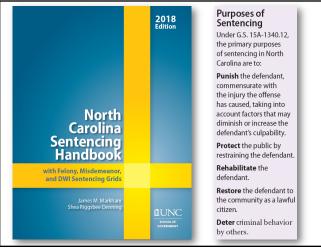


### **Objectives**

- Grid fluency
- How to say a sentence
- Avoid common errors

UNC

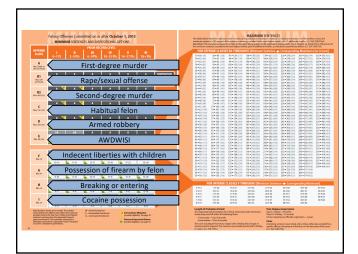


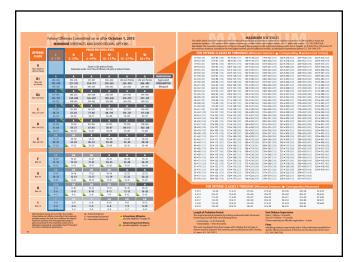
### **Types of Sentences**

- Prison ("Active")
- Probation ("Intermediate" or "Community")
- Split sentence ("Special Probation")
- Sex Offenders
- Multiple convictions
- Fines and Restitution

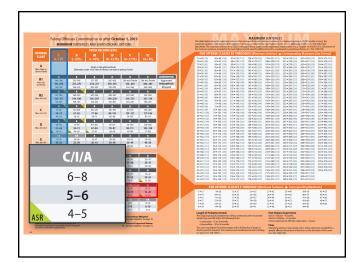
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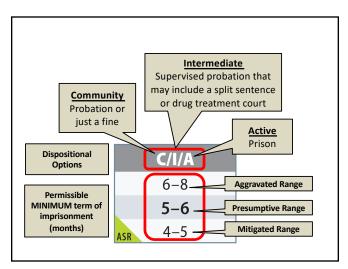
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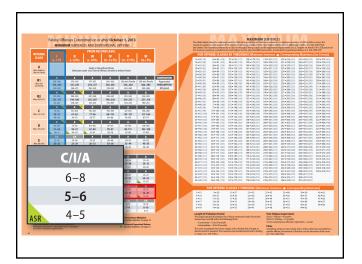




8

### **Exercise 1**

- Felony Larceny (Class H)
- Prior Record Level I



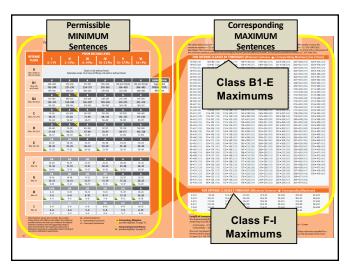
### • Give the longest |

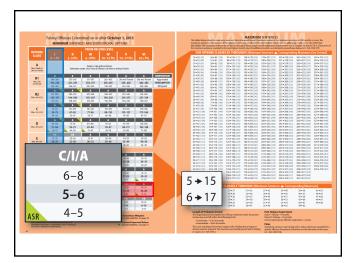
Give the longest possible Active sentence



11

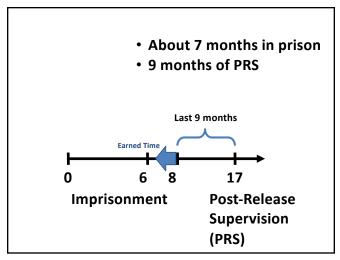
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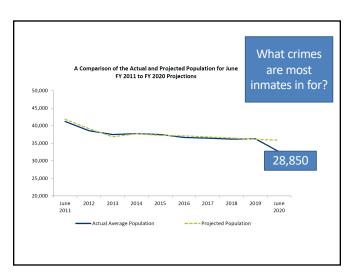




