

Article 83.

Imprisonment.

§ 15A-1351. Sentence of imprisonment; incidents; special probation.

(a) The judge may sentence to special probation a defendant convicted of a criminal offense other than impaired driving under G.S. 20-138.1, if based on the defendant's prior record or conviction level as found pursuant to Article 81B of this Chapter, an intermediate punishment is authorized for the class of offense of which the defendant has been convicted. A defendant convicted of impaired driving under G.S. 20-138.1 may also be sentenced to special probation. Under a sentence of special probation, the court may suspend the term of imprisonment and place the defendant on probation as provided in Article 82, Probation, and in addition require that the defendant submit to a period or periods of imprisonment in the custody of the Division of Adult Correction and Juvenile Justice of the Department of Public Safety or a designated local confinement or treatment facility at whatever time or intervals within the period of probation, consecutive or nonconsecutive, the court determines, as provided in this subsection. For probationary sentences for misdemeanors, including impaired driving under G.S. 20-138.1, all imprisonment under this subsection shall be in a designated local confinement or treatment facility. If the person being ordered to a period or periods of imprisonment is under the age of 18, that person must be imprisoned in a detention facility approved by the Juvenile Justice Section of the Division of Adult Correction and Juvenile Justice to provide secure confinement and care for juveniles or to a holdover facility as defined in G.S. 7B-1501(11). If the person being ordered to a period or periods of imprisonment reaches the age of 18 years while imprisoned, the person may be transported by personnel of the Juvenile Justice Section of the Division, or personnel approved by the Juvenile Justice Section, to the custody of the sheriff of the applicable local confinement facility. In addition to any other conditions of probation which the court may impose, the court shall impose, when imposing a period or periods of imprisonment as a condition of special probation, the condition that the defendant obey the Rules and Regulations of the Division of Adult Correction and Juvenile Justice of the Department of Public Safety governing conduct of inmates, and this condition shall apply to the defendant whether or not the court imposes it as a part of the written order. Except for probationary sentences for misdemeanors, including impaired driving under G.S. 20-138.1, if imprisonment is for continuous periods, the confinement may be in the custody of either the Division of Adult Correction and Juvenile Justice of the Department of Public Safety or a local confinement facility. Noncontinuous periods of imprisonment under special probation may only be served in a designated local confinement or treatment facility. If the person being ordered continuous or noncontinuous periods of imprisonment is under the age of 18, that person must be imprisoned in a detention facility approved by the Juvenile Justice Section of the Division of Adult Correction and Juvenile Justice to provide secure confinement and care for juveniles or to a holdover facility as defined in G.S. 7B-1501(11). If the person being ordered to a period or periods of imprisonment reaches the age of 18 years while imprisoned, the person may be transported by personnel of the Juvenile Justice Section of the Division, or personnel approved by the Juvenile Justice Section, to the custody of the sheriff of the applicable local confinement facility. Except for probationary sentences of impaired driving under G.S. 20-138.1, the total of all periods of confinement imposed as an incident of special probation, but not including an activated suspended sentence, may 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. For probationary sentences for impaired driving under G.S. 20-138.1, the total of all periods of confinement imposed as an incident of special probation,

but not including an activated suspended sentence, shall not exceed one-fourth the maximum penalty allowed by law. 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. The original period of probation, including the period of imprisonment required for special probation, shall be as specified in G.S. 15A-1343.2(d), but may not exceed a maximum of five years, except as provided by G.S. 15A-1342(a). The court may revoke, modify, or terminate special probation as otherwise provided for probationary sentences.

(b) Sentencing of a person convicted of a felony or of a misdemeanor other than impaired driving under G.S. 20-138.1 that occurred on or after the effective date of Article 81B is subject to that Article. For persons convicted of impaired driving under G.S. 20-138.1, a sentence to imprisonment must impose a maximum term and may impose a minimum term. The impaired driving judgment may state the minimum term or may state that a term constitutes both the minimum and maximum terms. If the impaired driving judgment states no minimum term, the defendant becomes eligible for parole in accordance with G.S. 15A-1371(a).

(c) Repealed by Session Laws 1979, c. 749, s. 7.

(d), (e) Repealed by Session Laws 1993, c. 538, s. 19.

