

# Criminal Law Update

Shea Denning &  
Jamie Markham

June 2025




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## Substitution of Alternate Jurors

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### State v. Chambers, \_\_\_\_ N.C. \_\_\_\_ (2025), p. 2

"(a) The judge may permit the seating of one or more alternate jurors. Alternate jurors must be sworn and seated near the jury with equal opportunity to see and hear the proceedings. They must attend the trial at all times with the jury, and obey all orders and admonitions of the judge. When the jurors are ordered kept together, the alternate jurors must be kept with them. The court should ensure that the alternate jurors do not discuss the case with anyone until that alternate replaces a juror or is discharged. ~~If before final submission of the case to the jury, at any time prior to a verdict being rendered, any juror dies, becomes incapacitated or disqualified, or is discharged for any other reason, an alternate juror becomes a juror, in the order in which selected, and serves in all respects as those selected on the regular trial panel. If an alternate juror replaces a juror after deliberations have begun, the court must instruct the jury to begin its deliberations anew. In no event shall more than 12 jurors participate in the jury's deliberations.~~ Alternate jurors receive the same compensation as other jurors and, unless they become jurors, must be discharged ~~upon the final submission of the case to the jury in the same manner and at the same time as the original jury.~~"

**SECTION 2.** G.S. 15A-1221(a) reads as rewritten:

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## State v. Chambers, \_\_\_ N.C. \_\_\_ (2025), p. 2

## § 15A-1215. Alternate jurors.

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Alternate jurors [] must be discharged in the same manner and **at the same time** as the original jury.

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## Sex Crimes

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State v. Spry, \_\_\_\_ N.C. App. \_\_\_\_ (2025), p. 10

- Knowing and voluntary plea in light of post-release supervision

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State v. Spry, \_\_\_\_ N.C. App. \_\_\_\_ (2025), p. 10

- In 2007, defendant pled guilty to second-degree kidnapping related to a robbery at a restaurant
- Initial judgment did not check box indicating “the above designated offense(s) is a reportable conviction involving a minor”
- Corrected judgment checked the box (victims were under 16)

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State v. Spry, \_\_\_\_ N.C. App. \_\_\_\_ (2025), p. 10

- In 2023, defendant filed MAR challenging whether his plea was knowing and voluntary
  - Not informed of sex offender registration
  - Not informed of 5-year post-release supervision

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State v. Spry, \_\_\_ N.C. App. \_\_\_ (2025), p. 10

**G.S. 15A-1022(a).** [A] superior court judge may not accept a plea of guilty or no contest from the defendant without first addressing him personally and:

(6) Informing him of the maximum possible sentence on the charge for the class of offense for which the defendant is being sentenced, including that possible from consecutive sentences, and of the mandatory minimum sentence, if any, on the charge.

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**Class B1 – E**  
120% + 12

**Class B1 – E Sex Crime**  
120% + 60

**Class F – I**  
120% + 9

**All felony sex offenders get 5 years of Post-Release Supervision**

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Under *Boykin [v. Alabama]*, due process, as established by the Fourteenth Amendment to the United States Constitution, requires that a defendant's guilty plea be made voluntarily, intelligently and understandingly." . . . [T]he plea . . . must be 'entered by one fully aware of the **direct consequences**.'

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The five years of post-release supervision to which Defendant was subjected, as opposed to the nine months to which he agreed, were a “direct consequence” of his guilty plea, because those additional months had a “definite, immediate and largely automatic effect on the range of the defendant's punishment.” . . . Without being aware of the direct consequences of his guilty plea, Defendant cannot be said to have made his plea “voluntarily, intelligently and understandingly.”

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State v. Spry, \_\_\_ N.C. App. \_\_\_ (2025), p. 10

- Remand for reconsideration of MAR
- *Temporary stay allowed*

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State v. Bowman, \_\_\_ N.C. \_\_\_ (2025), p. 1

- Jury unanimity

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## State v. Bowman, \_\_\_ N.C. \_\_\_ (2025), p. 1

- Defendant committed multiple sexual assaults against the victim—object insertion into anus, anal sex, oral sex
- Two identical charges of first-degree forcible sexual offense, neither identifying the specific act
- One jury instruction for both charges

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## State v. Bowman, \_\_\_ N.C. \_\_\_ (2025), p. 1

“For you to find [Mr. Bowman] guilty of first degree forcible sexual offense, the State must prove to you four things beyond a reasonable doubt. First, that the defendant engaged in a sexual act with the alleged victim. A sexual act means fellatio, which is any touching by the lips or tongue of one person and the male sex organ of another; anal intercourse, which is any penetration, however slight, of the anus of any person by their male or sexual organ; and, C, any penetration, however slight, by an object into the genital or anal opening of a person's body...”

