

# **Trying a B1 Sexual Assault Case**

## **Sentencing**

Christopher W. Bragg  
Resident Superior Court Judge  
Judicial District 20B

Superior Court Judges' Summer Conference  
2016

# Sentencing B-1 Sex Offenders

SUPERIOR COURT JUDGE'S CONFERENCE  
JUNE 23, 2016

## CASE

Copy  
And  
Steal  
Everything



## All the Credit Goes to:

Jamie Markham



John Rubin



Jessie Smith



## What are the B-1 Sex Offenses

- ▶ First-Degree Forcible Rape (14-27.2(a)(2), (b), (c)) now (14-27.21)
- ▶ Statutory Rape of a Child by an Adult (14-27.2A) now (14-27.23)
- ▶ First-Degree Statutory Rape (14-27.2(a)(1)) now (14-27.24)
- ▶ Statutory Rape with a Person 15 Years of Age or Younger (14-27.7A) now (14-27.25)

## **What are the B-1 Sex Offenses**

- ▶ **First-Degree Forcible Sex Offense (14-27.4(a)(2), (b))  
now (14-27.26)**
- ▶ **Statutory Sex Offense with a Child by an Adult  
(14.27.4A) now (14-28.28)**
- ▶ **First-Degree Statutory Sex Offense (14-27.4(a)(1))  
now (14-27.29)**
- ▶ **Statutory Sex Offense with a Person 15 Years of Age  
or Younger (14.27.7A) now (14-27.30)**

## **Mandatory Minimum Sentences**

- ▶ **Statutory Rape of a Child by an Adult (14-27.2A now  
14-27.23)**
- ▶ **Statutory Sex Offense with a Child by an Adult (14-27.4A  
now 14-27.28)**
- ▶ **Active Sentence of No Less than 300 months (420)**
- ▶ **COA, State v Singletary (May 3, 2016)**
- ▶ **Egregious Aggravation is Unconstitutional**

STATE OF NORTH CAROLINA

File No. \_\_\_\_\_

**County** \_\_\_\_\_

In The General Court of Justice  
☐ District    ☐ Superior Court Division

**STATE VERBIS**

And Address Of Defendant \_\_\_\_\_

Security No. \_\_\_\_\_ JDC No. \_\_\_\_\_

Sex \_\_\_\_\_ DOB \_\_\_\_\_

**WORKSHEET PRIOR RECORD  
LEVEL FOR FELONY SENTENCING  
AND PRIOR CONVICTION LEVEL  
FOR MISDEMEANOR SENTENCING  
(STRUCTURED SENTENCING)  
(For Offenses Committed On Or After Dec. 1, 2009)**

G.S. 15A-1302, 14, 15A-1303

I. SCORING PRIOR RECONV/FELONY SENTENCING			
NUMBER	TYPE	FACTORS	POINTS
	Prior Felony Class A Conviction	X10	
	Prior Felony Class B1 Conviction	X 9	
	Prior Felony Class B2 or C or D Conviction	X 6	
	Prior Felony Class E or F or G Conviction	X 4	
	Prior Felony Class H or I Conviction	X 2	
	Prior Class A1 or 1 Misdemeanor Conviction (see note on rearrests)	X 1	
<b>SUBTOTAL</b>			<b>▶</b>

(a/c Current Charge(s)) \_\_\_\_\_

The elements of the present offense are included in any prior offense whether or not the prior offense was used in determining prior record level.

\_\_\_\_\_ offense was committed while the offender was:  
☐ supervised or unsupervised probation, parole, or post-release supervision;  
☐ serving a sentence of imprisonment; or ☐ on escape from a correctional institution.