(f) Work Release. – When sentencing a person convicted of a felony, the sentencing court may recommend that the sentenced offender be granted work release as authorized in G.S. 148-33.1. When sentencing a person convicted of a misdemeanor, the sentencing court may recommend or, with the consent of the person sentenced, order that the sentenced offender be granted work release as authorized in G.S. 148-33.1.

(g) Credit. – Credit towards a sentence to imprisonment is as provided in Article 19A of Chapter 15 of the General Statutes.

(h) Repealed by Session Laws 2003-141, s. 2, effective December 1, 2003. (1977, c. 711, s. 1; 1977, 2nd Sess., c. 1147, ss. 15-17; 1979, c. 749, ss. 5-7; c. 760, s. 4; 1985 (Reg. Sess., 1986), c. 1014, s. 201(a); 1987, c. 738, s. 111(e); 1993, c. 84, s. 2; c. 538, s. 19; 1994, Ex. Sess., c. 24, s. 14(b); 1993 (Reg. Sess., 1994), c. 767, ss. 7, 10; 1998-212, s. 17.21(b); 2003-141, s. 2; 2003-151, s. 2; 2011-145, s. 19.1(h); 2014-100, s. 16C.1(a); 2017-186, s. 2(ppp); 2020-83, s. 8(j).)

§ 15A-1352. Commitment to Division of Adult Correction and Juvenile Justice of the Department of Public Safety or local confinement facility.

(a) Except as provided in subsection (f) of this section, a person sentenced to imprisonment for a misdemeanor under this Article or for nonpayment of a fine for conviction of a misdemeanor under Article 84 of this Chapter shall be committed for the term designated by the court to the Statewide Misdemeanant Confinement Program as provided in G.S. 148-32.1 or, if the period is for 90 days or less, to a local confinement facility, except as provided for in G.S. 148-32.1(b).

If a person is sentenced to imprisonment for a misdemeanor under this Article or for nonpayment of a fine under Article 84 of this Chapter, the sentencing judge may make a finding of fact as to whether the person would be suitable for placement in a county satellite jail/work release unit operated pursuant to G.S. 153A-230.3. If the sentencing judge makes a finding of fact that the person would be suitable for placement in a county satellite jail/work release unit and the person meets the requirements listed in G.S. 153A-230.3(a)(1), then the custodian of the local confinement facility may transfer the misdemeanant to a county satellite jail/work release unit.

If the person sentenced to imprisonment is under the age of 18, the person must be committed to a detention facility approved by the Juvenile Justice Section of the Division of Adult Correction and Juvenile Justice to provide secure confinement and care for juveniles. Personnel of the Juvenile

Justice Section of the Division or personnel approved by the Juvenile Justice Section shall transport the person to the detention facility. If the person sentenced to imprisonment reaches the age of 18 years while imprisoned, the person may be transported by personnel of the Juvenile Justice Section of the Division, or personnel approved by the Juvenile Justice Section, to the custody of the sheriff of the applicable local confinement facility.

(b) A person sentenced to imprisonment for a felony under this Article or for nonpayment of a fine for conviction of a felony under Article 84 of this Chapter shall be committed for the term designated by the court to the custody of the Division of Adult Correction and Juvenile Justice of the Department of Public Safety.

(c) Repealed by Session Laws 2014-100, s. 16C.1(b), effective October 1, 2014. See Editor's note for applicability.

(d) Notwithstanding any other provision of law, when the sentencing court, with the consent of the person sentenced, orders that a person convicted of a misdemeanor be granted work release, the court may commit the person to a specific prison facility or local confinement facility or satellite jail/work release unit within the county of the sentencing court in order to facilitate the work release arrangement. When appropriate to facilitate the work release arrangement, the sentencing court may, with the consent of the sheriff or board of commissioners, commit the person to a specific local confinement facility or satellite jail/work release unit in another county.

(e) Repealed by Session Laws 2014-100, s. 16C.1(b), effective October 1, 2014. See Editor's note for applicability.

(f) A person sentenced to imprisonment of any duration for impaired driving under G.S. 20-138.1, other than imprisonment required as a condition of special probation under G.S. 15A-1351(a) or G.S. 15A-1344(e), shall be committed to the Statewide Misdemeanant Confinement Program established under G.S. 148-32.1.

