

2014 Update to Arrest Warrant and Indictment Forms

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This update contains twelve forms. Of these, two are entirely new. One concerns the newly-created offense of possession of marijuana paraphernalia, G.S. 90-113.22A, while the other concerns the existing offense of sex offender unlawfully on premises, G.S. 14-208.18.

The remaining forms are revisions of existing forms and should replace the corresponding forms currently in the manual. The bulk of the revisions are in response to actions taken by the General Assembly during the 2014 legislative session, though some respond to developments in the case law or correct shortcomings in previous forms. The revised forms are for the following offenses:

- Assault on Court, Executive, or Legislative Officer, G.S. 14-16.6
- Threatening Court, Executive, or Legislative Officer, G.S. 14-16.7
- Possessing Stolen Goods, G.S. 14-71.1 and 14-72(a)
- Disorderly Conduct in a Public Building or Facility, G.S. 14-132(a)(1)
- First-Degree Trespass, G.S. 14-159.12
- Willfully Failing to Discharge Duties, G.S. 14-230
- Providing Contraband to Inmate, G.S. 14-258.1
- Carrying a Concealed Weapon, G.S. 14-269
- Weapon on Campus or Other Educational Property, G.S. 14-269.2
- Possession of Drug Paraphernalia, G.S. 90-113.22

Drafts of these forms were reviewed by several members of the Administrative Office of the Courts (AOC) legal staff as well as my colleagues here at the School of Government, and I am grateful for their help. Of course, any remaining errors are my responsibility. I welcome comments, questions, and concerns regarding these forms. I can be reached at welty@sog.unc.edu or at (919) 843-8474.

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Introductory Comment:

None.

Charging Language:**I. Assault on court, executive, or legislative officer**

... unlawfully, willfully, and feloniously did assault (*name victim*), (*name office*), by (*briefly describe the assault*).

II. Assault as retaliation for officer's exercise of duties

... unlawfully, willfully, and feloniously did assault (*name victim*) as retaliation against (*name officeholder and office*) because of the exercise of that officer's duties.

Notes about Charging Language:

- The statute covers the officials listed in G.S. 14-16.10, as well as people elected to one of the covered offices who have not yet taken the oath of office. G.S. 14-16.9.
- As to Offense II, it probably is not necessary to describe the specific duty performed by the officeholder that led to the retaliation. *Cf. State v. Noel*, 202 N.C. App. 715 (2010) (ruling that a charge for assault on a public officer during the discharge of his or her duties under G.S. 14-33(c)(4) does not require the officer's duty to be specified, as the assault is the gist of the offense and the details of the duty are secondary).
- The statute also covers a person who "makes a violent attack upon the residence, office, temporary accommodation or means of transportation" of a covered officer. G.S. 14-16.6(a). In an appropriate case, modify the charging language accordingly.
- When a covered assault is committed using a deadly weapon, it is a Class F felony. G.S. 14-16.6(b). In such a case, add an allegation that the defendant committed the assault using a deadly weapon, name or describe the weapon, and if its deadly character is not obvious, allege that it is a deadly weapon.
- When a covered assault inflicts serious bodily injury to the official, it is a Class F felony. G.S. 14-16.6(c). In such a case, add an allegation that the assault inflicted a serious bodily injury. It is probably not necessary to detail the nature of the serious bodily injury, *see State v. Gregory*, 223 N.C. 415 (1943), though you may choose to include such information.

Sample Charge:**I. Assault on court, executive, or legislative officer**

... unlawfully, willfully, and feloniously did assault Henry L. Raines, a superior court judge, by hitting the judge with his fist.

AOC Forms for This Offense:

None.

Punishment:

Class I felony, except for the Class F felonies described in the notes above.

Introductory Comment:

None.

Charging Language:**I. Threatening court, executive, or legislative officer**

. . . unlawfully, willfully, and feloniously did knowingly make a threat to (*choose one*: inflict serious bodily injury upon; kill) (*name victim*), (*name office*), by (*describe threat and manner in which it was made*).