Yes ☐ No ☐ (use of prior record)

**TOTAL** **▶**

MISDEMEANOR		FELONY																																																																																																																																																																																																											
<p>RE: If sentencing for a misdemeanor, total the number of prior convictions listed on the reverse and select the corresponding prior level.</p> <table border="1" style="width: 100%;"> <tr> <th>No. Of Prior Convictions</th> <th>Level</th> </tr> <tr> <td>0</td> <td>I</td> </tr> <tr> <td>1 - 4</td> <td>II</td> </tr> <tr> <td>5 - 9</td> <td>III</td> </tr> <tr> <td>10 - 14</td> <td>IV</td> </tr> <tr> <td>15 - 19</td> <td>V</td> </tr> <tr> <td>20 - 24</td> <td>VI</td> </tr> <tr> <td>25 - 29</td> <td>VII</td> </tr> <tr> <td>30 - 34</td> <td>VIII</td> </tr> <tr> <td>35 - 39</td> <td>IX</td> </tr> <tr> <td>40 - 44</td> <td>X</td> </tr> <tr> <td>45 - 49</td> <td>XI</td> </tr> <tr> <td>50 - 54</td> <td>XII</td> </tr> <tr> <td>55 - 59</td> <td>XIII</td> </tr> <tr> <td>60 - 64</td> <td>XIV</td> </tr> <tr> <td>65 - 69</td> <td>XV</td> </tr> <tr> <td>70 - 74</td> <td>XVI</td> </tr> <tr> <td>75 - 79</td> <td>XVII</td> </tr> <tr> <td>80 - 84</td> <td>XVIII</td> </tr> <tr> <td>85 - 89</td> <td>XIX</td> </tr> <tr> <td>90 - 94</td> <td>XX</td> </tr> <tr> <td>95 - 99</td> <td>XXI</td> </tr> <tr> <td>100 - 104</td> <td>XXII</td> </tr> <tr> <td>105 - 109</td> <td>XXIII</td> </tr> <tr> <td>110 - 114</td> <td>XXIV</td> </tr> <tr> <td>115 - 119</td> <td>XXV</td> </tr> <tr> <td>120 - 124</td> <td>XXVI</td> </tr> <tr> <td>125 - 129</td> <td>XXVII</td> </tr> <tr> <td>130 - 134</td> <td>XXVIII</td> </tr> <tr> <td>135 - 139</td> <td>XXIX</td> </tr> <tr> <td>140 - 144</td> <td>XXX</td> </tr> <tr> <td>145 - 149</td> <td>XXXI</td> </tr> <tr> <td>150 - 154</td> <td>XXXII</td> </tr> <tr> <td>155 - 159</td> <td>XXXIII</td> </tr> <tr> <td>160 - 164</td> <td>XXXIV</td> </tr> <tr> <td>165 - 169</td> <td>XXXV</td> </tr> <tr> <td>170 - 174</td> <td>XXXVI</td> </tr> <tr> <td>175 - 179</td> <td>XXXVII</td> </tr> <tr> <td>180 - 184</td> <td>XXXVIII</td> </tr> <tr> <td>185 - 189</td> <td>XXXIX</td> </tr> <tr> <td>190 - 194</td> <td>XXXX</td> </tr> <tr> <td>195 - 199</td> <td>XXXXI</td> </tr> <tr> <td>200 - 204</td> <td>XXXXII</td> </tr> <tr> <td>205 - 209</td> <td>XXXXIII</td> </tr> <tr> <td>210 - 214</td> <td>XXXXIV</td> </tr> <tr> <td>215 - 219</td> <td>XXXXV</td> </tr> <tr> <td>220 - 224</td> <td>XXXXVI</td> </tr> <tr> <td>225 - 229</td> <td>XXXXVII</td> </tr> <tr> <td>230 - 234</td> <td>XXXXVIII</td> </tr> <tr> <td>235 - 239</td> <td>XXXXIX</td> </tr> <tr> <td>240 - 244</td> <td>XXXXX</td> </tr> <tr> <td>245 - 249</td> <td>XXXXXI</td> </tr> <tr> <td>250 - 254</td> <td>XXXXXII</td> </tr> <tr> <td>255 - 259</td> <td>XXXXXIII</td> </tr> <tr> <td>260 - 264</td> <td>XXXXXIV</td> </tr> <tr> <td>265 - 269</td> <td>XXXXXV</td> </tr> <tr> <td>270 - 274</td> <td>XXXXXVI</td> </tr> <tr> <td>275 - 279</td> <td>XXXXXVII</td> </tr> <tr> <td>280 - 284</td> <td>XXXXXVIII</td> </tr> <tr> <td>285 - 289</td> <td>XXXXXIX</td> </tr> <tr> <td>290 - 294</td> <td>XXXXXX</td> </tr> <tr> <td>295 - 299</td> <td>XXXXXXI</td> </tr> <tr> <td>300 - 304</td> <td>XXXXXXII</td> </tr> <tr> <td>305 - 309</td> <td>XXXXXXIII</td> </tr> <tr> <td>310 - 314</td> <td>XXXXXXIV</td> </tr> <tr> <td>315 - 319</td> <td>XXXXXXV</td> </tr> <tr> <td>320 - 324</td> <td>XXXXXXVI</td> </tr> <tr> <td>325 - 329</td> <td>XXXXXXVII</td> </tr> <tr> <td>330 - 334</td> <td>XXXXXXVIII</td> </tr> <tr> <td>335 - 339</td> <td>XXXXXXIX</td> </tr> <tr> <td>340 - 344</td> <td>XXXXXXX</td> </tr> <tr> <td>345 - 349</td> <td>XXXXXXXI</td> </tr> <tr> <td>350 - 354</td> <td>XXXXXXXII</td> </tr> <tr> <td>355 - 359</td> <td>XXXXXXXIII</td> </tr> <tr> <td>360 - 364</td> <td>XXXXXXXIV</td> </tr> <tr> <td>365 - 369</td> <td>XXXXXXXV</td> </tr> <tr> <td>370 - 374</td> <td>XXXXXXXVI</td> </tr> <tr> <td>375 - 379</td> <td>XXXXXXXVII</td> </tr> <tr> <td>380 - 384</td> <td>XXXXXXXVIII</td> </tr> <tr> <td>385 - 389</td> <td>XXXXXXXIX</td> </tr> <tr> <td>390 - 394</td> <td>XXXXXXX</td> </tr> <tr> <td>395 - 399</td> <td>XXXXXXXI</td> </tr> <tr> <td>400 - 404</td> <td>XXXXXXXII</td> </tr> <tr> <td>405 - 409</td> <td>XXXXXXXIII</td> </tr> <tr> <td>410 - 414</td> <td>XXXXXXXIV</td> </tr> <tr> <td>415 - 419</td> <td>XXXXXXXV</td> </tr> <tr> <td>420 - 424</td> <td>XXXXXXXVI</td> </tr> <tr> <td>425 - 429</td> <td>XXXXXXXVII</td> </tr> <tr> <td>430 - 434</td> <td>XXXXXXXVIII</td> </tr> <tr> <td>435 - 439</td> <td>XXXXXXXIX</td> </tr> <tr> <td>440 - 444</td> <td>XXXXXXX</td> </tr> <tr> <td>445 - 449</td> <td>XXXXXXXI</td> </tr> <tr> <td>450 - 454</td> <td>XXXXXXXII</td> </tr> <tr> <td>455 - 459</td> <td>XXXXXXXIII</td> </tr> <tr> <td>460 - 464</td> <td>XXXXXXXIV</td> </tr> <tr> <td>465 - 469</td> <td>XXXXXXXV</td> </tr> <tr> <td>470 - 474</td> <td>XXXXXXXVI</td> </tr> <tr> <td>475 - 479</td> <td>XXXXXXXVII</td> </tr> <tr> <td>480 - 484</td> <td>XXXXXXXVIII</td> </tr> <tr> <td>485 - 489</td> <td>XXXXXXXIX</td> </tr> <tr> <td>490 - 494</td> <td>XXXXXXX</td> </tr> <tr> <td>495 - 499</td> <td>XXXXXXXI</td> </tr> </table>		No. Of Prior Convictions	Level	0	I	1 - 4	II	5 - 9	III	10 - 14	IV	15 - 19	V	20 - 24	VI	25 - 29	VII	30 - 34	VIII	35 - 39	IX	40 - 44	X	45 - 49	XI	50 - 54	XII	55 - 59	XIII	60 - 64	XIV	65 - 69	XV	70 - 74	XVI	75 - 79	XVII	80 - 84	XVIII	85 - 89	XIX	90 - 94	XX	95 - 99	XXI	100 - 104	XXII	105 - 109	XXIII	110 - 114	XXIV	115 - 119	XXV	120 - 124	XXVI	125 - 129	XXVII	130 - 134	XXVIII	135 - 139	XXIX	140 - 144	XXX	145 - 149	XXXI	150 - 154	XXXII	155 - 159	XXXIII	160 - 164	XXXIV	165 - 169	XXXV	170 - 174	XXXVI	175 - 179	XXXVII	180 - 184	XXXVIII	185 - 189	XXXIX	190 - 194	XXXX	195 - 199	XXXXI	200 - 204	XXXXII	205 - 209	XXXXIII	210 - 214	XXXXIV	215 - 219	XXXXV	220 - 224	XXXXVI	225 - 229	XXXXVII	230 - 234	XXXXVIII	235 - 239	XXXXIX	240 - 244	XXXXX	245 - 249	XXXXXI	250 - 254	XXXXXII	255 - 259	XXXXXIII	260 - 264	XXXXXIV	265 - 269	XXXXXV	270 - 274	XXXXXVI	275 - 279	XXXXXVII	280 - 284	XXXXXVIII	285 - 289	XXXXXIX	290 - 294	XXXXXX	295 - 299	XXXXXXI	300 - 304	XXXXXXII	305 - 309	XXXXXXIII	310 - 314	XXXXXXIV	315 - 319	XXXXXXV	320 - 324	XXXXXXVI	325 - 329	XXXXXXVII	330 - 334	XXXXXXVIII	335 - 339	XXXXXXIX	340 - 344	XXXXXXX	345 - 349	XXXXXXXI	350 - 354	XXXXXXXII	355 - 359	XXXXXXXIII	360 - 364	XXXXXXXIV	365 - 369	XXXXXXXV	370 - 374	XXXXXXXVI	375 - 379	XXXXXXXVII	380 - 384	XXXXXXXVIII	385 - 389	XXXXXXXIX	390 - 394	XXXXXXX	395 - 399	XXXXXXXI	400 - 404	XXXXXXXII	405 - 409	XXXXXXXIII	410 - 414	XXXXXXXIV	415 - 419	XXXXXXXV	420 - 424	XXXXXXXVI	425 - 429	XXXXXXXVII	430 - 434	XXXXXXXVIII	435 - 439	XXXXXXXIX	440 - 444	XXXXXXX	445 - 449	XXXXXXXI	450 - 454	XXXXXXXII	455 - 459	XXXXXXXIII	460 - 464	XXXXXXXIV	465 - 469	XXXXXXXV	470 - 474	XXXXXXXVI	475 - 479	XXXXXXXVII	480 - 484	XXXXXXXVIII	485 - 489	XXXXXXXIX	490 - 494	XXXXXXX	495 - 499	XXXXXXXI
No. Of Prior Convictions	Level																																																																																																																																																																																																												
0	I																																																																																																																																																																																																												
