographic device = Class A1. §14-202(c)
 - Felony if photo for arousal, without consent, installs photo devise or possession. §14-202(d)(e)(f) & (g)
 - Otherwise = Class 1. §14-202(a)
 - Second Offense
 - Of Class 1 = Class A1, of Class A1 = Felony. §14-202(i)
 - Judge must consider danger and can order sex offender registration. §14-202(l)
 - Judge must impose psychological evaluation and treatment. §14-202(i)(2)

Always Look For Potential Enhancements and Possible Felony Charges

Enhancements

- If a misdemeanor offense as to which no specific punishment is prescribed be infamous, done in secrecy and malice, or with deceit and intent to defraud, the offender shall, except where the offense is a conspiracy to commit a misdemeanor, be guilty of a Class H felony. §14-3(b)
- If any Class 2 or Class 3 misdemeanor is committed because of the victim's race, color, religion, nationality, or country of origin, the offender shall be guilty of a Class 1

misdemeanor. If any Class A1 or Class 1 misdemeanor offense is committed because of the victim's race, color, religion, nationality, or country of origin, the offender shall be guilty of a Class H felony. §14-3(c)

- If enhancements are not alleged, they cannot be used. Must be plead and proven. *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004))

Conspiracy and Attempt §14-2.5 (=1 Class lower)

- Unless a different classification is expressly stated, an attempt to commit a misdemeanor or a felony is punishable under the next lower classification as the offense which the offender attempted to commit. An attempt to commit a Class A or Class B1 felony is a Class B2 felony, an attempt to commit a Class B2 felony is a Class C felony, an attempt to commit a Class I felony is a Class 1 misdemeanor, and an attempt to commit a Class 3 misdemeanor is a Class 3 misdemeanor.

Solicitation §14-2.6

- (a) Unless a different classification is expressly stated, a person who solicits another person to commit a felony is guilty of a felony that is two classes lower than the felony the person solicited the other person to commit, except that a solicitation to commit a Class A or Class B1 felony is a Class C felony, a solicitation to commit a Class B2 felony is a Class D felony, a solicitation to commit a Class H felony is a Class 1 misdemeanor, and a solicitation to commit a Class I felony is a Class 2 misdemeanor.
- (b) Unless a different classification is expressly stated, (CAN/prostitution) a person who solicits another person to commit a misdemeanor is guilty of a Class 3 misdemeanor.

Aid and Abet & Acting in Concert (common law concepts)

- Guilty of same Class as Principal.
- Except Aid and Abet DWI is always a level 5. §20-179(f1)

II. Prior Conviction Level §15A-1340.11(7)

- Definitions
 - 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 the district court, and the person has not given notice of appeal and the time for appeal has expired; or
 - In the superior court, regardless of whether the conviction is on appeal to the appellate division.
- Contempt is not a criminal conviction. *State v. Reaves*, 142 N.C. App. 629 (2001).
- Infractions are not criminal convictions. §14-3.1(a), §15A-1340.11(7)

Prior Convictions from Same Session §15A-1340.21(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.

Prior Conviction Standard of Proof §15A-1340.21(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 Division of Criminal Information, 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 Division of Criminal Information, 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 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. (Also see §20-179(o) for DWI cases) 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.
- Out of State Conviction §15A-1340.11(7)(c)
 - 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 the courts of the United States, another state, the armed services 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.

III. Sentencing Dispositions Definitions (C/I/A) §15A-1340.11

- Community punishment §15A-1340.11(2)
 - A sentence in a criminal case that does not include an active punishment, an intermediate punishment, or any of the conditions of probation listed in subdivision (6) of this section.
 - Time Served Active Punishment Exception §15A-1340.20
 - 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.
- Intermediate Punishment §15A-1340.11(6)
 - A sentence in a criminal case that places an offender on supervised probation and includes at least one of the following conditions:
 - Special probation as defined in G.S. 15A-1351(a). (Split Sentence)

- [m]ay not exceed one-fourth the maximum sentence of imprisonment imposed for the offense, and no confinement other than an activated suspended sentence may be required beyond two years of conviction.
- In imposing a sentence of special probation, the judge may credit any time spent committed or confined, as a result of the charge, to either the suspended sentence or to the imprisonment required for special probation.
 - Assignment to a residential program.
 - House arrest with electronic monitoring.
 - Intensive probation.
 - Assignment to a day-reporting center.
 - Assignment to a drug treatment court program.
- Time Served Active Punishment Exception §15A-1340.20
 - 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.
- Active punishment §15A-1340.11(1)
 - 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.