II. Threatening as retaliation for officer's exercise of duties

. . . unlawfully, willfully, and feloniously did knowingly make a threat to (*choose one*: inflict serious bodily injury upon; kill) (*name victim*) as retaliation against (*name officeholder and office*) because of the exercise of that officer's duties, by (*describe threat and manner in which it was made*).

Notes about Charging Language:

- The statute covers the officials listed in G.S. 14-16.10, as well as people elected to one of the covered offices who have not yet taken the oath of office. *See* G.S. 14-16.9.
- As to Offense II, it probably is not necessary to describe the specific duty performed by the officeholder that led to the retaliation. *Cf. State v. Noel*, 202 N.C. App. 715 (2010) (ruling that a charge for assault on a public officer during the discharge of his or her duties under G.S. 14-33(c)(4) does not require the officer's duty to be specified, as the assault is the gist of the offense and the details of the duty are secondary).
- Subsection (b) of the statute makes it unlawful to put a letter or other document containing a threat to violate subsection (a) in the mail. In an appropriate case, modify the charging language accordingly.

Sample Charge:**I. Threatening court, executive, or legislative officer**

. . . unlawfully, willfully, and feloniously did knowingly make a threat to kill Michael Sampson, the Governor of the State of North Carolina, by telephoning the Governor's office on July 10, 2000, and telling Sarah Holmes, the Governor's secretary, that he was in Raleigh with a .38 caliber pistol and would kill the Governor before the week was over.

AOC Forms for This Offense:

None.

Punishment:

Class I felony.

Introductory Comment:

Two statutes address the possession of stolen goods: G.S. 14-71.1 and 14-72(a). At best, the statutes are redundant. At worst, they are slightly inconsistent. For example, G.S. 14-71.1 allows any felonious taking to serve as the underlying theft, while G.S. 14-72(a) arguably applies only when the underlying theft is a larceny. And while G.S. 14-72(a) provides for both misdemeanor and felony possession offenses, G.S. 14-71.1 creates only a felony offense.

Without carefully reconciling these statutes, the courts generally have ruled that possessing stolen goods is a felony if (1) the goods are worth more than \$1,000 or (2) the defendant knew or should have known that the goods were stolen under circumstances that amounted to felony larceny under G.S. 14-72(b). Otherwise, it is a misdemeanor. Unlike receiving stolen goods, possessing stolen goods may be an appropriate charge when the defendant stole the goods at issue.

Charging Language:

... unlawfully, willfully, and feloniously did possess (*describe the property*), the personal property of (*name the possessor*), valued at (*state value*), which property was stolen property, knowing and having reasonable grounds to believe the property to have been (*select one of the following*):

- (1) feloniously stolen, taken, and carried away;
- (2) feloniously stolen, taken, and carried away from the person of (*name person from whom taken*);
- (3) feloniously stolen, taken, and carried away pursuant to a violation of section (*insert 14-51, 14-53, 14-54, 14-54.1, or 14-57, as appropriate*) of the General Statutes;
- (4) feloniously stolen, taken, and carried away in that it was a (*name or describe device*), an explosive or incendiary device or substance;
- (5) feloniously stolen, taken, and carried away in that it was a (*name or describe firearm*), a firearm;
- (6) feloniously stolen, taken, and carried away in that it was a (*choose one: record, paper*) in the custody of the North Carolina State Archives;
- (7) feloniously taken and carried away in a manner amounting to (*name the felony*).

Notes about Charging Language:

- Strike through “and feloniously” after “willfully” if the charge is a misdemeanor, and strike through “feloniously” before “stolen, taken, and carried away.” In such a case, it probably is not necessary to allege the value of the property. However, for clarity, this form requests that information.
- The statute covers the possession of stolen goods with either (1) the knowledge they are stolen or (2) reasonable grounds to believe they are stolen. If it is not clear the defendant knew they were stolen, strike out the words “knowing and.”
- It is not legally necessary to allege the possessor of the property. *State v. Medlin*, 86 N.C. App. 114 (1987). For clarity, however, this form requests that information.