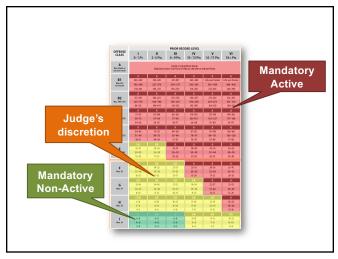
STATE OF NO	County	LINA Seat of Court	File No.			
NOTE: (Use ADD-CRI 342 Ar	or CMI offense(s) /		In The General Cou	r Court Division		
Hame Of Defendant	STATE VERSUS	Tow overe	JUDGMENT AND COMMITS ACTIVE PUNISHMENT - FE (STRUCTURED SENTENC (For Convictions On Or After Jan	ONY INGI		
Allomey For State		Del Found Del Waived Attorney For I		1.6. 15A-1301, -1340.13 Interf Of Part Inhals		
The defendant was found File No.(s) Off.	pulty/responsible, pursy	uunt to piea pursuant to Afford Wesse Description	of no contest: 15th by judge Ciffense Date G.S. Mo.	Trial by pary, of FRM CL. Pun CL. F H		
2 makes no	the trier of fact beyond o prior record level find ficking offenses.	jung offense stass punishment class represent 3: 15A-1340.14, the prior record points of ter G.S. 15A-1340.14(9)37 is based on this a reasonable doubt of the defendent's adrig because none is required for Class A	dimission to this issue.  LEVEL A felony, violent habitual felon, or	10 St St St	/ 6-17 m	onths
2. findsthe Dete 14:27.4A, 14:27.23 3. adjudges the defen 	sent on most broken the order to be growed to the growed t					
This finding is base  7. finds that the defen possessed the free or on the defendant	will be a second to the s					II DAC.
8. firsts the above-det a. and therefore b. but makes no 9. finds the above-det (MOTE: if afferance) 10. finds that a	signated offense(s) is a remakes the additional file finding or order concer- signated offense(s) invo- is not also a reportable co- rotor vehicle	a reportable conviction untill G.S. 14-208 findings and orders on the afflacted ACC tenting registration or satelite-based monitolved the [physical or mental ] is overable in A.S. I above, the finding requires or mental motor vehicle was used in the communication or threat or an act defined		ent without perole.  I be reported to DATV.		
12. Offeroes convinted of and that the detinate in the transition by the trie   13. finds the above det   patherase commits   14. did not grant a committed on or after committed on or after	on or after Dec. 1, 2017, on lendant was a criminal g ir of fact beyond a reaso signated offense(s) invo	wyl finds that the offense was committed gaing leader or organizer as defined in G. someticle doubt or on the defendant's admit divided joheck and	as part of criminal gang activity as define 3. 14-50, 16A(3). This finding is based on ission.  Dec. 1, 2006 - Am. 30, 2017) criminal street city. I have defendent refused to consen- tics Attorney, that the offender is inapprop- tics Attorney, that the offender is inapprop-	the determination of this gang activity		
			nt vvitn Pa	roie, pursu	ant to G.S. C	napter 15
for a m	inimu	m term of:		and a max	kimum term o	of:
	6		months		17	months

What does it mean?





# Prison Population (2019) Murder 17 % Sexual assaults 12 % Robbery 9 % Non-trafficking drug 7 %



### **Probationary Sentences**

20

### **Exercise 2**

Suspend the term of imprisonment from Exercise
 1 and give the defendant an Intermediate
 sentence

	C/I/A	
	6-8	
	5-6	
ASR	4-5	

UNC

### **Probationary Sentences (p. 26)**

- Term of imprisonment
- Type of sentence
- Length of probation period
- Conditions of probation
- Delegated authority

22

### **Probationary Sentences (p. 26)**

• Term of imprisonment 6-17 months

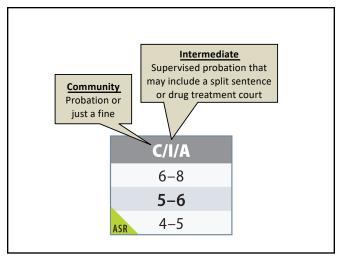
- Type of sentence
- Length of probation period
- Conditions of probation
- Delegated authority

UNC

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### **Probationary Sentences (p. 26)**

- Term of imprisonment
- Type of sentence
- Length of probation period
- Conditions of probation
- Delegated authority



### **Probationary Sentences (p. 26)**

- Term of imprisonment
- Type of sentence
- Length of probation period
- Conditions of probation
- Delegated authority

UNC.