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## State v. Bowman, \_\_\_ N.C. \_\_\_ (2025), p. 1

IN 19CRS2364, COUNT 2, WE, THE JURY, BY UNANIMOUS DECISION, FIND THE DEFENDANT TO BE:

☒ 1. GUILTY OF FIRST DEGREE SEXUAL OFFENSE

OR

☐ 2. GUILTY OF SECOND DEGREE SEXUAL OFFENSE

OR

☐ 2. NOT GUILTY

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State v. Bowman, \_\_\_ N.C. \_\_\_ (2025), p. 1

- **Court of Appeals:** New trial
  - Given the trial court’s instruction, not possible to match the jury’s verdict to the specific incidents without a special verdict sheet
  - Jury might not have been unanimous as to any particular act
- **Supreme Court:** No plain error

State v. Bowman, \_\_\_ N.C. \_\_\_ (2025), p. 1

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|--|--|
| <ul style="list-style-type: none"> <li>• <b>Permissible disjunctive:</b> <ul style="list-style-type: none"> <li>– When a single crime can be established by alternative acts</li> <li>– E.g., sexual offense (“must return a verdict of guilty if defendant engaged in oral sex or anal sex”)</li> </ul> </li> </ul> | <ul style="list-style-type: none"> <li>• <b>Impermissible disjunctive:</b> <ul style="list-style-type: none"> <li>– When alternative acts constitute separate offenses</li> <li>– E.g., trafficking (“knowingly possessed or knowingly sold”)</li> </ul> </li> </ul> |
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State v. Bowman, \_\_\_ N.C. \_\_\_ (2025), p. 1

- **“This is not to say that Mr. Bowman's trial was flawless.”**
  - The State's indictment did not specify a sexual act
  - The verdict sheets provided no clarity as to which specific sexual act on which the jury unanimously agreed.
- **The “better practice”:**
  - Submit separate issues of each unlawful sexual act if more than one act exists

State v. Belfield, \_\_\_ N.C. App. \_\_\_ (2025), p. 11

- Satellite-based monitoring (SBM)
- Findings to override a non-HIGH Static-99

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State v. Belfield, \_\_\_ N.C. App. \_\_\_ (2025), p. 11

- Defendant convicted of indecent liberties with a child
- Trial court conducted SBM hearing

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**LIFETIME SBM**

1. Sexually violent predator
2. Enumerated "reoffenders"
3. Aggravated offenses
4. Rape/Sexual Offense with Child by Adult

**SBM Not to Exceed 50 Years**  
Offense involving "physical, mental, or sexual abuse of a minor"



- Review DAC Risk Assessment (Static-99) and all relevant evidence
- Determine whether defendant requires the "highest possible level of supervision and monitoring"
- Determine whether SBM is reasonable under Fourth Amendment

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## State v. Belfield, \_\_\_ N.C. App. \_\_\_ (2025), p. 11

- Static-99 score: 4 (MODERATE-HIGH/ABOVE AVERAGE RISK)
- Additional findings by judge:
  - Chief probation officer recommendation for SBM
  - Difficulty locating defendant based on frequent use of halfway houses and lack of stable housing
  - Current offense committed while defendant was residing in a halfway house
- Court ordered 25 years of SBM

## State v. Belfield, \_\_\_ N.C. App. \_\_\_ (2025), p. 11

- **Court of Appeals: Affirmed**
  - Additional findings were supported by competent evidence
  - Additional findings were not merely duplicative of Static-99