Sample Charges:

. . . unlawfully, willfully, and feloniously did possess a Sony radio, the personal property of Roger Watts, valued at \$45, which property was stolen property, knowing and having reasonable grounds to believe the property to have been feloniously stolen, taken, and carried away pursuant to a violation of section 14-51 of the General Statutes.

. . . unlawfully, willfully, and feloniously did possess a wallet and \$35 in cash and a Texaco and Gulf credit card, the personal property of William T. Lindsay, valued at \$50, which property was stolen property, knowing and having reasonable grounds to believe the property to have been feloniously stolen, taken and carried away from the person of William T. Lindsay.

AOC Forms for This Offense:

AOC-CR-126 (Indictment, with Burglary)

AOC-CR-134 (Indictment, with Felony Breaking/Entering and Felony Larceny)

AOC-CR-138 (Indictment, with Felony Larceny)

AOC-J-319 (Juvenile Petition, with Larceny)

AOC-J-334 (Juvenile Petition)

Punishment:

Class 1 misdemeanor if alternative (1) is used and the value of the goods is less than \$1,000. Otherwise, Class H felony.

Introductory Comment:

Although G.S. 14-132 defines several crimes, such as defacing a public building, G.S. 14-132(a)(2), and committing a nuisance in a public building, G.S. 14-132(a)(3), this manual provides sample charging language only for the most commonly-charged offense defined in the statute, namely, disorderly conduct in a public building, G.S. 14-132(a)(1).

Charging Language:

. . . unlawfully and willfully did commit disorderly conduct (*describe disorderly conduct*) (*choose one or both: in; near*) a public building and facility, (*describe building or facility and give its location*).

Notes about Charging Language:

- Disorderly conduct is not defined in this statute. Courts would likely apply the definition of disorderly conduct in G.S. 14-288.4.
- A “public building or facility” is defined in G.S. 14-132(c) to include a building or facility (1) to which the public or a portion of the public has access and which is owned or controlled by the state, any subdivision of the state, any other public agency, or any private institution or agency of a charitable, educational, or eleemosynary nature; (2) dedicated to the use of the general public primarily for public recreation, cultural activities, and other public events; or (3) designated by the Director of the State Bureau of Investigation pursuant to G.S. 143B-987. The definition also includes the surrounding grounds and premises of a building or facility used in the connection with the operation or functioning of the building or facility.

Sample Charge:

. . . unlawfully and willfully did commit disorderly conduct by fighting with three other people, Sam Jones, Peter Fink, and Sally Jones, in a public building and facility, the Division of Motor Vehicles license office at 12 Trent Street, Middletown, North Carolina.

AOC Forms for This Offense:

None.

Punishment:

Class 2 misdemeanor.

Introductory Comment:

None.

Charging Language:

. . . unlawfully and willfully did without authorization enter and remain

(choose one)

- (1) in the building of (*name the owner or possessor of the building*), located at (*give location*);
- (2) on the premises of (*name the owner or possessor of the premises*), located at (*give location*), so enclosed and secured as to demonstrate clearly an intent to keep out intruders.

Notes about Charging Language:

- G.S. 14-159.11 defines “building” as a structure or part of a structure, other than a conveyance, enclosed so as to permit reasonable entry through a door and roofed to protect it from the elements.
- G.S. 14-159.14 provides that first- and second-degree trespass are lesser-included offenses of breaking or entering offenses in G.S. 14-54 (felonious and misdemeanor breaking or entering of a building) and G.S. 14-56 (felonious breaking or entering of motor vehicle, boat, etc.).
- This offense is a Class A1 misdemeanor if committed on any of the premises specified in G.S. 14-159.12(c) (certain electric power facilities; water infrastructure facilities; natural gas infrastructure facilities; and agricultural facilities) and if the person entered a building or surmounted a barrier to reach the facility. In an appropriate case, add allegations regarding the nature of the premises and the entry of a building or the surmounting of a barrier to the language above.
- This offense is a Class H felony if it meets the requirements for the Class A1 misdemeanor and either the defendant had the intent to disrupt the operation of the facility or the defendant’s actions put himself or herself or another person on the premises at risk of serious bodily injury. G.S. 14-159.12(d). In an appropriate case, allege “unlawfully, willfully, and feloniously” instead of “unlawfully and willfully”; add the allegations discussed in the preceding bullet point; and add an allegation regarding the defendant’s intent or the risk created by his or her actions.