26

### Length of Probation Period

The original period of probation for a felony sentenced under Structured Sentencing must fall within the following limits:

- Community—12 to 30 months
- •Intermediate—18 to 36 months

The court may depart from those ranges with a finding that a longer or shorter period is required. The maximum permissible period with a finding is 5 years. G.S. 15A-1343.2.

		SU	SPENSION OF SENTENCE				
	Subject to the conditions set out below, the execution of this sentence is suspended and the defendant is placed on supervised unsupervised						
orgoa		_					
<b>X</b> 1	The Court finds that a longer	shorter per	iod of probation is necessary than the	at which is specified in G.S. 15A-134: ons the authority to impose any of the	3.2(d).		
2.	The Court finds that it is NOT appr	opriate to delegate t	o the Section of Community Correction 15A-1343.2(f) for intermediate punis	ons the authority to impose any of the	e requirements in		
- a	This period of probation shall begin		ndant is released from incarceration	at the expiration of the sentence	in the case below.		
·							
1	File No.	Offense	County	Court	Date		
_							
4. The defendant shall comply with the conditions set forth in file number							
5.	The defendant shall provide a DN	A sample pursuant to	G.S. 15A-266.4. (AOC-CR-319 requ	uired)			
	The deletidant shall provide a Div	sample pursuant to	3 G.G. 13A-200.4. (ACC-CIX-319 leqt	ulleu)			

• Average probation for a felony: 26 months

### **Probationary Sentences (p. 26)**

- Term of imprisonment
- Type of sentence
- Length of probation period
- Conditions of probation
- Delegated authority

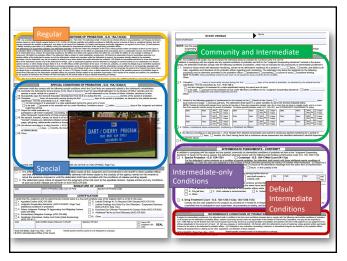
UNC

28

### **Conditions of Probation**

- Regular conditions
  - Apply by default, but may be stricken
- Special conditions
  - Statutory special conditions
  - Ad hoc conditions; must be "reasonably related"
- "Community and Intermediate" conditions
- Intermediate conditions
  - Apply in Intermediate cases, unless stricken
- Sex offender conditions

UNC



### **Probationary Sentences (p. 26)**

- Term of imprisonment
- Type of sentence
- Length of probation period
- Conditions of probation
- Delegated authority

I UNC

31

### **Delegated Authority**

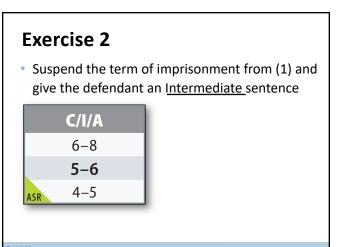
- Conditions a probation officer may impose without court action
  - Community service
  - Additional reporting
  - Substance abuse assessment/treatment
  - House arrest
  - Curfew with electronic monitoring
  - Educational/vocational programming
  - 2- or 3-day "quick dip" in the jail

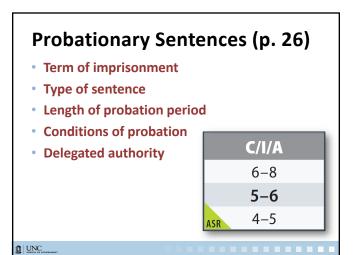
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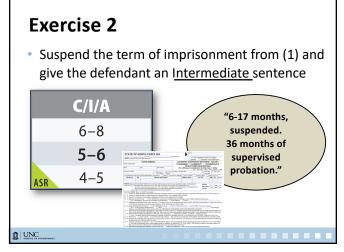
32

### Delegated Authority • Applies unless the court "un-delegates" it \*\*The Court finds that it is NOT appropriate to delegate... \*\*The Court finds that it is NOT appropriate to delegate... \*\*The Court finds that it is NOT appropriate to delegate...

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On supervised probation for 3 years
If revoked . . .