STATIC-99R Coding Form				
Question Number	Risk Factor	Codes	Score	
1	Young (score according to the offender's age at time of release – for minimum release date)	Aged 18 to 24.9 Aged 25 to 29.9 Aged 30 to 34.9 Aged 35 or older	1 0 -1 -3	
2	Ever Lived With	Ever Lived with a lover for at least two years?	Yes No	0 1
3	Index non-sexual violence	Any Convictions	No Yes	0 1
4	Prior non-sexual violence	Any Convictions	No Yes	0 1
5	Prior Sex Offenses	Charges None 1 2-3 4+	None None 1 2 3	0 1 2 3
6	Prior sentencing dates (excluding index)	3 or less 4 or more	0 1	0 1
7	Any convictions for non-contact Sex offenses	No Yes	0 1	0 1
8	Any Unrelated Victims	No Yes	0 1	0 1
9	Any Stranger Victims	No Yes	0 1	0 1
10	Any Male Victims	No Yes	0 1	0 1
TOTAL		Add up scores from individual risk factors	0	

TRANSLATING STATIC-99R SCORES INTO RISK CATEGORIES	
Score	Label for Risk Category
-3 through 1	Low
2, 3	Moderate-Low
4, 5	Moderate-High
6 plus	High

### State v. Belfield, \_\_\_ N.C. App. \_\_\_ (2025), p. 11

- **Impermissible findings:**
  - Prior sex crimes
  - Stranger victims
  - Same-sex victims
- **Permissible findings:**
  - Very young victims
  - Lack of sex offender treatment. State v. Green, 211 N.C. App. 599 (2011)
  - Multiple offenses in succession
  - Increasing sexual aggressiveness. State v. Smith, 240 N.C. App. 73 (2015)
  - Difficulty locating; unstable housing

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### State v. Lingerfelt, \_\_\_ N.C. App. \_\_\_ (2024), p. 12

- Petition to terminate sex offender registration
- “Jacob Wetterling finding”: Federal tiers under SORNA
  - Tier I: 15-year minimum (reducible to 10 with “clean record”)
  - Tier II: 25-year minimum
  - Tier III: Lifetime registration required
- **Court of Appeals:** Sexual activity by a substitute parent is at least Tier II; trial court denial of petition is affirmed
- *Pending before Supreme Court*

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## Life Sentences

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State v. Walker, \_\_\_ N.C. App. \_\_\_ (2025), p. 17

- 25-year review of life without parole sentences
- Applies to offenses committed Oct. 1, 1994 to Nov. 30, 1998

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**§ 15A-1380.5. Review of sentences of life imprisonment without parole.**

(a) For purposes of this Article the term "life imprisonment without parole" shall include a sentence imposed for "the remainder of the prisoner's natural life".

(b) A defendant sentenced to life imprisonment without parole is entitled to review of that sentence by a resident superior court judge for the county in which the defendant was convicted after the defendant has served 25 years of imprisonment. The defendant's sentence shall be reviewed again every two years as provided by this section, unless the sentence is altered or commuted before that time.

(c) In reviewing the sentence the judge shall consider the trial record and may review the defendant's record from the Department of Correction, the position of any members of the victim's immediate family, the health condition of the defendant, the degree of risk to society posed by the defendant, and any other information that the judge, in his or her discretion, deems appropriate.

(d) After completing the review required by this section, the judge shall recommend to the Governor or to any executive agency or board designated by the Governor whether or not the sentence of the defendant should be altered or commuted. The decision of what to recommend is in the judge's discretion.

(e) The Governor or an executive agency designated under this section shall consider the recommendation made by the judge.

(f) The recommendation of a judge made in accordance with this section may be reviewed on appeal only for an abuse of discretion. (1994, Ex. Sess., c. 21, s. 7; c. 22, s. 36.)

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### 25-Year Review of Life Sentences

"A defendant sentenced to life imprisonment without parole is entitled to review of that sentence by a resident superior court judge for the county in which the defendant was convicted after the defendant has served 25 years of imprisonment."

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### 25-Year Review of Life Sentences

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### 25-Year Review of Life Sentences

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State v. Walker, \_\_\_ N.C. App. \_\_\_ (2025), p. 17

- Defendant sentenced to LWOP in 1999 for a Nov. 1998 murder
- Requested 25-year review in 2023
- Superior court judge notified district attorney, gave 60 days to prepare, including notification of victim's family
- DA's office prepared written input for review
- Judge considered trial record, DAC records, and statements from victim's family

State v. Walker, \_\_\_ N.C. App. \_\_\_ (2025), p. 17

- After review, judge recommended no alteration or commutation
- Recommendation mailed to Parole Commission and Governor's Clemency Office

The undersigned has considered the request of the Defendant, information provided by the Wake County District Attorney at the request of the Court, and the record proper.