1 - 4	II																																																																																																																																																																																																												
5 - 9	III																																																																																																																																																																																																												
10 - 14	IV																																																																																																																																																																																																												
15 - 19	V																																																																																																																																																																																																												
20 - 24	VI																																																																																																																																																																																																												
25 - 29	VII																																																																																																																																																																																																												
30 - 34	VIII																																																																																																																																																																																																												
35 - 39	IX																																																																																																																																																																																																												
40 - 44	X																																																																																																																																																																																																												
45 - 49	XI																																																																																																																																																																																																												
50 - 54	XII																																																																																																																																																																																																												
55 - 59	XIII																																																																																																																																																																																																												
60 - 64	XIV																																																																																																																																																																																																												
65 - 69	XV																																																																																																																																																																																																												
70 - 74	XVI																																																																																																																																																																																																												
75 - 79	XVII																																																																																																																																																																																																												
80 - 84	XVIII																																																																																																																																																																																																												
85 - 89	XIX																																																																																																																																																																																																												
90 - 94	XX																																																																																																																																																																																																												
95 - 99	XXI																																																																																																																																																																																																												
100 - 104	XXII																																																																																																																																																																																																												
105 - 109	XXIII																																																																																																																																																																																																												
110 - 114	XXIV																																																																																																																																																																																																												
115 - 119	XXV																																																																																																																																																																																																												
120 - 124	XXVI																																																																																																																																																																																																												
125 - 129	XXVII																																																																																																																																																																																																												
130 - 134	XXVIII																																																																																																																																																																																																												
135 - 139	XXIX																																																																																																																																																																																																												
140 - 144	XXX																																																																																																																																																																																																												
145 - 149	XXXI																																																																																																																																																																																																												
150 - 154	XXXII																																																																																																																																																																																																												
155 - 159	XXXIII																																																																																																																																																																																																												
160 - 164	XXXIV																																																																																																																																																																																																												
165 - 169	XXXV																																																																																																																																																																																																												