If the person sentenced to imprisonment is under the age of 18, the person must be committed to a detention facility approved by the Juvenile Justice Section of the Division of Adult Correction and Juvenile Justice to provide secure confinement and care for juveniles. Personnel of the Juvenile Justice Section or personnel approved by the Juvenile Justice Section shall transport the person to the detention facility. If the person sentenced to imprisonment reaches the age of 18 years while imprisoned, the person may be transported by personnel of the Juvenile Justice Section of the Division, or personnel approved by the Juvenile Justice Section, to the custody of the sheriff of the applicable local confinement facility. (1977, c. 711, s. 1; 1977, 2nd Sess., c. 1147, s. 18; 1979, c. 456, s. 1; c. 787, ss. 1, 2; 1985 (Reg. Sess., 1986), c. 1014, s. 201(b); 1987, c. 207, s. 3; 1989, c. 761, s. 6; 1991, Ex. Sess., c. 486, s. 1; c. 8, s. 1; 1993, c. 538, s. 37; 1994, Ex. Sess., c. 24, s. 14(b); 2011-145, s. 19.1(h); 2011-192, s. 7(b)-(c); 2014-100, s. 16C.1(b); 2017-186, s. 2(qqq); 2020-83, s. 8(k).)

§ 15A-1353. Order of commitment when imprisonment imposed; release pending appeal.

(a) When a sentence includes a term or terms of imprisonment, the court must issue an order of commitment setting forth the judgment. Unless otherwise specified in the order of commitment, the date of the order is the date service of the sentence is to begin.

If a female defendant is convicted of a nonviolent crime and the court is provided medical evidence from a licensed physician that the defendant is pregnant or the court otherwise determines that the defendant is pregnant, the court may specify in the order that the date of service of the sentence is not to begin until at least six weeks after the birth of the child or other termination of the pregnancy unless the defendant requests to serve her term as the court would otherwise order.

The court may impose reasonable conditions upon defendant during such waiting period to insure that defendant will return to begin service of the sentence.

If the court sentences a defendant pursuant to G.S. 15A-1351(a), the period during which that defendant is awaiting imprisonment shall be considered part of the probationary sentence and such defendant shall be subject to all incidents and conditions of probation.

(b) There must be included in the commitment, or in a separate order referred to in the commitment, any provisions with regard to release under Article 26, Bail, if an appeal is taken, and the conditions of the release. If the commitment has been entered before appeal or the setting of the conditions for release, appropriate copies of those documents must be forwarded to the agency having custody of the defendant.

(c) Unless a later time is directed in the order of commitment, or the defendant has been released from custody pursuant to Article 26, Bail, or the defendant is appealing from a judgment of the district court to the superior court for a trial de novo, the sheriff must cause the defendant to be placed in the custody of the agency specified in the judgment on the day service of sentence is to begin or as soon thereafter as practicable.

(d) A certified copy of the order of commitment, together with any separate order providing for release of the defendant pending appeal, must be delivered to the custodian of the confinement facility.

(e) When a defendant has been committed pursuant to this section:

- (1) If appeal has been entered and conditions of release have been set as provided in Article 26, Bail, the agency having custody of the defendant may effect his release in the manner provided in G.S. 15A-537; or
- (2) If appeal is entered and the conditions of release are not set until after the order of commitment has been issued, and the defendant has been placed in the custody of the agency directed therein, appropriate copies of the conditions of release must be certified by the clerk and forwarded to the agency, which then may effect his release in the manner provided in G.S. 15A-537.

(f) When the sentencing court, with the consent of the person sentenced, orders that a person convicted of a misdemeanor be granted work release, the following provisions must be included in the commitment, or in a separate order referred to in the commitment:

- (1) The date work release is to begin;
- (2) The prison or local confinement facility to which the offender is to be committed;
- (3) A provision that work release terminates the date the offender loses his job or violates the conditions of the work-release plan established by the Division of Adult Correction and Juvenile Justice of the Department of Public Safety; and
- (4) A determination whether the earnings of the offender are to be disbursed by the Division of Adult Correction and Juvenile Justice of the Department of Public Safety or the clerk of the sentencing court in the manner that the court in its order directs. (1977, c. 711, s. 1; 1979, c. 758, s. 1; 1983, c. 389; 1985 (Reg. Sess., 1986), c. 1014, s. 201(c); 2011-145, s. 19.1(h); 2017-186, s. 2(rrr).)