Sample Charge:

. . . unlawfully and willfully did without authorization enter and remain in the building of Samuel Jones, located at 123 East Main Street, Patterson, North Carolina.

AOC Forms for This Offense:

AOC-J-311 (Juvenile Petition) (includes charging language for non-aggravated offenses only)

Punishment:

Class 2 misdemeanor. Under the limited circumstances described above, this offense may be a Class A1 misdemeanor or a Class H felony.

Introductory Comment:

None.

Charging Language:

... unlawfully, willfully, and feloniously was, as a person required by Article 27A of Chapter 14 of the General Statutes to register as a result of having committed (*choose one or both: (name prior offense)*), an offense in Article 7A of Chapter 14 of the General Statutes; an offense where the victim of the offense was under the age of 16 years at the time of the offense), knowingly present at the following location:

(*choose one*)

- (1) on the premises of (*name or describe place*), a place intended primarily for the (*choose one or more: use; care; supervision*) of minors;
- (2) within 300 feet of (*name or describe location*), a location intended primarily for the (*choose one or more: use; care; supervision*) of minors that is located on (*name or describe premises*), premises that are not intended primarily for the use, care, or supervision of minors;
- (3) (*name or describe place*), a place where minors gather for regularly scheduled (*choose one or more: educational; recreational; social*) programs.

Notes about Charging Language:

- This offense does not apply to a parent or guardian of a minor in need of emergency medical care who takes the child to an appropriate location for treatment, G.S. 14-208.18(b); to a parent or guardian of a minor who is on school property for certain purposes and under certain conditions, G.S. 14-208.18(d); to voters to the extent described in G.S. 14-208.18(e); to public school students if permitted to attend under G.S. 14-208.18(f); or to juveniles receiving medical or mental health treatment to the extent set forth in G.S. 14-208.18(g).
- The charging document should describe the place or location in a way that makes clear the connection between the place or location and children. For example, alleging that the defendant was *at the playground* at a specific park would be better than alleging only that the defendant was at the park, as it may be unclear whether a park is intended primarily for the use of minors. *Cf. State v. Daniels*, ___ N.C. App. ___, ___, 741 S.E.2d 354, 364 (2012) (holding the statute unconstitutional as applied to a defendant charged with being “kind of close to the parking lot area” of a park that contained youth sports fields, because a reasonable person would not be able to know whether being in that location would violate the statute).

Sample Charge:

... unlawfully, willfully, and feloniously was, as a person required by Article 27A of Chapter 14 of the General Statutes to register as a result of having committed second-degree rape, an offense in Article 7A of Chapter 14 of the General Statutes, knowingly present at the following location: on the premises of Jumping Beans Trampoline Center, a place intended primarily for the use of minors.

AOC Forms for This Offense:

None.

Punishment:

Class H felony.

Introductory Comment:

None.

Charging Language:

. . . unlawfully and willfully did, as a (*name public office*), (*choose one or more*: omit; neglect; refuse) to discharge a duty of (*choose one*: his; her) office, (*describe duty and how defendant omitted, neglected, or refused to discharge it*), and did thereby cause injury to the public.

Notes about Charging Language:

- Public officials covered by this statute include a “clerk of any court of record, sheriff, magistrate, school board member, county commissioner, county surveyor, coroner, treasurer, or official of any of the State institutions, or of any county, city or town.”
- The state is not legally required to specify the duty that the defendant failed to discharge. *State v. Birdsong*, 325 N.C. 418 (1989); *State v. Rhome*, 120 N.C. App. 278 (1995). This form nonetheless asks for that information.
- Although the statute does not refer to injury to the public as an element of the offense, this form includes an allegation regarding injury to the public because case law indicates that such an injury may be an element. *State v. Birdsong*, 325 N.C. 418 (1989) (citing *State v. Anderson*, 196 N.C. 771 (1929)); *State v. Rhome*, 120 N.C. App. 278 (1995).