Multiple Sentences §15A-1340.15 (felony) & §15A-1340.22 (misdemeanor)

- Consolidate §15A-1340.22(b)
 - 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.
- Concurrent §15A-1354(a)
 - If not specified or not required by statute to run consecutively, sentences shall run concurrently.
- Consecutive § 15A-1340.22
 - (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.
 - Look out for Habitual DWI. Mandatory consecutive sentence, “[s]entences imposed under this subsection shall run consecutively with and shall commence at the expiration of any sentence being served.” §20-138.5

Presentence Report §15A-1332

- The court may order probation to conduct presentence investigation and submit written or oral report. Sentence recommendations may be included if requested. §15A-1332(b)
- May require more detailed study by DOC for short period, not to exceed 90 days, for a felony, Class A1 or Class 1 if defendant consents.

Probation Lengths §15A-1343.2(d)

- Unless the court makes specific findings that longer or shorter periods of probation are necessary, the length of the original period of probation for offenders sentenced under Article 81B shall be as follows:
 - (1) For misdemeanants sentenced to community punishment, not less than six nor more than 18 months;
 - (2) For misdemeanants sentenced to intermediate punishment, not less than 12 nor more than 24 months.

Period of Probation §15A-1342(a)

- 5 year maximum (DWI)
- 2 year maximum for Deferred Prosecution

Class 3 Misdemeanors §15A-1344(d)

- . . . provided that probation may not be revoked solely for conviction of a Class 3 misdemeanor.
- Class 3 misdemeanors, City Code violations and Infractions WILL not revoke probation.

Fines §15A-1340.23(b)

- (b) Unless otherwise provided for a specific offense, the maximum fine is:
 - Class A1 and Class 1 is in the discretion of the court.
 - \$1,000 for a Class 2 misdemeanor
 - \$200.00 for a Class 3 misdemeanor

Restitution §15A-1340.34 through §15A-1340.38

- Basis
- Determination
- Defendant's Ability to Pay
- Partial Restitution
- Enforcement

IV. Special Rules for Particular Issues

Possession of M/J & PDP

- If greater than ½ ounce = Class 1. If ½ ounce or less = Class 3. Class 3 M/J MUST be given a suspended sentence. §90-95(d)(4)
- §90-96 Judgment
 - Whenever any person who has not previously been convicted of any offense under this Article or under any statute of the United States or any state relating to those substances included in Article 5 or 5A of Chapter 90 or to that paraphernalia

included in Article 5B of Chapter 90 pleads guilty to or is found guilty of (i) a misdemeanor under this Article by possessing a controlled substance included within Schedules II through VI of this Article or by possessing drug paraphernalia as prohibited by G.S. 90-113.21, or (ii) a felony under G.S. 90-95(a)(3) by possessing less than one gram of cocaine, the court may, without entering a judgment of guilt and with the consent of such person, defer further proceedings and place him on probation upon such reasonable terms and conditions as it may require. §90-96(a)

- Court may allow the defendant to participate in a drug education program approved for this purpose by the Department of Health and Human Services. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge such person and dismiss the proceedings against him. Discharge and dismissal under this section shall be without court adjudication of guilt and shall not be deemed a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime including the additional penalties imposed for second or subsequent convictions under this Article.

Domestic Violence §15A-1382.1

- When convicted of an offense involving assault, or communicating a threat, the presiding judge shall determine whether the defendant and victim had a personal relationship. If so,
 - The judge shall determine whether the defendant shall comply with one or more of the special conditions of probation set forth in §15A-1343(b1). Court may also require house arrest under §15A-1343(3c).

Victim’s Rights Act <http://www.nccourts.org/Citizens/CPrograms/Victims/Offenses.asp>

- are current or former spouses,
- are persons of the opposite sex who live together or have lived together,
- are related as parents and children, including others acting in loco parentis to a minor child, or as grandparents and grandchildren,
- have a child in common,
- are current or former household members, or
- are persons of the opposite sex who are in a dating relationship or have been in a dating relationship.
- **Covered Offenses**

STATUTE	OFFENSE	CLASS
14-33(a)	Simple assault, simple assault and battery, or simple affray	2
14-33(c)(1))	Assault, assault and battery, or affray that inflicts serious injury or that involves the use of a deadly weapon	A1
14-33(c)(2)	Assault, assault and battery, or affray that involves an assault on a female	A1
14-34	Assaulting by pointing gun	A1

14-134.3	Domestic criminal trespass	1
14-277.3	Stalking	A1

Habitual Misdemeanor Assault §14-33.2

- A person violates any of the provisions of G.S. 14-33 and causes physical injury
- or G.S. 14-34 (assault by pointing gun)
- and two or more prior convictions for either misdemeanor or felony assault, with the earlier of the two prior convictions occurring no more than 15 years prior to the date of the current violation.