In considering this request, the Court has considered the trial record, the Defendant's record from the Department of Corrections, the degree of risk to society posed by the defendant, and such other information contained in the record.

Following this review, the Court, in its discretion, recommends that the sentence of the defendant should not be altered or commuted.

State v. Walker, \_\_\_ N.C. App. \_\_\_ (2025), p. 17

• **Court of Appeals: Affirmed**

- Statute requires a *recommendation*, not an *order*; findings of fact and conclusions of law are not required
- Judge reviewed trial record as required
- Statute does not require a hearing

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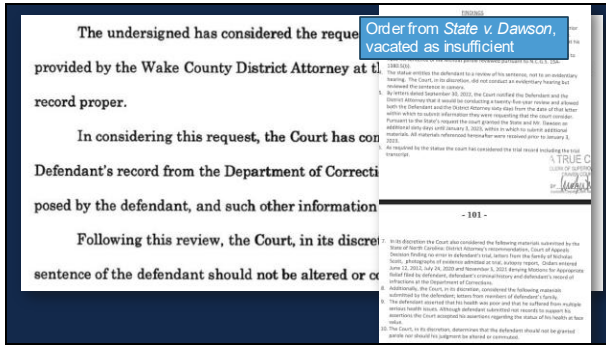
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State v. Walker, \_\_\_ N.C. App. \_\_\_ (2025), p. 17

- Jail credit
- Timing of subsequent reviews
  - “The defendant’s sentence shall be reviewed again every two years as provided by this section, unless the sentence is altered or commuted before that time.”

Pursuant to N.C. Gen. Stat. § 15A-1380.5, your case will be eligible for judicial review two years from the date of this letter.

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### State v. Walker, \_\_\_ N.C. App. \_\_\_ (2025), p. 17

- Delegation to Parole Commission

The Governor's designation of the North Carolina Post-Release Supervision and Parole Commission as the executive agency or board requires a resident Superior Court Judge, pursuant to this statute, to recommend to the North Carolina Post-Release Supervision and Parole Commission whether the defendant should be considered for parole. Recommendations as to commutations pursuant to this statute should be made to the Governor.

Sincerely,



Gregory J. McLeod  
Deputy General Counsel

### State v. Tirado, \_\_\_ N.C. \_\_\_ (2025), p. 15

- Life without Parole after *Miller v. Alabama*
  - Mandatory LWOP for a defendant under 18 is cruel and unusual punishment
- Statutory fix allows discretion
  - If sole basis is felony murder, sentence to life with possibility of parole (LWP) after 25 years
  - If not felony murder, court conducts hearing to consider mitigating evidence of youth, choosing between LWOP and LWP

### State v. Tirado, \_\_\_ N.C. \_\_\_ (2025), p. 15

- 17-year-old defendant initially sentenced to death for two murders in 2000
- Resentenced to consecutive LWOP after *Roper v. Simmons*
- Again resentenced to consecutive LWOP sentences under the *Miller* fix law
  - Trial court made a finding that “defendant’s crimes reflected irreparable corruption rather than transient immaturity”
- Court of Appeals: Affirmed

### State v. Tirado, \_\_\_ N.C. \_\_\_ (2025), p. 15

- Supreme Court: Affirmed
  - Article I, Section 27 “cruel or unusual punishments” clause in N.C. Constitution offers less protection than the federal Eighth Amendment, not more; correct to interpret in “lockstep”
  - Consecutive LWOP sentences did not run afoul of State v. Kelliher, 381 N.C. 558 (2022)
    - *Kelliher*: Consecutive LWP/25 was “de facto life without parole” for a defendant the trial court did not find to be incorrigible/irredeemable
  - *Kelliher* inapplicable:
    - Sentence here was LWOP
    - Trial court did find defendant’s crimes reflected irreparable corruption

### State v. Sims, \_\_\_ N.C. \_\_\_ (2025), p. 13

- Life without Parole after *Miller v. Alabama*
- 17-year-old convicted of first-degree murder, resentenced to LWOP under *Miller*-fix law

### State v. Sims, \_\_\_ N.C. \_\_\_ (2025), p. 13

- “There is no separate requirement that a sentencing court make a finding the murderer is permanently incorrigible or irreparably corrupt. We know this because the Supreme Court explicitly stated such [in *Jones v. Mississippi*, 141 S. Ct. 1307 (2021)].”
- “Judges do not engage in predictive analytics or employ redemption anticipation algorithms to gauge whether a defendant will remain incorrigible or corrupt into his seventies; nor should we. To the contrary, sentencing courts must merely apply the straightforward language of our *Miller*-fix statute and exercise discretion in handing down an appropriate sentence to comply with the Eighth Amendment and, by extension, Article I, § 27 of our state constitution.”