Sample Charge:

. . . unlawfully and willfully did, as a magistrate of Essex County, omit, neglect, and refuse to discharge a duty of her office, by collecting cash bond monies for secured bonds and willfully and corruptly failing to turn over those monies, as required, to the Clerk of Superior Court of Essex County, and did thereby cause injury to the public.

AOC Forms for This Offense:

None.

Punishment:

Class 1 misdemeanor. G.S. 14-230 also provides that as part of the punishment for this offense, the sentencing judge may remove the official from office.

Introductory Comment:

G.S. 14-258.1 addresses providing contraband to inmates. This form covers the felony offenses set forth in subsection (a), concerning the provision of weapons, ammunition, drugs, and poison; subsection (d), concerning the provision of mobile phones and wireless devices; and subsection (g), concerning the possession of mobile phones and wireless devices. It does not cover the misdemeanor offenses set forth in statute concerning alcohol, tobacco, and vapor products.

Charging Language:**I. Providing weapon, ammunition, drugs, or poison**

G.S. 14-258.1(a)

. . . unlawfully, willfully, and feloniously did (*choose one*: give; sell)

(*choose one or more*)

- (1) a deadly weapon, a (*describe weapon*);
- (2) ammunition for a firearm, (*describe ammunition*);
- (3) a controlled substance, (*name substance*), which is included in Schedule (*state schedule number*) of the Controlled Substances Act;
- (4) a poisonous substance, (*name substance*)

to (*name the inmate the contraband was given or sold to*), who was at the time an inmate of (*name the institution*), which is a (*choose one*: penal institution; local confinement facility; mental institution; charitable institution).

II. Providing mobile phone or wireless device

G.S. 14-258.1(d)

. . . unlawfully, willfully, and feloniously did knowingly (*choose one*: give; sell) a (*choose one or more*: mobile telephone; wireless communications device; component of a mobile telephone; component of a wireless communications device) to (*name inmate*), who was at the time an inmate in the custody of (*choose one*: the Division of Adult Correction of the Department of Public Safety; (*name facility*), a local confinement facility).

III. Possession of mobile phone or wireless device

G.S. 14-258.1(g)

. . . unlawfully, willfully, and feloniously did possess a (*choose one or more*: mobile telephone; wireless communications device; component of a mobile telephone; component of a wireless communications device) while an inmate in the custody of (*choose one*: the Division of Adult Correction of the Department of Public Safety; (*name facility*), a local confinement facility).

Notes about Charging Language:

- As to Offense I, the statute also prohibits conspiring with, aiding, abetting, soliciting, advising, or encouraging others to provide the contraband. If the defendant did not actually give or sell the contraband himself or herself, choose the proper wording from the statute.
- As to Offense I, in alternative (1), if the weapon is considered a deadly weapon only because of the way it was used, describe how it was used to show that it was a deadly weapon.

- As to Offense I, alternative (3) does not apply to controlled substances provided “under the general supervision of a practitioner.”
- As to Offense II, the statute also makes it unlawful to knowingly give or sell a covered item to a person who is not an inmate for delivery to an inmate. In an appropriate case, modify the charging language accordingly.

Sample Charge:

I. Providing weapon, ammunition, drugs, or poison

. . . unlawfully, willfully, and feloniously did give a controlled substance, marijuana, which is included in Schedule VI of the Controlled Substances Act, to Hansen G. Willingham, who was at the time an inmate of the Mecklenburg County Jail, a local confinement facility.

AOC Forms for This Offense:

None.

Punishment:

Offenses I, II, and III are Class H felonies. As to Offense I, if the defendant is an officer or employee of any state institution or local confinement facility, the defendant must be dismissed from his or her employment upon conviction.

Introductory Comment:

None.

Charging Language:

. . . unlawfully and willfully did intentionally carry concealed about the defendant's person while off the defendant's own premises a (*choose one*: gun; deadly weapon), (*describe the gun or weapon*).