Firearm Notification §15A-1336

- AOC must develop a form to comply with the criminal case firearm notification requirements of the Violence Against Women Act of 2005. (See AOC-CR-617)

Potential Sex Offender Registration §14-208.7

- Secret Peeping under §14-202(d), (e), (f), (g) or (h) (all felonies) or a second or subsequent conviction of (a), (a1) or (c) only if ordered by court under (1).
- Sexual Battery under §14-27.5A.

DNA Sample §15A-266.4

- Assault on handicapped person under §14-32.1.
- Stalking under §14-277.3.
- Sexual Battery under §14-27.5A.
- Cyberstalking §14-196.3. (New, effective Feb. 1, 2011)

DNA Sample Upon Arrest §15A-266.3A (New, effective Feb. 1, 2011)

V. Other Considerations

Look for Mandatory Consecutive Sentences

- Habitual DWI, Habitual Felon, Habitual Violent Felon and Chapter 90 Trafficking.
- Habitual DWI statute says, “[s]entences imposed under this subsection shall run consecutively with and shall commence at the expiration of any sentence being served.” §20-138.5

Prior Record Level for Felony Sentencing §15A-1340.14(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.

Appeal §15A-1431

- Reasons for appeal include acquittal, but other considerations include:
 - Better sentence through negotiation.

- Pending Felony (save points, credit, cross examination).
- Probation Revocation concerns. See attached “Effects of Convictions” cheat sheet.
- If you appeal, the State may reinstate cases that were dismissed as part of a plea. §15A-1431(b)
- Notice of Appeal may be entered within 10 days of entry of judgment, either in open court or in writing. May withdraw appeal within same 10 day window. §15A-1431(c)
- The 10 days begin the day after judgment is entered. Count each calendar day, weekend and weekday. If the 10th day falls on a weekend or holiday, go to the next business day.
- After that 10 day window, if appeal has been entered and not withdrawn, the clerk is to transfer the case to superior court. §15A-1431(c)
- Judge must review the case and fix conditions of pretrial release. §15A-1431(d)
- Any prior order of pretrial release remains in effect unless modified. §15A-1431(e)
- Appeal stays payment of costs, fines, probation, special probation (split sentence) and active punishment. §15A-1431(f1)
 - BUT judge can modify bond. §15A-1431(d), (e), (f1), & §15A-534(e)(1)
- Remand (or withdraw of appeal) at any time PRIOR to calendaring for trial is automatic without the consent of the DA or of the court. This section is silent as to the attachment of the superior court costs, but probably safer to request that they be remitted. §15A-1431(g)
- Remand (or withdraw of appeal) AFTER calendaring for trial only with consent of the court and with the attachment of the superior court costs, unless remitted. §15A-1431(h)
- DWI remand (or withdraw of appeal) is completely the opposite. Resentencing upon remand or withdrawal of appeal is required. §20-38.7(c) & §15A-1431(g) & (h)
- Upon remand, you may need to change when probation starts, when a split or weekends begin or time frame for completion of things like community service. See [AOC-CR-320](#) (Judgment Modifying Time Periods Of Probation After Termination Of Appeal).
- What about new convictions after appeal but before remand? Except for DWI, sentence is exactly the same. If silent, concurrent. §15A-1354(a)

DWI SENTENCING

Cheat Sheet (for DWI, you would rather be high, for everything else low is the way to go!)

Aggravating and Grossly Aggravating Factors §20-179(c) & (d)

- Must allege factors and must prove beyond a reasonable doubt at trial or sentencing hearing. §20-179(a)(1)
- Superior court procedure requires notice and admission or bifurcation of trial. §20-179(a1) & (a2)
- Use [AOC form CR-311](#) to show that only 1 Grossly Aggravating Factor regardless of the number of children in car or persons injured.

