

Overview

- Presentence Investigations
- Contingent sentences
- Habitual Felon Sentencing
- Firearm/Deadly Weapon Enhancement
- Extraordinary Mitigation
- Substantial Assistance (Drug Trafficking)
- Advanced Supervised Release

"Pre-sentence investigations are favored and encouraged."

State v. Pope, 257 N.C. 326 (1962)

Presentence Reports

- Presentence investigation
- Presentence commitment for study



Presentence Investigation

- G.S. 15A-1332
 - Court may order PSI for any defendant
 - Pre-conviction on defendant's motion
 - Completed by probation officer

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Presentence Investigation

- Prompt investigation into defendant's:
 - Health
 - Family and social history
 - Criminal history
 - History of substance abuse
 - Employment
 - Education
- Tailored to your request

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Risk-Needs Assessment

- Risk assessment:
 - Offender Traits Inventory, Revised (OTI-R)
- Needs assessment
 - Officer interview + Offender self-report
 - Will flag substance abuse, family issues

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Presentence Commitment

- Any felony or Class A1 or 1 misdemeanor
- Requires defendant's consent (except for sexually violent predator determination)
- Commit for up to 90 days
- Coordinated through DAC Diagnostic Services

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Presentence Reports

- Sentencing hearing may be held in different district upon completion of report
- Reports not a public record
- Reports may be expunged upon request, in your discretion

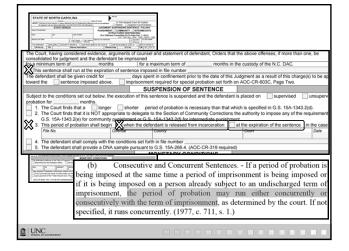
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"Contingent" Sentences

- Active sentence followed by probation
- Permitted under G.S. 15A-1346

(b) Consecutive and Concurrent Sentences. - If a period of probation is being imposed at the same time a period of imprisonment is being imposed or if it is being imposed on a person already subject to an undischarged term of imprisonment, the period of probation may run either concurrently or consecutively with the term of imprisonment, as determined by the court. If not specified, it runs concurrently. (1977, c. 711, s. 1.)

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Habitual Felon

- Four-class enhancement, capped at C
- HF sentences must run consecutively to other sentences "being served"
- Prior convictions used to habitualize do not count toward prior record level
 - State may allege more than three
 - State may choose which convictions to allege
 - Consolidated/same week convictions: One for HF and one for prior record level
 - Masked conviction may still establish "bonus point"

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Firearm/Deadly Weapon

- Minimum sentence enhancement if defendant "actually possessed and used, displayed, or threatened the use or display of a firearm or deadly weapon in committing a felony."
 - Gun-shaped cigarette lighter ≠ Actual possession

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Firearm/Deadly Weapon

• Offenses committed before 10/1/2013:

- Class B1-E: 60-month enhancement

• Offenses committed on/after 10/1/2013:

Class B1-E: 72-month enhancement
Class F-G: 36-month enhancement
Class H-I: 12-month enhancement

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Firearm/Deadly Weapon

- Facts must be charged in indictment/information
 - One pleading sufficient for all felonies tried together
- Proved to jury beyond a reasonable doubt, unless defendant pleads guilty
- Can't be proved with evidence necessary to prove an element of the underlying felony
- · Active sentences only

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Firearm/Deadly Weapon

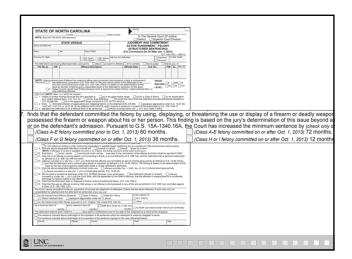
- Second-degree kidnapping (Class E)
 - Offense date: Jan. 4, 2016
 - Prior record level II
 - Firearm enhancement properly alleged, proved
- What is highest enhanced MIN-MAX from the presumptive range?

1/A 29-36 23-29+72 ASR 17-23

100-132 (180)

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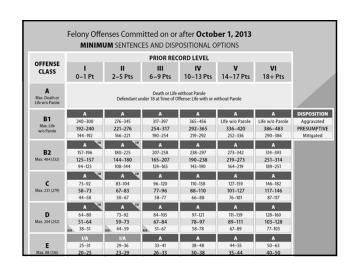
Extraordinary mitigation

- Allows Intermediate probation in an "A"-only cell of the sentencing grid when court finds:
 - Extraordinary mitigating factors of a kind significantly greater than in the normal case;
 - Those factors substantially outweigh any factors in aggravation; and
 - It would be a manifest injustice to impose an active punishment in the case

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Extraordinary mitigation Exclusions Cannot use with Class A or Class B1 felony Cannot use for drug trafficking/conspiracy Must have fewer than 5 prior record points







Extraordinary mitigation

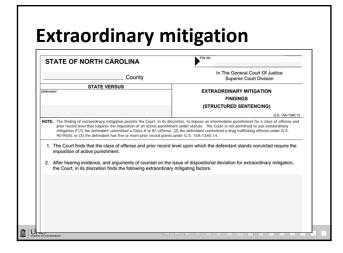
- Court must find extraordinary mitigating factors "significantly greater than in the normal case"
 - Quality, not quantity, makes mitigation extraordinary
 - Cannot be an ordinary mitigating factor

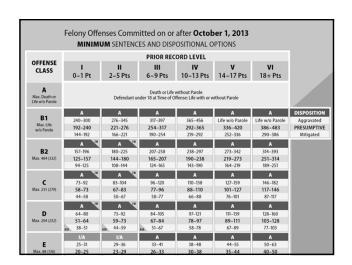
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Extraordinary mitigation

- Improper extraordinary mitigating factors
 - "The defendant's level of mental functioning was insufficient to constitute a defense but significantly reduced his culpability."
 - The 14-year-old victim consented to the crime

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Substantial Assistance

- Drug trafficking only
- "Substantial assistance in the identification, arrest, or conviction of any accomplices, accessories, co-conspirators, or principals."
- Judge has discretion to give reduced sentence, reduced fine, or probation

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Attempted Trafficking

 Reverts to regular sentencing grid for that class of offense

Class E drug trafficking: 90-120 monthsAttempted Class E trafficking: 20-36 months

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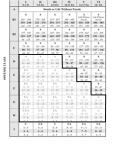
Advanced Supervised Release

- Created by Justice Reinvestment Act
- Allows early release from prison to PRS for identified defendants who complete "risk reduction incentives" in prison

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Eligibility

- Only certain grid cells
- Only Active sentences
- Only if court-ordered at sentencing
- Never over prosecutor objection



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