Drop set item 1 Name

## Forfeiture/Waiver of Counsel

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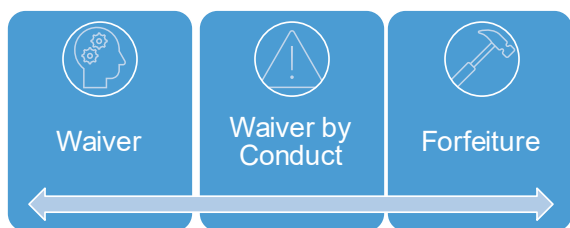
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### Three Ways to Lose the Right to Counsel




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### State v. McGirt, \_\_\_ N.C. App. \_\_\_ (2025), p. 4




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### State v. McGirt, \_\_\_\_ N.C. App. \_\_\_\_ (2025), p. 4

THE COURT: All right. Well, [Mr. Christopher's] motion to withdraw is allowed. The question now, sir, is whether or not we've come to a point where you have, in essence, waived your right -- well, you said you have a waiver?

THE DEFENDANT: Yeah, that's what I -- I filed it just to get him off my case.

THE COURT: We're somewhat coming to a point where we need to consider if you have effectively waived your right to the assistance of court-appointed counsel anyway and that you need to represent yourself or if we need to appoint standby counsel to assist you with this case. What are you asking to do, just so I have an understanding of that first?

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### State v. McGirt, \_\_\_\_ N.C. App. \_\_\_\_ (2025), p. 4

THE COURT: All right, sir, *I'm going to find that you have -- that you have waived your right to the assistance of counsel.* I will not assign a sixth attorney to represent you on these matters. The case -- the case can still move forward to trial. I will assign standby counsel. Mr. Christopher, do you have any -- anything that you would add as it relates to being available as standby counsel in the event that [Defendant] would need assistance?

THE DEFENDANT: Appoint anybody but him. I'll take him. (Indicating to the bailiff.) Anybody but Mr. Christopher.

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### Knowing, Voluntary, and Intelligent Waiver

#### What is enough?

- "I'll represent myself" accompanied by explanation of difference between standby counsel and appointed counsel. *S v. Bannerman*, COA (2021)
- Refusal to answer questions posed by trial court. *S v. Jones*, COA (2024)
- Execution of multiple waivers and there is no evidence that initial waiver was insufficient. *S v. Harper*, COA (2022)
- Trial court's thorough explanation of the consequences of conviction. *S v. Moore*, COA (2023)

#### What is *not* enough?

- D repeatedly requests new counsel after signing waiver. *In re S.L.L.*, COA (2004).

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## Forfeiture



Display of aggressive, profane or threatening behavior



Conduct that seriously obstructs the proceedings

"[E]ven if a defendant's conduct is highly frustrating, forfeiture is not constitutional where any difficulties or delays are not so egregious that they frustrated the purposes of the right to counsel itself."  
*State v. Atwell*, 383 N.C. 437, 449 (2022).

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## Confrontation Clause

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## Smith v. Arizona, 602 U.S. 779 (2024)

- When an expert conveys an absent analyst's statements in support of his opinion, and **those statements provide that support only if they are true, then the statements come into evidence for their truth.**
  - So they are hearsay.
  - This will generally be the case when an expert relies on an absent lab analyst's statements as part of offering his opinion.
- If these hearsay statements are also testimonial, their admission violates the Confrontation Clause

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### State v. Clark, \_\_\_ N.C. App. \_\_\_ (2024), p. 8

- Testifying expert relied on truth of absent analyst's statements in report. (hearsay)
- Statements in report are testimonial.
- Testifying expert's "failure to independently test the substance and his sole reliance upon [the testing analyst's] statements contained in her report . . . implicated defendant's rights under the Confrontation Clause."