Grossly Aggravating Factors §20-179(c)

- A conviction for an offense involving impaired driving within seven years of the date of this offense (See §20-179(o) re: rebutting priors)
- Each prior conviction is a separate grossly aggravating factor
- District court conviction that is appealed and either withdrawn or remanded BUT not yet resentenced
- The defendant's driver's license was revoked for an impaired driving offense at the time of this offense
- Serious injury to another person caused by the defendant's impaired driving at the time of this offense
- A child under the age of 16 years was in the vehicle at the time of this offense

Weighing Grossly Aggravating Factors §20-179(c)

- If any Grossly Aggravating Factors exist, it's as simple as counting them up.
 - Only 1 = Level 2
 - More than one = Level 1.
- May still consider Mitigating and Aggravating Factors in determining the appropriate sentence.
- If no Grossly Aggravating Factors, judge must weigh Aggravating and Mitigating Factors. §20-179(f)
- Prior convictions may be challenged if defendant shows by the preponderance of the evidence that the conviction was obtained while defendant was indigent, had no counsel and had not waived counsel. §20-179(o) (also see §15A-980)

Sentencing for Levels 1 & 2 §20-179(g) & (h)

- **MAY** be suspended with these Probation Conditions:
- | <u>Level</u> | <u>Max</u> | <u>Mandatory Minimum Sentence</u> |
|--------------|-------------------------|-----------------------------------|
| 1 | 2 years
\$4,000 fine | 30 days |
| 2 | 1 year
\$2,000 fine | 7 days |
- If suspended, **MUST** require substance abuse assessment. §20-179(g) & (h)
- **SCRAM Device** §20-179 (h1-h3)

- May also impose 30 to 60 days of abstinence, as verified by DOC approved device. Cost of the device may not exceed \$1,000.

Aggravating Factors §20-179(d)

- Gross impairment of **0.15** or more
- Especially reckless or dangerous driving
- Negligent driving that led to a reportable accident
- Driving by the defendant while his driver's license was revoked
- Two or more prior convictions of a motor vehicle offense for which at least three points are assigned occurring within five years of the date of this offense **OR** one or more prior convictions of an offense involving impaired driving that occurred more than seven years before the date of this offense
- Conviction of speeding while fleeing or attempting to elude apprehension
- Conviction of speeding by the defendant by at least 30 miles per hour over the legal limit
- Passing a stopped school bus
- Any other factor that aggravates the seriousness of the offense

Mitigating Factors §20-179(e)

- Slight impairment solely from alcohol and the alcohol concentration did not exceed 0.09
- Slight impairment resulting solely from alcohol, with no chemical analysis having been available to the defendant
- Driving at the time of the offense that was safe and lawful except for the impairment
- A safe driving record, having no convictions for any motor vehicle offense for which at least four points are assigned within five years of the date of this offense
- Impairment caused primarily by a lawfully prescribed drug for an existing medical condition, and the amount of the drug taken was within the prescribed dosage
- Voluntary submission to a mental health facility for assessment after being charged with the impaired driving offense and, if recommended by the facility, voluntary participation in the recommended treatment
- Assessment, compliance with recommendations and maintaining 60 days of continuous abstinence, as proven by DOC approved device
- Any other factor that mitigates the seriousness of the offense

Weighing Aggravating and Mitigating Factors §20-179(f)

- If no Grossly Aggravating Factors, judge must weigh Aggravating and Mitigating Factors.
- **Level 3** = Aggravating outweighs Mitigating A>M
- **Level 4** = No Aggravating or Mitigating ∅
- or Aggravating = Mitigating A=M
- **Level 5** = Mitigating outweighs Aggravating M>A

Sentencing for Levels 3, 4 & 5 §20-179(i), (j) & (k)

- **MAY** be suspended with these Probation Conditions:

<u>Level</u>	<u>Min</u>	<u>Max</u>	<u>Probation Conditions</u>
3	72 hrs	6 months \$1,000 fine	72 hours jail 72 hours C.S. or any combination
4	48 hrs	120 days \$500 fine	48 hours jail 48 hours C.S. or any combination
5	24 hrs	60 days \$200 fine	24 hours jail 24 hours C.S. or any combination

- If suspended, **MUST** require substance abuse assessment. §20-179 (all levels)

No Consolidation of Multiple DWI's (§20-179(f2))

Aiding and Abetting DWI §20-179(f1)

- Always a Level 5.
- No findings of factors needed.

Unsupervised Probation §20-179(r)

- Must be given unsupervised probation, **UNLESS** judge makes specific findings otherwise, if:
 - No DWI's within 7 years,
 - Level 3, 4 or 5 and
 - Obtained assessment and completed treatment.