Notes about Charging Language:

- A second offense of carrying a concealed gun is a Class H felony. If the defendant has previously been convicted of carrying a concealed gun and is now being charged with carrying a concealed gun, use the words "unlawfully, willfully, and feloniously" instead of "unlawfully and willfully," and allege the date of the prior conviction and the court in which the conviction occurred. In an indictment or information, the allegation concerning the previous conviction must be in a separate count as required by G.S. 15A-928.
- The statute applies to a range of weapons other than firearms but does not apply to an "ordinary pocket knife" carried in a closed position. G.S. 14-269(d) (defining "ordinary pocket knife" as a small knife, designed for carrying in a pocket or purse, which has its cutting edge and point entirely enclosed by its handle and may not be opened by a throwing, explosive, or spring action).
- The statute contains several exemptions, including for certain military personnel, law enforcement officers, and holders of concealed handgun permits. A permit holder who carries a concealed handgun outside the scope of the permit violates this section, except that "[a] violation . . . punishable under G.S. 14-415.21(a) [which makes it an infraction to carry a concealed handgun without one's permit in one's possession or to fail to disclose a concealed handgun and permit to a law enforcement officer] is not punishable under this section." G.S. 14-269(c).

Sample Charge:

. . . unlawfully and willfully did carry concealed about the defendant's person while off the defendant's own premises a gun, a Ruger 9mm pistol.

AOC Forms for This Offense:

AOC-J-325 (Juvenile Petition)

Punishment:

Class 2 misdemeanor. However, a second conviction of carrying a concealed gun is a Class H felony.

Introductory Comment:

None.

Charging Language:**I. Misdemeanor possession of a weapon other than firearm** **G.S. 14-269.2(d)**

... unlawfully and willfully did possess a [*choose one and describe item*: BB gun; stun gun; air rifle; air pistol; bowie knife (*see other weapons listed in statute*)] on educational property, (*describe educational property*).

II. Misdemeanor possession of a firearm **G.S. 14-269.2(f)**

... unlawfully and willfully did possess a (*choose one and describe item*: gun; rifle; pistol; firearm) on educational property, (*describe educational property*).

III. Felony possession of a firearm **G.S. 14-269.2(b)**

... unlawfully, willfully, and feloniously did possess a (*choose one and describe item*: gun; rifle; pistol; firearm) on educational property, (*describe educational property*).

IV. Felony discharging a firearm **G.S. 14-269.2(b)**

... unlawfully, willfully, and feloniously did discharge a firearm, (*describe firearm*), on educational property, (*describe educational property*).

V. Felony involving a bomb or other powerful explosive **G.S. 14-269.2(b1)**

... unlawfully, willfully, and feloniously did possess a (*choose one and describe item*: dynamite cartridge; bomb; grenade; mine; powerful explosive as defined in G.S. 14-284.1) on educational property, (*describe educational property*).

Notes about Charging Language:

- The statute applies whether the weapon in question is possessed openly or concealed.
- It ordinarily is a Class I felony to possess a firearm on educational property. G.S. 14-269.2(b). However, it is a Class 1 misdemeanor rather than a Class I felony for certain persons to possess a firearm on educational property when the firearm is unloaded and locked in a vehicle. G.S. 14-269.2(f). When the misdemeanor provision applies, use alternative II, above. When the felony provision applies, use alternative III.
- “Educational property” is defined in G.S. 14-269.2 (a)(1). Note that the offenses in alternatives II, III, and V may be committed at a curricular or extracurricular activity sponsored by a school, even if the activity is not located on educational property. In such a case, modify the charging language accordingly.
- G.S. 14-269.2(c), (c1), and (e) set out specific provisions for people who aid and abet a minor under 18 years of age to commit felony and misdemeanor violations.
- This offense does not apply to, among others: (1) law enforcement officers and others exempted from the provisions of G.S. 14-269 and (2) firefighters, emergency service personnel, North Carolina Forest Service personnel, “detention officers employed by and authorized by

the sheriff to carry firearms,” and private police employed by educational institutions, acting within the scope of their duties. The statute also exempts weapons used solely for educational or school-sanctioned ceremonial purposes. G.S. 14-269.2(g), (h).