170 - 174	XXXVI																																																																																																																																																																																																												
175 - 179	XXXVII																																																																																																																																																																																																												
180 - 184	XXXVIII																																																																																																																																																																																																												
185 - 189	XXXIX																																																																																																																																																																																																												
190 - 194	XXXX																																																																																																																																																																																																												
195 - 199	XXXXI																																																																																																																																																																																																												
200 - 204	XXXXII																																																																																																																																																																																																												
205 - 209	XXXXIII																																																																																																																																																																																																												
210 - 214	XXXXIV																																																																																																																																																																																																												
215 - 219	XXXXV																																																																																																																																																																																																												
220 - 224	XXXXVI																																																																																																																																																																																																												
225 - 229	XXXXVII																																																																																																																																																																																																												
230 - 234	XXXXVIII																																																																																																																																																																																																												
235 - 239	XXXXIX																																																																																																																																																																																																												
240 - 244	XXXXX																																																																																																																																																																																																												
245 - 249	XXXXXI																																																																																																																																																																																																												
250 - 254	XXXXXII																																																																																																																																																																																																												
255 - 259	XXXXXIII																																																																																																																																																																																																												
260 - 264	XXXXXIV																																																																																																																																																																																																												
265 - 269	XXXXXV																																																																																																																																																																																																												
270 - 274	XXXXXVI																																																																																																																																																																																																												
275 - 279	XXXXXVII																																																																																																																																																																																																												
280 - 284	XXXXXVIII																																																																																																																																																																																																												
285 - 289	XXXXXIX																																																																																																																																																																																																												
290 - 294	XXXXXX																																																																																																																																																																																																												
295 - 299	XXXXXXI																																																																																																																																																																																																												
300 - 304	XXXXXXII																																																																																																																																																																																																												
305 - 309	XXXXXXIII																																																																																																																																																																																																												
310 - 314	XXXXXXIV																																																																																																																																																																																																												
315 - 319	XXXXXXV																																																																																																																																																																																																												
320 - 324	XXXXXXVI																																																																																																																																																																																																												
325 - 329	XXXXXXVII																																																																																																																																																																																																												
330 - 334	XXXXXXVIII																																																																																																																																																																																																												