Split Sentences and Report Dates §20-179(s)

- Hour for hour credit for service. §20-179(s)(1)
- If alcohol remains in body upon report, shall be refused entrance and reported back to court. §20-179(s)(2)
- Immediate service of sentence after hearing. §20-179(s)(3)
- No Jail Credit for First 24 Hours. §20-179 (p)(1)
- Credit for Inpatient Treatment. (§20-179(k1))
 - Inpatient facility operated or licensed by the State.
 - Defendant bears the cost unless trial judge orders that the costs be absorbed by the State.
 - Credit only allowed if treatment occurred after offense.

Appeal of DWI Case §20-38.7

- Remand of a DWI requires consent of the DA and Superior Court.
- Resentencing upon remand or withdrawal of appeal required. Completely different than EVERY other case. §15A-1431(g) & (h)

Habitual DWI

- Habitual impaired driving statute says, “[s]entences imposed under this subsection shall run consecutively with and shall commence at the expiration of any sentence being served.” §20-138.5

JAIL CREDIT

Credits Allowed §15-196.1

- The minimum and maximum term of a sentence shall be credited with and diminished by the total amount of time a defendant has 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. The credit provided shall be calculated from the date custody under the charge commenced and shall include credit for all time spent in custody pending trial, trial de novo, appeal, retrial, or pending parole, probation or post-release revocation hearing: Provided, however, the credit available herein shall not include any time that is credited on the term of a previously imposed sentence to which the defendant is subject.
 - A defendant is entitled to jail credit for periods of confinement prior to his conviction (or probation revocation) as long as:
 - The credit was not used on a previously imposed sentence.
 - The defendant was not serving another sentence during the same time period.
 - A defendant stops earning credit when he begins serving his active sentence.

Allowance in Cases of Multiple Sentences §15-196.2

- In the event time creditable under this section shall have been spent in custody as the result of more than one pending charge, resulting in imprisonment of more than one offense, credit shall be allowed as herein provided. Consecutive sentences shall be considered as one sentence for the purpose of providing credit, and the creditable time shall not be multiplied by the number of consecutive offenses for which a defendant is imprisoned. Each concurrent sentence shall be credited with so much of the time as was spent in custody due to the offense resulting in the sentence. When both concurrent and consecutive sentences are imposed, both of the above rules shall obtain to the applicable extent.
 - Concurrent Sentences
 - Use appropriate credit on each charge.
 - Consecutive Sentences
 - Any period that the defendant was confined on more than one charge is to be counted only once as credit toward the entire string of sentences.

Calculating Jail Credit

- Jail credit is computed by excluding the first day and including the last. See State v. Richardson, 245 S.E.2d 754 (1978).

Split Rule §15A-1351(a)

- [m]ay not exceed one-fourth the maximum sentence of imprisonment imposed for the offense, and no confinement other than an activated suspended sentence may be required beyond two years of conviction.

- In imposing a sentence of special probation, the judge may credit any time spent committed or confined, as a result of the charge, to either the suspended sentence or to the imprisonment required for special probation.
- A defendant who serves, pursuant to special probation, an active sentence is entitled to credit for that time on any sentence imposed upon revocation of probation. See *State v. Farris*, 336 N.C. 552 (1994).

Credit for Inpatient Treatment

- Defendant participating in a residential treatment program where his freedom was substantially limited was in "custody," for purposes of entitlement to a sentencing credit for time spent in the program. *State v. Hearst*, 356 N.C. 132 (2002).
- Specifically mentioned in DWI statute. The judge may credit against the active sentence imposed on a defendant the time the defendant was an inpatient at the treatment facility, provided such treatment occurred after the commission of the offense for which the defendant is being sentenced. §20-179 (k1)

Credit on Amended Charge

- Use "as a result of the charge" language in §15-196.1.
 - May need to provide copies of warrants, police reports, etc. to show same charge.

House Arrest

- Does not constitute confinement in a state or local institution and does not qualify as time that can be credited against a defendant's sentence pursuant to this section. See *State v. Jarman*, 140 N.C. App. 198 (2000).

DWI Sentencing §20-179

- No Jail Credit for First 24 Hours. §20-179 (p)(1)
- The judge may credit against the active sentence imposed on a defendant the time the defendant was an inpatient at the treatment facility, provided such treatment occurred after the commission of the offense for which the defendant is being sentenced. §20-179 (k1)

Certificate of Credit §15-196.4

- The judge presiding shall determine the credits to which the defendant is entitled and shall cause the clerk to transmit to the custodian of the defendant a statement of allowable credits.

Order Providing Credit §15-196.4

- Upon reviewing a petition seeking credit not previously allowed, the court shall determine the credits due and forward an order setting forth the allowable credit to the custodian of the petitioner.
- See AOC form [AOC-CR-906M](#).