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### State v. Lester, \_\_\_ N.C. \_\_\_ (2025), p. 7

- Machine-generated raw data is not hearsay and is not testimonial under the Confrontation Clause.
- Relevant question is whether a human intervened at the time the raw billing data was stated by the machine
- Absent human intervention, print out of data is not testimonial hearsay

Opinion Name

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**Judicial Authority**

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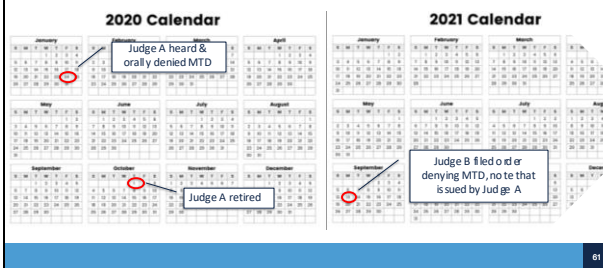
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### State v. Fearn, \_\_\_ N.C. App. \_\_\_ (2025), p. 9




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### State v. Fearn, \_\_\_ N.C. App. \_\_\_ (2025), p. 9



Rule 63 of Rules of Civil  
Procedure



G.S. 15A-1224(b)  
(allowing for  
substitution of judge  
during criminal trial)



*State v. Bartlett*,  
368 N.C. 309 (2015)

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### State v. Aspiote, \_\_\_ N.C. App. \_\_\_ (2025), p. 13

- No evidence in record that the D stated he would not positive
- Testing positive is not conclusive proof that person was under the influence
- Failure to timely provide urine sample cannot be basis for direct criminal contempt as that occurred outside of the presence of the court

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## Sentencing

State v. Lacure, \_\_\_\_ N.C. App. \_\_\_\_ (2025), p. 18

- Co-defendants sentenced to LWOP for 2019 murder of Desmond Jenkins

The Court further Orders: (check all that apply)

1. The defendant shall pay to the Clerk of Superior Court the "Total Amount Due" shown below.

Costs	Fine	Restitution	Attorney's fees	State Fee	Appt Fee/Moc	Total Amount Due
\$ 0.00	\$	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$

\*See attached "Restitution Worksheet, Notice and Order (Initial Sentencing)," AOC-CR-611, which is incorporated by reference.

☐ 2. The Court finds that restitution was recommended as part of the defendant's plea arrangement.

☒ 3. The Court finds just cause to waive costs, as ordered on the attached ☐ AOC-CR-618 ☐ Other: \_\_\_\_\_

☐ 4. Without objection by the State, the defendant shall be admitted to the Advanced Supervised Release (ASR) program. If the defendant completes the risk reduction incentives as identified by the Division of Adult Correction and Juvenile Justice, then he or she will be released at the end of the ASR term specified on Side One, G.S. 15A-1340.15.

☒ 5. Other: THE FIRST 22 YEARS OF DEFS SENTENCE, DEF NOT ALLOWED TO TAKE ANY EDUCATIONAL CLASSES OR VOCATIONAL TRAINING WHATSOEVER; REMIT COURT COSTS

State v. Lacure, \_\_\_\_ N.C. App. \_\_\_\_ (2025), p. 18

- Privileges and restrictions of an incarcerated person are determined by the Department of Adult Corrections.
- Trial court went beyond its scope of authority; special condition reversed

State v. Sandefur, \_\_\_ N.C. App. \_\_\_ (2025), p. 20

- Prior record level: Substantial similarity of out-of-state offenses

V. PRIOR CONVICTION					
NOTE: Federal law precludes making computer printout of DC-CCH (top sheet) part of permanent public court record.					
NOTE: The only misdemeanor offenses under Chapter 20 that are assigned points for determining prior record level for felony sentencing are misdemeanor death by vehicle (G.S. 20-141.4a2) and, for sentencing for felony offenses committed on or after December 1, 1987, impaired driving (G.S. 20-138.1) and commercial impaired driving (G.S. 20-138.2). First Degree Rape and First Degree Sexual Offense convictions prior to October 1, 1994, are Class B1 convictions.					
Source Code	Offenses	File No.	Date Of Conviction	County (Name Of State if not NC)	Class
	RECKLESS DRIVING	22 CR 700134	03/23/2022	CLEVELAND	2
	DWLR NOT IMPAIRED REV	22 CR 700679	03/23/2022	CLEVELAND	3
	RECK INJ TO A CHILD		07/05/2016	TEXAS	1
EL CP 30	THEFT BY PROPERTY - \$200		03/23/2016	TEXAS	3
	UNLAWFUL POS OF A FIREARM		01/13/2016	TEXAS	1
	ROBBERY 2ND DEGREE		11/17/2009	KENTUCKY	G
	POSS CONT SUB 1ST DEGREE		07/10/2009	KENTUCKY	1
	DRUG PARAPHERNALIA, BY POSS-2ND		07/10/2009	KENTUCKY	1
	MANUFACTURING METH 1ST OFFENSE		07/10/2009	KENTUCKY	1
	UNLAWFUL POSS OF METH PRECURSORS		07/10/2009	KENTUCKY	F
	MANUFACTURING METH 1ST OFFENSE		04/10/2003	KENTUCKY	1

