

DRUG TRAFFICKING SENTENCING (G.S. 90-95(h))

Drug trafficking is not sentenced using the regular Structured Sentencing grid. Instead, a person convicted of drug trafficking must be sentenced as set out below, including the mandatory fine, regardless of his or her prior criminal record. A person sentenced for trafficking may not be placed on probation unless the judge finds that the person has provided *substantial assistance*, as described below. Trafficking sentences must run consecutively with any other sentence being served by the defendant. However, when a trafficking offense is disposed of in the same proceeding as another conviction the court may impose concurrent sentences. *State v. Walston*, 193 N.C. App. 134, 141–42 (2008).

Conspiracy to commit trafficking. Conspiracies to commit trafficking offenses are punishable the same as the target offense. G.S. 90-95(i).

Attempted trafficking. Attempts to commit trafficking are the same *offense class* as the target offense, but they are sentenced under the ordinary Structured Sentencing grid, not the special mandatory sentences for completed trafficking offenses. G.S. 90-98.

Substantial assistance. The judge sentencing a defendant for trafficking *may* reduce the fine, or impose a prison term less than the applicable minimum, or suspend the prison term and place the defendant on probation when the defendant has provided substantial assistance in the identification, arrest, or conviction of any accomplices, accessories, co-conspirators, or principals, if the sentencing judge enters in the record a finding that the defendant has rendered such substantial assistance. G.S. 90-95(h)(5). The assistance offered need not be limited to accomplices, etc., involved in the defendant's individual case; the court is permitted to consider the defendant's assistance in the prosecution of other cases. *State v. Baldwin*, 66 N.C. App. 156 (1984).

The determination of whether or not the defendant has provided substantial assistance is within the discretion of the trial court. *State v. Hamad*, 92 N.C. App. 282 (1988). Even when the court finds substantial assistance, the decision to reduce the defendant's sentence is in the court's discretion. *State v. Wells*, 104 N.C. App. 274 (1991).

When substantial assistance applies, the court may select a minimum sentence of its choosing; it is not bound by the regular sentencing grid. *State v. Saunders*, 131 N.C. App. 551 (1998). However, to aid in the administration of the sentence, the court should probably order a maximum that is 120% of the imposed minimum plus additional time for post-release supervision, as appropriate.

Post-release supervision. The applicability of the post-release supervision law to drug trafficking sentences has changed over time in response to the Justice Reinvestment Act and related legislation. See G.S. 15A-1368.1.

Offenses committed before 12/1/11:

- Class C–E trafficking offenses receive 9 months of PRS;
- Class F–H trafficking offenses receive no PRS.

Offenses committed on/after 12/1/11 to 11/30/12: PRS applicability unclear. See Jamie Markham, *Revised Drug Trafficking Chart*, N.C. Criminal Law Blog (Aug. 1, 2012), for a detailed discussion.

Offenses committed on/after 12/1/12:

- Class C–E trafficking offenses receive 12-month PRS;
- Class F–H trafficking offenses receive 9-month PRS.

MINIMUM–MAXIMUM SENTENCES FOR DRUG TRAFFICKING CRIMES, BY OFFENSE CLASS

| Offense committed before 12/1/12 | | | Offense committed on/after 12/1/12 | | |
|----------------------------------|------------|---------|------------------------------------|------------|---------|
| Class | Minimum | Maximum | Class | Minimum | Maximum |
| Class C | 225 months | 279 | Class C | 225 months | 282 |
| Class D | 175 | 219 | Class D | 175 | 222 |
| Class E | 90 | 117 | Class E | 90 | 120 |
| Class F | 70 | 84 | Class F | 70 | 93 |
| Class G | 35 | 42 | Class G | 35 | 51 |
| Class H | 25 | 30 | Class H | 25 | 39 |

| Drug | Amount | Class | Fine (not less than) |
|-------------------------|------------------------------------|--------------|-----------------------------|
| Marijuana | In excess of 10 lbs.–49 lbs. | Class H | \$5,000 |
| | 50–1,999 lbs. | Class G | \$25,000 |
| | 2,000–9,999 | Class F | \$50,000 |
| | 10,000 or more | Class D | \$200,000 |
| Methaqualone | 1,000–4,999 dosage units | Class G | \$25,000 |
| | 5,000–9,999 | Class F | \$50,000 |
| | 10,000 or more | Class D | \$200,000 |
| Cocaine | 28–199 grams | Class G | \$50,000 |
| | 200–399 | Class F | \$100,000 |
| | 400 or more | Class D | \$250,000 |
| Methamphetamine | 28–199 grams | Class F | \$50,000 |
| | 200–399 | Class E | \$100,000 |
| | 400 or more | Class C | \$250,000 |
| Amphetamine | 28–199 grams | Class H | \$5,000 |
| | 200–399 | Class G | \$25,000 |
| | 400 or more | Class E | \$100,000 |
| Opium or Heroin | 4–13 grams | Class F | \$50,000 |
| | 14–27 | Class E | \$100,000 |
| | 28 or more | Class C | \$500,000 |
| LSD | 100–499 units | Class G | \$25,000 |
| | 500–999 | Class F | \$50,000 |
| | 1,000 or more | Class D | \$200,000 |
| MDA/MDMA | 100–499 units/28–199 grams | Class G | \$25,000 |
| | 500–999 units/200–399 grams | Class F | \$50,000 |
| | 1,000 units/400 grams, or more | Class D | \$250,000 |
| MDPV* | 28–199 grams | Class F | \$50,000 |
| | 200–399 | Class E | \$100,000 |
| | 400 or more | Class C | \$250,000 |
| Mephedrone* | 28–199 grams | Class F | \$50,000 |
| | 200–399 | Class E | \$100,000 |
| | 400 or more | Class C | \$250,000 |
| Synthetic Cannabinoids* | In excess of 50–249 dosage units** | Class H | \$5,000 |
| | 250–1,249 | Class G | \$25,000 |
| | 1,250–3,749 | Class F | \$50,000 |
| | 3,750 or more | Class D | \$200,000 |

**A "dosage unit" is 3 grams of synthetic cannabinoid or any mixture containing such substance.

* Offenses committed on or after June 1, 2011. S.L. 2011-12.