• About 7 months in prison

• 9 months of PRS

Last 9 months

0 6 8 17

Imprisonment Post-Release

Supervision

(PRS)

37

### • Give the defendant from Exercise 1 a Community sentence C/I/A 6-8 5-6 ASR 4-5

UNC EXHIBITION OF COMP

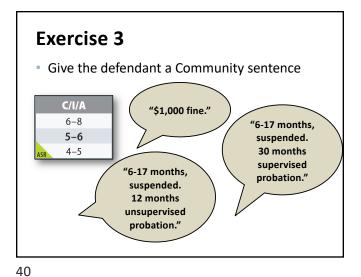
### Community

- Supervised or unsupervised probation that MAY NOT include
  - -Special probation
  - Drug treatment court
- Or a fine only

### Intermediate

- Supervised probation that MAY include
  - -Special probation
  - Drug treatment court

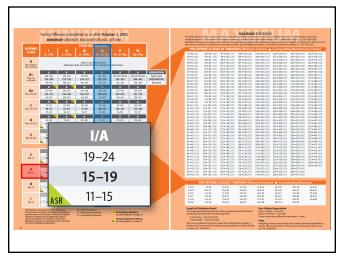
UNC



### **Exercise 4**

- Common Law Robbery (Class G)
- Prior Record Level IV
- Sentence the defendant to "Special Probation": Give him a 30-day split sentence

UNC



### **Exercise 4**

- Common Law Robbery (Class G)
- Prior Record Level IV
- Sentence the defendant to "Special Probation":
   Give him a 30-day split sentence

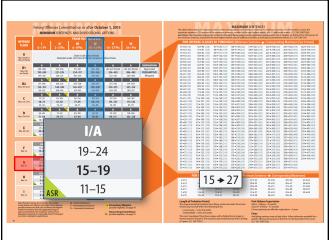
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43

### **Probationary Sentences (p. 26)**

- <u>Term of imprisonment</u>
- Type of sentence
- Length of probation period
- Conditions of probation
- Delegated authority

UNC



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### **Probationary Sentences (p. 26)**

- Term of imprisonment
- Type of sentence
- Length of probation period
- Conditions of probation
- Delegated authority

46

### Community

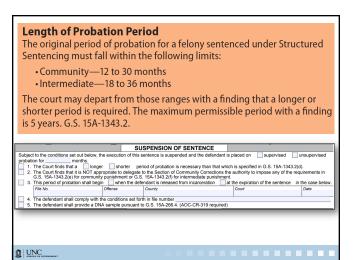
- Supervised or unsupervised probation that MAY NOT include
  - Special probation
  - Drug treatment

47

### Intermediate

- Supervised probation that MAY include
  - Special probation
  - Drug treatment court

court	
Or a fine only	
INC.	
Probationary Sentences (p. 26)	
• Term of imprisonment	
• Type of sentence	
• Length of probation period	
• Conditions of probation	
Delegated authority	
INC.	



### **Probationary Sentences (p. 26)**

- Term of imprisonment
- Type of sentence
- Length of probation period
- Conditions of probation
- Delegated authority

UNC.

50

### **Special Probation (Split)**

- Jail/prison confinement for up to ¼ the maximum imposed sentence of imprisonment
- May be noncontinuous (e.g., weekends)
  - Noncontinuous periods must be served in jail
  - Must be complete within 2 years of conviction
- Judge may order \$40/day jail fee (optional)



Maximum permissible split? 6.75 months

UNC

# Exercise 4 Common Law Robbery (Class G) Prior Record Level IV Sentence the defendant to "Special Probation": Give him a 30-day split sentence 15-27 months, suspended 36 months supervised probation 30 days special probation

52

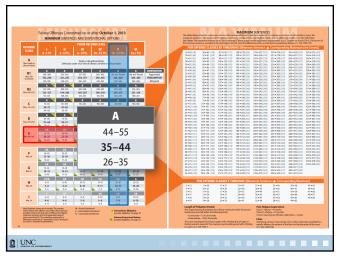
### Serious Felonies (Class A-E)

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### **Exercise 5**

- Discharge Weapon into Occupied Property (Class E)
- PRL V
- Aggravating and Mitigating factors: None
- Give the defendant the shortest possible Active sentence

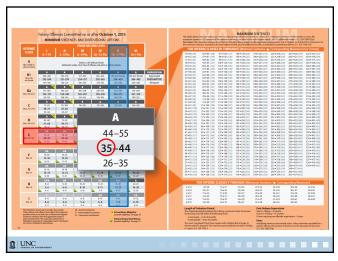
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### **Exercise 5**

