

# Advanced Sentencing Procedures

Jamie Markham

UNC School of Government

June 2018



UNC  
SCHOOL OF GOVERNMENT

www.sog.unc.edu

## Overview

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



UNC  
SCHOOL OF GOVERNMENT



“Pre-sentence investigations are favored and encouraged.”

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



UNC  
SCHOOL OF GOVERNMENT



## Presentence Reports

- Presentence investigation
- Presentence commitment for study



UNC  
SCHOOL OF GOVERNMENT



UNC

SCHOOL OF GOVERNMENT

## Presentence Investigation

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

## Presentence Investigation

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

## Risk-Needs Assessment

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

## 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

## 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

## “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.)

STATE OF NORTH CAROLINA

IN SENATE AND IN THE SUPERIOR COURT OF THE STATE OF NORTH CAROLINA

FILE NO. \_\_\_\_\_ COUNTY OF \_\_\_\_\_

THE COURT, HAVING CONSIDERED EVIDENCE, ARGUMENTS OF COUNSEL AND STATEMENT OF DEFENDANT, ORDERS THAT THE ABOVE OFFENSES, IF MORE THAN ONE, BE CONSOLIDATED FOR JUDGMENT AND THE DEFENDANT BE IMPRISONED

minimum term of \_\_\_\_\_ months for a maximum term of \_\_\_\_\_ months in the custody of the N.C. DAC.

This sentence shall run at the expiration of sentence imposed in file number \_\_\_\_\_

The defendant shall be given credit for \_\_\_\_\_ days spent in confinement prior to the date of this Judgment as a result of this charge(s) to be applied toward the \_\_\_\_\_ sentence imposed above.  imprisonment required for special probation set forth on AOC-CR-603C, Page Two.

**SUSPENSION OF SENTENCE**

Subject to the conditions set out below, the execution of this sentence is suspended and the defendant is placed on  supervised  unsupervised probation for \_\_\_\_\_ months.

1. The Court finds that a  longer  shorter period of probation is necessary than that which is specified in G.S. 15A-1343.2(d).

2. The Court finds that it is NOT appropriate to delegate to the Section of Community Corrections the authority to impose any of the requirements of G.S. 15A-1343.2(e) for community supervision or G.S. 15A-1343.2(f) for intermediate punishment.

3. This period of probation shall begin  when the defendant is released from incarceration  at the expiration of the sentence, in the case of File No. \_\_\_\_\_ County \_\_\_\_\_ Court \_\_\_\_\_ Date \_\_\_\_\_

4. The defendant shall comply with the conditions set forth in file number \_\_\_\_\_

5. The defendant shall provide a DNA sample pursuant to G.S. 15A-266.4. (AOC-CR-319 required)

**MONETARY CONDITIONS**

(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.)

UNC  
UNIVERSITY OF NORTH CAROLINA

## 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”

## 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

## 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

## 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

## 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?

I/A
29-36
<b>23-29<sup>+72</sup></b>
ASR 17-23

100-132 (180)
101-134 (182)
102-135 (182)

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE  
 (Criminal - Superior Court Division)

STATE VERSUS

JUDGMENT AND COMMITMENT  
 ACTIVE PROBATION RELIEF  
 (Per Commission On Or After Jan. 1, 2013)

Case No. \_\_\_\_\_

Defendant Name \_\_\_\_\_

Offense Description \_\_\_\_\_

Class \_\_\_\_\_

Findings: I find that the defendant committed the felony by using, displaying, or threatening the use or display of a firearm or deadly weapon possessed the firearm or weapon about his or her person. This finding is based on the jury's determination of this issue beyond a reasonable doubt or on the defendant's admission. Pursuant to G.S. 15A-1340.16A, the Court has increased the minimum sentence by (check only one):

(Class A-E felony committed prior to Oct. 1, 2013) 60 months.  (Class A-E felony committed on or after Oct. 1, 2013) 72 months.

(Class F or G felony committed on or after Oct. 1, 2013) 36 months.  (Class H or I felony committed on or after Oct. 1, 2013) 12 months.

Disposition:  Active Probation  Active Probation with Parole  Life without Parole  Death

Minimum Sentence \_\_\_\_\_

Maximum Sentence \_\_\_\_\_

Parole Eligibility \_\_\_\_\_

Supervised Release \_\_\_\_\_

Other \_\_\_\_\_

UNC SCHOOL OF GOVERNMENT

## 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

## 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

Felony Offenses Committed on or after October 1, 2013  
 MINIMUM SENTENCES AND DISPOSITIONAL OPTIONS