Sample Charges:

I. Misdemeanor possession of a weapon other than firearm **G.S. 14-269.2(d)**
... unlawfully and willfully did possess a BB gun, manufactured by Air Express, Inc., on educational property, Smith High School, Smithville, North Carolina.

II. Misdemeanor possession of a firearm **G.S. 14-269.2(f)**
... unlawfully and willfully did possess a rifle, a .308 caliber bolt-action manufactured by Remington, on educational property, Rashkis Elementary School, Chapel Hill, North Carolina.

III. Felony possession of a firearm **G.S. 14-269.2(b)**
... unlawfully, willfully, and feloniously did possess a gun, a Smith and Wesson .45 caliber, on educational property, Jamestown High School, Jamestown, North Carolina.

IV. Felony discharging a firearm **G.S. 14-269.2(b)**
... unlawfully, willfully, and feloniously did discharge a firearm, a Smith and Wesson .45 caliber, on educational property, Jamestown High School, Jamestown, North Carolina

V. Felony involving a bomb or other powerful explosive **G.S. 14-269.2(b1)**
... unlawfully, willfully, and feloniously did possess a bomb on educational property, Livingston High School, Livingston, North Carolina.

AOC Forms for This Offense:

AOC-J-316 (Juvenile Petition)

Punishment:

Alternatives I and II are Class I misdemeanors. Alternative III is a Class I felony. Alternative IV is a Class F felony. Alternative V is a Class G felony.

Introductory Comment:

In the 2014 legislative session, the General Assembly amended this statute to exclude marijuana-related paraphernalia. At the same time, it enacted G.S. 90-113.22A to address marijuana-related paraphernalia, but at a lower punishment level.

Charging Language:

... unlawfully and willfully did knowingly possess with intent to use drug paraphernalia, (*describe paraphernalia*), to (*choose one or more*: plant; propagate; cultivate; grow; harvest; manufacture; compound; convert; produce; process; prepare; test; analyze; package; repackage; store; contain; conceal; introduce into the body) a controlled substance other than marijuana which it would be unlawful to possess.

Notes about Charging Language:

- “Drug paraphernalia” is defined in G.S. 90-113.21.
- The statute makes it unlawful to “use or possess with intent to use” the specified paraphernalia. Because it is improbable, if not impossible, to use paraphernalia without possessing it with the intent to use it, this form simplifies the charging language by alleging only possession with intent to use. If, in a particular case, there is some reason to include an allegation of use in addition to or instead of the allegation of possession with intent to use, modify the charging language accordingly.

Sample Charge:

... unlawfully and willfully did knowingly possess with intent to use drug paraphernalia, two miniature cocaine spoons, to introduce into the body a controlled substance other than marijuana which it would be unlawful to possess.

AOC Forms for This Offense:

AOC-J-332 (Juvenile Petition) (includes charging language based on pre-2014 statute)

Punishment:

Class 1 misdemeanor.

Introductory Comment:

In the 2014 legislative session, the General Assembly amended G.S. 90-113.22, the general drug paraphernalia statute, to exclude marijuana-related paraphernalia. At the same time, it created this statute to address marijuana-related paraphernalia, but at a lower punishment level.

Charging Language:

. . . unlawfully and willfully did knowingly possess with intent to use drug paraphernalia, (*describe paraphernalia*), to (*choose one or more*: plant; propagate; cultivate; grow; harvest; manufacture; compound; convert; produce; process; prepare; test; analyze; package; repackage; store; contain; conceal; introduce into the body) marijuana.

Notes about Charging Language:

- “Drug paraphernalia” is defined in G.S. 90-113.21.
- The statute makes it unlawful to “use or possess with intent to use” the specified paraphernalia. Because it is improbable, if not impossible, to use paraphernalia without possessing it with the intent to use it, this form simplifies the charging language by alleging only possession with intent to use. If, in a particular case, there is some reason to include an allegation of use in addition to or instead of the allegation of possession with intent to use, modify the charging language accordingly.

Sample Charge:

. . . unlawfully and willfully did knowingly possess with intent to use drug paraphernalia, a metal pipe, to introduce into the body marijuana.

AOC Forms for This Offense:

None.

Punishment:

Class 3 misdemeanor.