- Discharge Weapon into Occupied Property (Class E)
- PRL V
- Aggravating and Mitigating factors: None
- Give the defendant the shortest possible Active sentence

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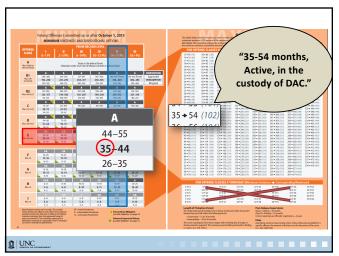


### Serious Felonies (Class B1-E)

- 12 months of Post-Release Supervision
- Longer maximum sentences

UNC

58



59

What does it mean?

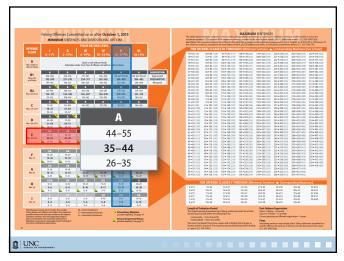
# Class B1-E Sentence Administration Last 12 months 0 35 42 54 Imprisonment PRS PRS period is 12 months

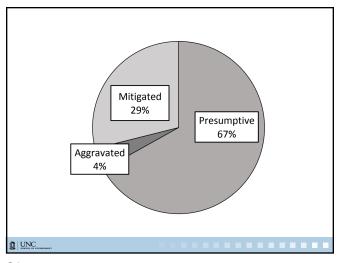
61

### **Exercise 6**

- Discharge Weapon into Occupied Property (Class E)
- PRL V
- Aggravating factors:
  - Involved a person under the age of 16
  - The victim was very old
- Mitigating factors:
  - Honorable discharge from the Armed Forces
- Give the defendant the shortest possible Active sentence

UNC





### **Aggravating Factors: Procedure**

- State must give 30-day notice of intent to prove
  - Statutory aggravators need not be pled
  - Non-statutory aggravators must be pled
- Aggravating factors must be proved to jury beyond a reasonable doubt (unless pled to)
- Prohibited aggravating factors
  - Evidence necessary to prove an element
  - Same item of evidence may not be used to prove more than one aggravating factor
  - Exercise of right to jury trial cannot be an aggravator

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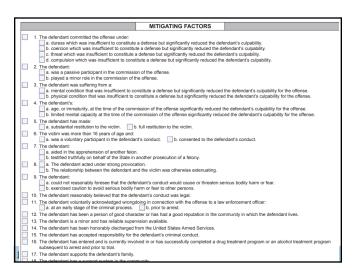
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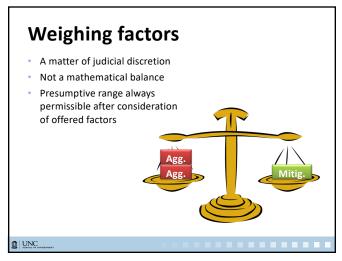
### **Mitigating Factors: Procedure**

- Defendant must be given an opportunity to prove mitigating factors
- Defendant must prove to the judge by a preponderance of the evidence

UNC SCHOOL OF GOVERNMENT	

STATE OF NORTH CAROLINA	File No.
	In The General Court Of Justice
County	☐ District ☐ Superior Court Division
STATE VERSUS	FELONY JUDGMENT
Name Of Defendant	FINDINGS OF AGGRAVATING AND MITIGATING FACTORS
Offense	(STRUCTURED SENTENCING)
	G.S. 15A-1340.16
NOTE: When consolidating offenses for judgment, findings of aggravating factors and m aggravating factors and mitigating factors should be made for each offense that i	itigating factors should be made only for the most serious offense. Separate findings of is not consolidated.
AGGRAVATII	NG FACTORS
□ 2. The defendant joined with more than one other person in committing:  □ 2. The defendant joined with more than one other person in committing: □ (offenses committed nor entire Dec. 1, 2017) criminal gaing as defined by criminal conduct by gaing members, and the defendant was not changed. □ 3. The offense was committed for the purpose of □ a worlding or price. □ 4. The defended was: □ a here do commit the offense. □ by a fine of the purpose of □ a worlding or price. □ 5. The offense was committed to □ discupt □ by hinder the life of the purpose of □ a worlding or price. □ 6. The offense was committed to □ discupt □ by the offense. □ by a satisfact or deputy derived founds. □ discupt □ by the offense the life of the offense of the offe	ce of other participants in the commission of the offense. the offense and was not charged with committing a conspiracy, check one)leftness committed Dec. 1, 1997-1960 3, 2077) criminal street gaing, GS. 14-60.1641, with the speech intent to promote, further, or assist in any with committing a conspiracy. with committing a conspiracy with committing a conspiracy with committing a conspiracy up to a present of nome law enforcement officer, englopes of the Division of lical technician, ambulance attendant, social worker, justice or judge, clerk or reas against the deficient, while engaged in the performance of that person so. and setting the committed of the performance of that person is mas defined in GS. 14-163.1 or death to a law enforcement agency animal, as committed on or after December 1, 3009) as defined in GS. 14-163.1, while