OFFENSE CLASS	PRIOR RECORD LEVEL						DISPOSITION
	I 0-1 Pt	II 2-5 Pts	III 6-9 Pts	IV 10-13 Pts	V 14-17 Pts	VI 18+ Pts	
<b>A</b> Max. Death or Life w/o Parole	Death or Life without Parole Defendant under 18 at Time of Offense: Life with or without Parole						
<b>B1</b> Max. Life w/o Parole	240-300 192-240 144-192	A 221-276 166-221	A 317-397 254-317 190-254	A 365-456 292-365 219-292	A Life w/o Parole 336-420 252-336	A Life w/o Parole 386-483 290-386	Aggravated PRESUMPTIVE Mitigated
<b>B2</b> Max. 484 (532)	A 157-196 125-157 94-125	A 180-225 144-180 106-144	A 207-258 165-207 124-165	A 238-297 190-238 143-190	A 273-342 219-273 164-219	A 314-393 251-314 189-251	
<b>C</b> Max. 231 (279)	A 73-92 58-73 44-58	A 83-104 67-83 50-67	A 96-120 77-96 58-77	A 110-138 88-110 66-88	A 127-159 101-127 76-101	A 146-182 117-146 87-117	
<b>D</b> Max. 204 (252)	A 64-80 51-64 38-51	A 73-92 59-73 44-59	A 84-105 67-84 51-67	A 97-121 78-97 58-78	A 111-139 89-111 67-89	A 128-160 103-128 77-103	
<b>E</b> Max. 88 (136)	I/A 25-31 20-25	I/A 29-36 23-29	A 33-41 26-33	A 38-48 30-38	A 44-55 35-44	A 50-63 40-50	

UNC SCHOOL OF GOVERNMENT

## 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

## 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

## Extraordinary mitigation

STATE OF NORTH CAROLINA File No. \_\_\_\_\_

County \_\_\_\_\_ In The General Court Of Justice  
Superior Court Division

STATE VERSUS \_\_\_\_\_

Defendant \_\_\_\_\_

**EXTRAORDINARY MITIGATION  
FINDINGS  
(STRUCTURED SENTENCING)**

G.S. 15A-1340.13

**NOTE:** The finding of extraordinary mitigation permits the Court, in its discretion, to impose an intermediate punishment for a class of offense and prior record level that requires the imposition of an active punishment under statute. The Court is not permitted to give extraordinary mitigation if (1) the defendant committed a Class A or B1 offense, (2) the defendant committed a drug trafficking offense under G.S. 90-95(b), or (3) the defendant has five or more prior record points under G.S. 15A-1340.14.

1. The Court finds that the class of offense and prior record level upon which the defendant stands convicted require the imposition of active punishment.
2. After hearing evidence, and arguments of counsel on the issue of dispositional deviation for extraordinary mitigation, the Court, in its discretion finds the following extraordinary mitigating factors.

### Felony Offenses Committed on or after October 1, 2013 MINIMUM SENTENCES AND DISPOSITIONAL OPTIONS

OFFENSE CLASS	PRIOR RECORD LEVEL						DISPOSITION
	I 0-1 Pt	II 2-5 Pts	III 6-9 Pts	IV 10-13 Pts	V 14-17 Pts	VI 18+ Pts	
<b>A</b> Max. Death or Life w/o Parole	Death or Life without Parole Defendant under 18 at Time of Offense: Life with or without Parole						
<b>B1</b> Max. Life w/o Parole	A 240-300 192-240 144-192	A 276-345 221-276 166-221	A 317-397 254-317 190-254	A 365-456 292-365 219-292	A Life w/o Parole 336-420 252-336	A Life w/o Parole 386-483 290-386	<b>DISPOSITION</b> Aggravated <b>PRESUMPTIVE</b> Mitigated
<b>B2</b> Max. 484 (532)	A 157-196 125-157 94-125	A 180-225 144-180 108-144	A 207-258 165-207 124-165	A 238-297 190-238 143-190	A 273-342 219-273 164-219	A 314-393 251-314 189-251	
<b>C</b> Max. 231 (279)	A 73-92 58-73 44-58	A 83-104 67-83 50-67	A 96-120 77-96 58-77	A 110-138 88-110 66-88	A 127-159 101-127 76-101	A 146-182 117-146 87-117	
<b>D</b> Max. 204 (252)	A 64-80 51-64 38-51	A 73-92 59-73 44-59	A 84-105 67-84 51-67	A 97-121 78-97 58-78	A 111-139 89-111 67-89	A 128-160 103-128 77-103	
<b>E</b> Max. 88 (136)	I/A 25-31 20-25	I/A 29-36 23-29	A 33-41 26-33	A 38-48 30-38	A 44-55 35-44	A 50-63 40-50	

## 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

## Attempted Trafficking

- Reverts to regular sentencing grid for that class of offense
  - Class E drug trafficking: 90-120 months
  - Attempted Class E trafficking: 20-36 months

## 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

## Eligibility

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

OFFENSE CLASS	Months in Life Without Parole					
	I 10-15	II 15-20	III 20-25	IV 25-30	V 30-35	VI 35-40
A	A	A	A	A	A	A
B1	100-120	120-144	144-180	180-225	225-270	270-315
B2	120-144	144-180	180-225	225-270	270-315	315-360
C	15-20	20-25	25-30	30-35	35-40	40-45
D	15-20	20-25	25-30	30-35	35-40	40-45
E	15-20	20-25	25-30	30-35	35-40	40-45
F	15-20	20-25	25-30	30-35	35-40	40-45
G	15-20	20-25	25-30	30-35	35-40	40-45
H	15-20	20-25	25-30	30-35	35-40	40-45
I	15-20	20-25	25-30	30-35	35-40	40-45

## ASR Date

- Court imposes regular sentence from the grid
- ASR date, if ordered, flows from regular sentence
  - If presumptive or aggravated, ASR date is the lowest mitigated minimum sentence in the defendant's grid cell
  - If mitigated, ASR date is 80% of imposed minimum sentence

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

*4-14 month sentence  
ASR date: 3.2 months*

Regular sentence: 8-19 months  
ASR date: 6 months