§ 15A-1354. Concurrent and consecutive terms of imprisonment.

(a) Authority of Court. – When multiple sentences of imprisonment are imposed on a person at the same time or when a term of imprisonment is imposed on a person who is already subject to an undischarged term of imprisonment, including a term of imprisonment in another

jurisdiction, the sentences may run either concurrently or consecutively, as determined by the court. If not specified or not required by statute to run consecutively, sentences shall run concurrently.

(b) **Effect of Consecutive Terms.** – In determining the effect of consecutive sentences imposed under authority of this Article and the manner in which they will be served, the Division of Adult Correction and Juvenile Justice of the Department of Public Safety must treat the defendant as though he has been committed for a single term with the following incidents:

- (1) The maximum prison sentence consists of the total of the maximum terms of the consecutive sentences, less 12 months for each of the second and subsequent sentences imposed for Class B through Class E felonies, or less 60 months for each second or subsequent Class B1 through E felony for which the sentence was established pursuant to G.S. 15A-1340.17(f), and less nine months for each of the second and subsequent sentences imposed for Class F through Class I felonies; and
- (2) The minimum term consists of the total of the minimum terms of the consecutive sentences. (1977, c. 711, s. 1; 1979, c. 760, s. 4; 1979, 2nd Sess., c. 1316, s. 40; 1985, c. 21; 1994, Ex. Sess., c. 14, s. 23; 2011-145, s. 19.1(h); 2011-192, s. 2(i); 2011-307, s. 3; 2017-186, s. 2(sss).)

§ 15A-1355. Calculation of terms of imprisonment.

(a) **Commencement of Sentence.** – The commencement date of a sentence of imprisonment under authority of this Article is as provided in G.S. 15A-1353(a), except when the sentence is a consecutive sentence. When it is a consecutive sentence, it commences to run when the State has custody of the defendant following completion of the prior sentence.

(b) Repealed by Session Laws 1977, 2nd Sess., c. 1147, s. 19.

(c) **Earned Time; Credit for Good Behavior for Impaired Drivers.** – Persons convicted of felonies or misdemeanors under Article 81B of this Chapter may, consistent with rules of the Division of Adult Correction and Juvenile Justice of the Department of Public Safety, earn credit which may be used to reduce their maximum terms of imprisonment as provided in G.S. 15A-1340.13(d) for felony sentences and in G.S. 15A-1340.20(d) for misdemeanor sentences.

For sentences of imprisonment imposed for convictions of impaired driving under G.S. 20-138.1, the Division of Adult Correction and Juvenile Justice of the Department of Public Safety may give credit toward service of the maximum term and any minimum term of imprisonment and toward eligibility for parole for allowances of time as provided in rules and regulations made under G.S. 148-11 and 148-13.

(d) **Earned Time Credit for Medically and Physically Unfit Inmates.** – Inmates in the custody of the Division of Adult Correction and Juvenile Justice of the Department of Public Safety who suffer from medical conditions or physical disabilities that prevent their assignment to work release or other rehabilitative activities may, consistent with rules of the Division of Adult Correction and Juvenile Justice of the Department of Public Safety, earn credit based upon good behavior or other criteria determined by the Division that may be used to reduce their maximum term of imprisonment as provided in G.S. 15A-1340.13(d) for felony sentences and in G.S. 15A-1340.20(d) for misdemeanor sentences. (1977, c. 711, s. 1; 1977, 2nd Sess., c. 1147, s. 19; 1979, c. 749, s. 8; c. 760, s. 4; 1981, c. 571; c. 1127, s. 84; 1983, c. 560, § 1; 1993, c. 538, s.

20; 1994, Ex. Sess., c. 24, s. 14(b); 2001-424, s. 25.1(a); 2002-126, s. 17.19(d); 2002-159, s. 77; 2011-145, s. 19.1(h); 2017-186, s. 2(ttt).)

§§ 15A-1356 through 15A-1360. Reserved for future codification purposes.