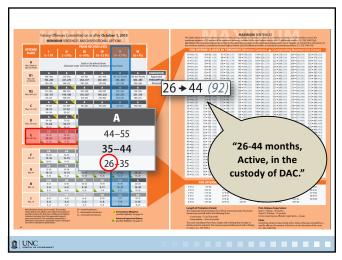


### **Exercise 6**

- Discharge Weapon into Occupied Property (Class E)
- PRL V
- Aggravating factors:
  - Involved a person under the age of 16
  - The victim was very old
- Mitigating factors:
  - Honorable discharge from the Armed Forces
- Give the defendant the shortest possible Active sentence

UNC

70



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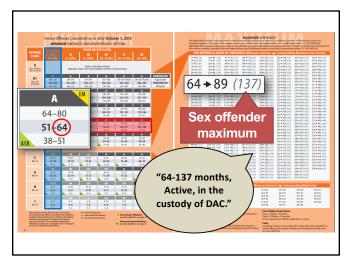
### **Sex Offenders**

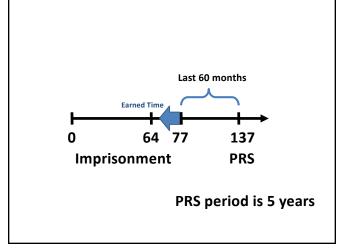
### **Exercise 7**

- Attempted second-degree forcible rape
- Prior Record Level I
- Aggravating and Mitigating factors: None
- Give the longest possible Active sentence

UNC

73





- Reportable sex crimes
  - Registration
  - Satellite-based monitoring
  - No-contact order
  - Page 19-20

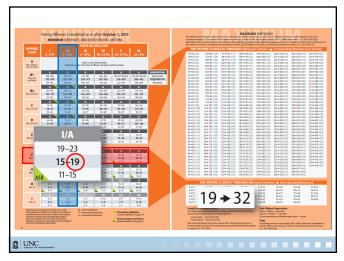
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UNC

### **Exercise 8**

- Indecent Liberties with a Child
- PRL II
- Aggravating and Mitigating factors: None
- Give the defendant probation with the longest possible split sentence

UNC



### **Exercise 8**

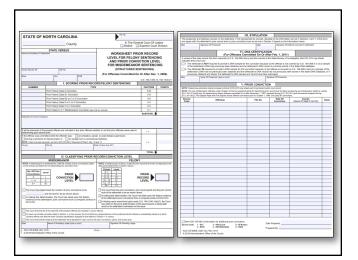
- Indecent Liberties with a Child
- PRL II
- Aggravating and Mitigating factors: None
- Give the defendant probation with the longest possible split sentence
  - 19-32 months, suspended
  - 36 months supervised probation
  - 8 months special probation

UNC

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### **Prior Record Level**

UNC EXHIBITION OF COM




### **Prior Record Level**

### COUNT

### -

- All felonies
- Class 1 and Class A1 non-traffic misdemeanors
- DWI, commercial DWI, and death by vehicle
- Prayer for Judgment (PJC)
- Crimes from other jurisdictions

### **DON'T COUNT**

- Class 2 & 3 misdemeanors
- Traffic misdemeanors (other than DWI, commercial DWI, and death by vehicle)
- Infractions
- Contempt adjudications
- Convictions used to habitualize
- Juvenile adjudications
- Count only the most serious conviction from a single calendar week of superior court, or session of district court

UNC.