335 - 339	XXXXXXIX																																																																																																																																																																																																												
340 - 344	XXXXXXX																																																																																																																																																																																																												
345 - 349	XXXXXXXI																																																																																																																																																																																																												
350 - 354	XXXXXXXII																																																																																																																																																																																																												
355 - 359	XXXXXXXIII																																																																																																																																																																																																												
360 - 364	XXXXXXXIV																																																																																																																																																																																																												
365 - 369	XXXXXXXV																																																																																																																																																																																																												
370 - 374	XXXXXXXVI																																																																																																																																																																																																												
375 - 379	XXXXXXXVII																																																																																																																																																																																																												
380 - 384	XXXXXXXVIII																																																																																																																																																																																																												
385 - 389	XXXXXXXIX																																																																																																																																																																																																												
390 - 394	XXXXXXX																																																																																																																																																																																																												
395 - 399	XXXXXXXI																																																																																																																																																																																																												
400 - 404	XXXXXXXII																																																																																																																																																																																																												
405 - 409	XXXXXXXIII																																																																																																																																																																																																												
410 - 414	XXXXXXXIV																																																																																																																																																																																																												
415 - 419	XXXXXXXV																																																																																																																																																																																																												
420 - 424	XXXXXXXVI																																																																																																																																																																																																												
425 - 429	XXXXXXXVII																																																																																																																																																																																																												
430 - 434	XXXXXXXVIII																																																																																																																																																																																																												
435 - 439	XXXXXXXIX																																																																																																																																																																																																												
440 - 444	XXXXXXX																																																																																																																																																																																																												
445 - 449	XXXXXXXI																																																																																																																																																																																																												
450 - 454	XXXXXXXII																																																																																																																																																																																																												
455 - 459	XXXXXXXIII																																																																																																																																																																																																												
460 - 464	XXXXXXXIV																																																																																																																																																																																																												
465 - 469	XXXXXXXV																																																																																																																																																																																																												
470 - 474	XXXXXXXVI																																																																																																																																																																																																												
475 - 479	XXXXXXXVII																																																																																																																																																																																																												
480 - 484	XXXXXXXVIII																																																																																																																																																																																																												
485 - 489	XXXXXXXIX																																																																																																																																																																																																												
490 - 494	XXXXXXX																																																																																																																																																																																																												
495 - 499	XXXXXXXI																																																																																																																																																																																																												

