



## The Under Supervision Bonus Point for Sentencing

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Yesterday's [post](#) was about the prior record point that applies when all the elements of the offense being sentenced are included in one of the defendant's prior offenses. Today's post is about the other sentencing bonus point, which applies when the offense being sentenced was committed while the defendant was on probation, parole, or post-release supervision; while he or she was serving a sentence of imprisonment; or while he or she was on escape from a correctional institution. [G.S. 15A-1340.14\(b\)\(7\)](#). I usually refer to the second point as the "under supervision" bonus point. Like the same elements point, the idea behind the under supervision point is straightforward. *You committed another crime before you even finished your sentence in a prior case. We're going to punish you a little more severely this time.*

For the under supervision bonus point to apply, the defendant must have been under one of the types of supervision or confinement set out in the statute at the time of the offense being sentenced. Though the statute uses words common to the criminal and juvenile systems, it appears that only the criminal (that is, adult) versions can qualify a defendant for the additional point. For example, the court of appeals held in *State v. Tucker* that a defendant was not eligible for the point when being sentenced for a crime committed while he was in training school. 154 N.C. App. 653 (2002). The court concluded that training school was not a "sentence of imprisonment" within the language of G.S. 15A-1340.14(b)(7). *Id.* at 659. And in light of the reasoning behind the court's conclusion—the "fundamental legal difference" between the adult and juvenile systems—the same logic would probably extend to crimes committed by defendants on juvenile probation or juvenile post-release supervision.

A defendant is eligible for the additional point even if the offense for which he or she was on probation would not itself count for points. For instance, a defendant being sentenced for a crime committed while he was on probation for a Class 3 misdemeanor would receive the additional point, even though a Class 3 misdemeanor does not count for any points on its own. See *State v. Leopard*, 126 N.C. App. 82 (1997) (allowing the additional point for a defendant on probation for impaired driving, at a time before DWIs counted toward felony prior record level). A defendant being sentenced as a habitual felon qualifies for the point even if the offense for which the defendant was on probation at the time of the principal offense is also one of the three prior felonies used to habitualize him or her. *State v. Bethea*, 122 N.C. App. 623, 626–27 (1996).

Procedurally, the under supervision bonus point is more complicated than the same elements point. Unless the defendant waives it, the State must provide the defendant with written notice at least 30 days before trial or the entry of a plea that it intends to prove the existence of the under supervision point. [G.S. 15A-1340.16\(a6\)](#). (There is no statutory notice requirement for the same elements point.) The State is not required to allege its intent to establish the point in an indictment or other pleading. G.S. 15A-1340.16(a5). The facts supporting the under supervision point must be proved to a jury beyond a reasonable doubt, unless the defendant admits to them—just like an aggravating factor. See *State v. Miles*, \_\_\_ N.C. App. \_\_\_, 727 S.E.2d 375 (June 5, 2012) (holding that the trial court did not commit error under *Blakely v. Washington* by adding the additional point without submitting the question to the jury when the defendant admitted that he was imprisoned at the time of the present assault). The defendant may admit to the facts supporting the under supervision point—unlike the same elements points, which is a question of law that must be evaluated by the court.

Finally, the fact that a defendant was on probation at the time of the offense being sentenced may be used both to establish the under supervision bonus point and as a non-statutory aggravating factor under G.S. 15A-1340.16(d)(20). State v. Moore, 188 N.C. App. 416 (2008).