☐ serving a sentence of imprisonment, or ☐ on escape from a correctional institution.

NOTE: If part of a plea transcript, use form AOC-CR-300 ("Transcript Of Plea"), Nos. 18 and 17.

County  File No.  State (if other than NC)

TOTAL

II. CLASSIFYING PRIOR RECORD/CONVICTION LEVEL

MISDEMEANOR

NOTE: If sentencing for a misdemeanor, list the number of prior convictions listed on the reverse and select the corresponding prior conviction level.

No. Of Prior Convictions	Level
0	I
1 - 4	II
5 +	III

PRIOR CONVICTION LEVEL

☐ The Court has determined the number of prior convictions to be \_\_\_\_\_ and the level to be as shown above.

☐ In making this determination, the Court has relied upon the State's evidence of the defendant's prior convictions from a computer printout of DC-CCH.

☐ The Court finds that all of the elements of the present offense are included in a prior offense.

☐ For reasons stated on the reverse, the Court finds by a preponderance of the evidence that the offense is substantially similar to a North Carolina offense and that the North Carolina classification assigned to this offense in Section V is correct.

☐ The Court finds that the State and the defendant have stipulated in open court to the prior convictions, points, and record level.

Date  Name Of Presiding Judge (type or print)  Signature Of Presiding Judge

AOC-CR-600B, Rev. 5/15 (Over)

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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

PRIOR RECORD LEVEL

☐ 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 DC-CCH.

☐ In finding a prior record level point under G.S. 15A-1340.1(a)(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.

### State v. Sandefur, \_\_\_ N.C. App. \_\_\_ (2025), p. 20

- “Because the State failed to identify the applicable statutes, and no comparison of the elements took place at the trial court during sentencing, the State did not meet its burden to establish substantial similarity for purposes of determining Defendant’s prior record level.”
- Remand for resentencing

### State v. Fuller, \_\_\_ N.C. App. \_\_\_ (2025), p. 21

- Prior record level: Substantial similarity of out-of-state offense

V. PRIOR CONVICTION					
NOTE: Federal law precludes making computer printout of DOJ-CCH (rap sheet) part of permanent public court record.					
NOTE: The only misdemeanor offenses under Chapter 20 that are assigned points for determining prior record level for felony sentencing are misdemeanor death by vehicle [20 B. 20-141.4(b)(2)] and for sentencing for felony offenses committed on or after December 1, 1987, required driving [20 B. 20-138.1] and commercial required driving [20 B. 20-138.2]. First Degree Rape and First Degree Sexual Offense convictions prior to October 1, 1994, are Class B1 convictions.					
Source Code	Offenses	File No.	Date Of Conviction	County (Name Of State if not NC)	Class
	Dog Fighting x 9	21 CRS 174	05/06/2022	ROCKINGHAM	H
	Cruelty to Animals(F) x 15 (multiple file no.)	21 CRS 169	05/06/2022	ROCKINGHAM	H
	Cruelty to Animals(M) x 3 (multiple file no.)	21 CRS 171	05/06/2022	ROCKINGHAM	I
	Unauthorized Practice of Veterinary Med.	21 CRS 167	05/06/2022	ROCKINGHAM	I
	Criminal Contempt x 2	22 CRS 193	05/02/2022	ROCKINGHAM	—
	Distribute Cocaine (F)	VA 102015 J	12/08/1998	ALBEMARLE (VA)	I
sub. sim.					
	Identity Theft: Obtain ID to Avoid Arrest	VA 002013 J	08/22/2006	ALBEMARLE (VA)	G