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### **Bonus Points**

- Under supervision (+1)
  - Committed while on probation, parole, post-release supervision, incarcerated, or on escape
  - State must give 30-day notice and prove to a jury beyond a reasonable doubt (unless admitted to)
- Same elements (+1)
  - All elements of the present offense included in a prior offense
  - No stipulations: Judge must make a finding

1 UNC

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### FELONY

**NOTE:** If sentencing for a felony, locate the prior record level which corresponds to the total points determined in Section I above.

Points	Level		
0 - 1	I		
2 - 5	II		
6 - 9	III		
10 - 13	IV		
14 - 17	V		
18+	VI		



- The Court finds the prior convictions, prior record points and the prior record level of the defendant to be as shown herein.
- In making this determination, the Court has relied upon the State's evidence of the defendant's prior convictions from a computer printout of DCI-CCH.
- In finding a prior record level point under G.S. 15A-1340.14(b)(7), the Court has relied on the jury's determination of this issue beyond a reasonable doubt or the defendant's admission to this issue.

II UNC

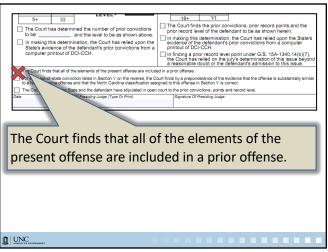
### Prior record "bonus points"

- Same elements (+1)
  - All elements of the present offense included in a prior offense
  - Defendant may not stipulate to this question of law



UNC.

85

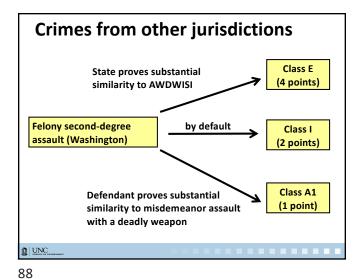


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### **Out-of-State Prior Convictions**

- By default:
  - Prior out-of-state felonies: Class I (2 points)
  - Prior out-of-state misdemeanors: Class 3 (0 points)
- With "substantial similarity" determination:
  - Count like the similar North Carolina offense
  - Proponent must prove by preponderance of evidence
  - Court must make findings; stipulations ineffective

UNC SCHOOL OF GOVERNMENT		 		

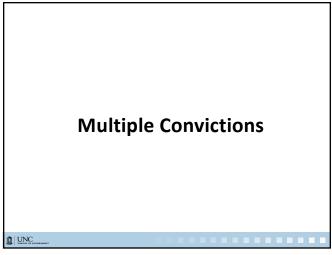


### **Crimes from other jurisdictions**

- No stipulations to substantial similarity
  - -Similarity is a question of law
  - -Must be determined by trial judge

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### Multiple convictions Concurrent sentences — If judgments are silent, sentences run concurrently

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## Multiple convictions Consecutive sentences One sentence begins at the expiration of another Consecutive sentence begins at the expiration of another

### **Multiple convictions**

- Consolidated sentences
  - All convictions sentenced together may be consolidated into one sentence for the most serious offense

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### **Multiple convictions**

- Probationary sentences
  - Probation periods must run concurrently with one another
  - A probationary sentence may run consecutively to an Active sentence ("contingent")

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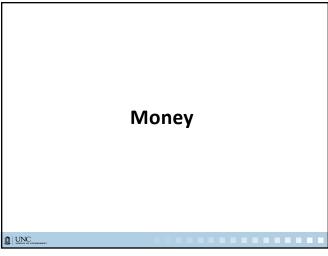
### **Exercise 10**

- Felony breaking or entering (Class H)
- Felony larceny (Class H)
- Prior Record Level I





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### **Additional Issues: Money**

- Fines
  - Amount in court discretion for felonies
- Costs
  - Apply by default unless waived for "just cause"
  - 15-day written notice to affected parties
- · Other fees
  - Attorney fees
  - Probation supervision fees (\$40/month)
  - Jail fees (\$10/day pretrial; \$40/day for splits)
  - EHA fee (\$90 + \$4.48/day)
  - Community Service fee (\$250)

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