

Sentencing for New Superior Court Judges

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A. Reference Materials

1. *Law of Sentencing, Probation and Parole in North Carolina*, Clarke, IOG
2. *Punishment Chart*, Rubin, IOG
3. *Structured Sentencing Training and Reference Manual*, Sentencing Commission
4. Trial Court Desktop
5. Forms
6. IOG Web site--<http://www.iog.unc.edu/programs/crimlaw/appellate.pdf>

B. Structured Sentencing—GS 15A-1340.1, et. seq.

1. Applies to both felony and misdemeanor, but with different rules
2. DWI and capital cases are excluded
3. DWI remains only parole offense, except for FSA and older cases -- Article 85, GS. Ch. 15A.
4. May have old cases involving FSA, or even pre-FSA cases

C. Structured Sentencing for Felonies

1. Grid-based -- GS 15A-1340.17
2. Based on prior record and class of offense
3. Each grid contains a required or permitted disposition
4. Each grid contains a range of minimum punishments
5. Prosecutor must present evidence of prior record, but retains power to charge bargain—GS 15A-1340.14(f)
6. Term of imprisonment imposed must have minimum and maximum; grid is range of minimums only. Maximum is derived from minimum term imposed, following chart in GS 15A-1340.17(d), (e)
7. Classification of offense is statutory with following exceptions:
 - a. Conspiracy is one class lower than principal offense GS 14-2.4
 - b. Attempt is one class lower GS 14-2.5
 - c. Solicitation is two classes lower GS 14-2.6
 - d. Accessory after fact is two classes lower GS 14-7
 - e. Use of bullet-proof vest ups class by one level GS 15A-1340.16C
8. Prior record level is determined by statutory chart and is conviction-based with few exceptions (GS 15A-1340.14):
 - a. Escape, probation, or same previous offense
 - b. Multiple convictions in same court week, count only most serious conviction
 - c. Out-of-state offenses

9. Dispositions
 - a. Active
 - i. Prison or Jail
 - b. Intermediate
 - i. Day Reporting Center GS 15A-1340.11(3)
 - ii. Intensive Probation GS 15A-1340.11(5) and GS 143B-262(c)
 - iii. Special probation GS 15A-1351(a)
 - iv. Residential GS 15A-1340.11(8)
 - v. House Arrest with Electronic Monitoring GS 15A-1340.11(4a)
 - vi. Assignment to drug treatment court GS 15A-1340.11(3a)
 - c. Community
 - i. Fine
 - ii. Treatment
 - iii. Education
 - iv. Restitution GS 15A-1343(d); -1340.34 et. seq.
 - v. Community service GS 15A-1343(b1)(6), -1343(d)1; 143B-262.4
 - vi. Regular probation, etc.
10. Duration of sentence of imprisonment
 - a. Must be within grid limits GS 15A-1340.13(b)
 - b. Grid has three ranges-Mitigated, Presumptive, and Aggravated GS 15A-1340.13(e)
 - i. Jury must find aggravating factors GS 15A-1340.16
 - c. Court determines which range, and if moves from presumptive, must do so after finding factors to support departure
 - d. Court must consider evidence offered, but need not make findings unless necessary to support departure
11. Plea Bargaining as to Sentence
 - a. DA may charge bargain
 - b. DA may bargain about consecutive and concurrent
 - c. DA may bargain for a specific sentence that is consistent with grid
 - d. DA may not bargain for a sentence that is not in an acceptable range for the grid in which defendant falls
 - e. E.g, May not bargain for aggravated range sentence unless judge finds factors to support aggravated sentence 135 NC App. 107
12. Consecutive Sentences—in court's discretion, unless part of plea bargain
13. Concurrent Sentences—ditto
 - a. Presumption is that sentences are concurrent
14. Components of active sentence
 - a. Classes B1-E (e.g. Minimum 20, maximum 33)
 - i. Minimum of 20 must be served
 - ii. Period between 20 and 24 months may be reduced by earned time awarded by DOC GS 15A-1340.13(d)
 - iii. After 24 months (or less if earned time awarded) must be released, subject to 9 months of Post-release supervision GS 15A-1368 et. seq.

- b. Class F-I (e.g. Minimum 20, maximum 24)
 - i. Minimum of 20 must be served
 - ii. Period between 20 and 24 months may be reduced by earned time awarded by DOC
 - iii. After 24 months (or less if earned time awarded) must be released
 - iv. No PRS imposed on these sentences
15. Special Rules and Exceptions
- a. Habitual felons GS 14-7.1 et. seq.
 - b. Violent habitual felon GS 14-7.7 et. seq.
 - c. Extraordinary mitigation GS 15A-1340.13(g), (h)
 - d. Drug trafficking “substantial assistance” GS 90-95(h)(5); 131 NC App. 551

D. Structured Sentencing--Misdemeanors

1. Uses different prior record system GS 15A-1340.21(b)
2. No duty on DA to provide record
3. No minimum sentence
4. No aggravating or mitigating factors
5. Limits on consecutive sentences GS 15A-1340.22(a)
6. Credit for time served exception to requirement that intermediate punishment be used GS 15A-1340.20(d)

E. Probation

1. Required if don't have active sentence
2. May be supervised or unsupervised
3. May
 - a. Be regular or intensive
 - b. Be special (*aka* split sentence), either supervised or unsupervised
 - c. Have regular or special conditions
4. Presumptive lengths GS 15A-1343.2(d)
 - a. Misdemeanors, community punishment, 6-18
 - b. Misdemeanors, intermediate, 12-24
 - c. Felons, community, 12-30
 - d. Felons, intermediate, 18-36
 - e. May depart if make findings to that effect
5. Delegation to probation officer
 - a. Financial details GS 15A-1343(g)
 - b. Response to violations to require community service, treatment, increased reporting, curfew and electronic monitoring, and educational programs GS 15A-1343.2(e), (f)
6. Revocation or modification
 - a. Special probation—up to one fourth the maximum or six months, whichever is less GS 15A-1344(e)
 - b. Active Sentence—must be within original range of minimums, can't be above original minimum GS 15A-1344(d1)

- c. Contempt is also authorized GS 15A-1344(e1)

Sentencing Philosophy

1. Should you have one?
 - a. Advantage
 - i. Predictability
 - ii. Fairness to parties
 - iii. Makes it easier on you to sentence by exception
 - b. Disadvantage
 - i. Harder to have keep your eyes open to the facts of each case, and the uniqueness of each case
2. Factors
 - a. Goals of Sentencing
 - i. Deterrence
 - ii. Retribution/punishment commensurate with offense, but taking into account defendant's circumstances
 1. What is "punishment"?
 - iii. Restraint
 - iv. Rehabilitation
 - b. Offense circumstances
 - i. Victim's interests
 - c. Offender's circumstances
 - i. Family support
 - ii. Mental ability
 - iii. Employment/education
 - iv. Drug use
 - d. Society expectations
 - e. Cost of sentence
3. Sentencing Philosophy
 - a. What is your "default" position? Why? What are you trying to achieve?
 - b. How much risk should society take?
 - c. How much should society pay for your sentences? Does it matter?