II. CLASSIFYING PRIOR RECORD/CONVICTION LEVEL																							
<div style="display: flex; justify-content: space-between;"> <div> <p><b>MISDEMEANOR</b></p> <p>NOTE: If sentencing for a misdemeanor, total the number of prior conviction(s) listed on the reverse and select the corresponding prior conviction level.</p> <table border="1"> <thead> <tr> <th>No. Of Prior Convictions</th> <th>Level</th> </tr> </thead> <tbody> <tr> <td>0</td> <td>I</td> </tr> <tr> <td>1 - 4</td> <td>II</td> </tr> <tr> <td>5 +</td> <td>III</td> </tr> </tbody> </table> <p>PRIOR CONVICTION LEVEL <b>III</b></p> <p><input type="checkbox"/> The Court has determined the number of prior convictions to be _____ and the level to be as shown above.</p> <p><input type="checkbox"/> In making this determination, the Court has relied upon the State's evidence of the defendant's prior convictions from a computer printout of DCJ-CCH.</p> <p><input checked="" type="checkbox"/> For each out-of-state conviction listed in Section V on the reverse, the Court finds by a preponderance of the evidence that the offense is substantially similar to a North Carolina offense and that the North Carolina classification assigned to this offense in Section V is correct.</p> <p><input type="checkbox"/> The Court finds that the State and the defendant have stipulated in open court to the prior convictions, points, and record level.</p> </div> <div> <p><b>FELONY</b></p> <p>NOTE: If sentencing for a felony, locate the prior record level which corresponds to the total points determined in Section I above.</p> <table border="1"> <thead> <tr> <th>Points</th> <th>Level</th> </tr> </thead> <tbody> <tr> <td>0 - 1</td> <td>I</td> </tr> <tr> <td>2 - 5</td> <td>II</td> </tr> <tr> <td>6 - 9</td> <td>III</td> </tr> <tr> <td>10 - 13</td> <td>IV</td> </tr> <tr> <td>14 - 17</td> <td>V</td> </tr> <tr> <td>18 +</td> <td>VI</td> </tr> </tbody> </table> <p>PRIOR RECORD LEVEL <b>III</b></p> <p><input checked="" type="checkbox"/> The Court finds the prior convictions, prior record points and the prior record level of the defendant to be as shown herein.</p> <p><input checked="" type="checkbox"/> In making this determination, the Court has relied upon the State's evidence of the defendant's prior convictions from a computer printout of DCJ-CCH.</p> <p><input type="checkbox"/> 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.</p> </div> </div>		No. Of Prior Convictions	Level	0	I	1 - 4	II	5 +	III	Points	Level	0 - 1	I	2 - 5	II	6 - 9	III	10 - 13	IV	14 - 17	V	18 +	VI
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### State v. Fuller, \_\_\_\_ N.C. App. \_\_\_\_ (2025), p. 21

- Virginia identify theft from 2006 treated as Class G
  - State provided copy of Virginia statute (2023 version)
  - State identified proper subsection
  - Trial court made finding of substantial similarity
- Court of Appeals:
  - Virginia offense is not substantially similar
  - May be committed using identity of fictitious person; North Carolina counterpart requires an actual person, living or dead
- Remand for resentencing

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### State v. Wilson, \_\_\_\_ N.C. App. \_\_\_\_ (2025), p. 22

- Prior record level: Nontraffic misdemeanors

"For each prior misdemeanor conviction as defined in this subsection, 1 point. For purposes of this subsection, misdemeanor is defined as any Class A1 and Class 1 **nontraffic misdemeanor offense**, impaired driving (G.S. 20-138.1), impaired driving in a commercial vehicle (G.S. 20-138.2), and misdemeanor death by vehicle (G.S. 20-141.4(a2)), but not any other **misdemeanor traffic offense under Chapter 20 of the General Statutes**." G.S. 15A-1340.14(b)(5).

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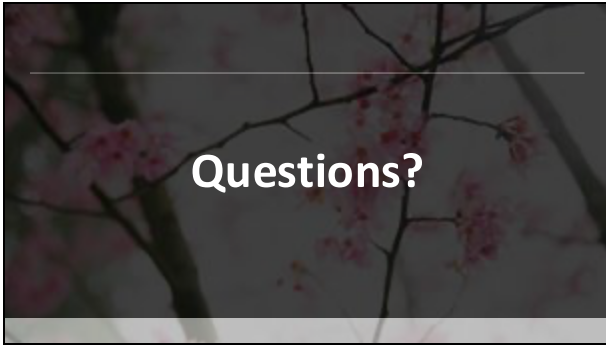
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