4

## State v. Thomas

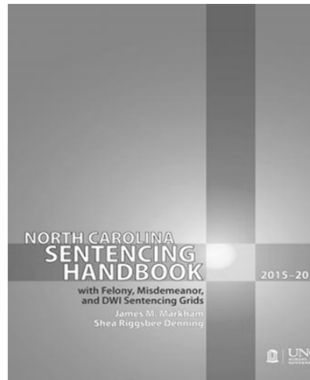
(April 5, 2016)

- ▶ N.C.G.S. 15A-1021.1
- ▶ Expressly Requires
- ▶ Trial Judge to Determine
- ▶ (1) Did State Provide Notice
  - ▶ 30 days or Prior to Plea (G/NC)
- ▶ (2) Did Def Waive Right to Notice

- ▶ (16) Have you admitted the existence of the sentencing points not related to prior convictions shown below, have you agreed that there is evidence to support these points beyond a reasonable doubt, have you agreed that the Court may accept your admission to these points, and **do you understand that you are waiving any notice requirement that the State may have with regard to these sentencing points agree that the State has provided you with appropriate notice about these sentencing points?** *(If so, review the sentencing points with the defendant.)*

# SENTENCING HANDBOOK

Jamie Markham



Shea Denning



\*\*\*Felony Offenses Committed December 1, 2011 10/1/13 \*\*\*

## FELONY PUNISHMENT CHART

### PRIOR RECORD LEVEL

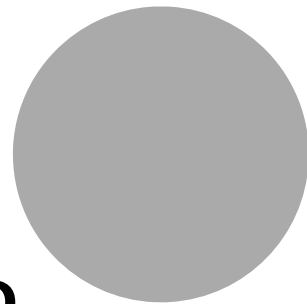
OFFENSE CLASS	I 0-1 Pt	II 2-5 Pts	III 6-9 Pts	IV 10-13 Pts	V 14-17 Pts	VI 18+ Pts
	<b>A</b>	<b>A</b>	<b>A</b>	<b>A</b>	<b>A</b>	<b>A</b>
<b>B1</b>	240 – 300 192 – 240 144 – 192	276 – 345 221 – 276 166 – 221	317 - 397 254 - 317 190 - 254	365 – 456 292 - 365 219 - 292	Life W/O Parole 336 - 420 252 – 336	Life W/O Parole 386 - 483 290 - 386

# Sex Offender Sentencing Chart

MINIMUM AND MAXIMUM SENTENCES FOR CLASSES B1 THROUGH E FELONY SEX OFFENSES G.S. 15A-1340.17(f)						
B1 through E felony that is subject to the registration requirement of G.S. Chapter 14, including maximum sentence for each minimum sentence is shown in the table below. In each entry, the number to the left of the dash represents the minimum sentence (in months) and the number to the right of the dash represents the corresponding maximum sentence (in months).						
FOR OFFENSE CLASSES B1 THROUGH E						
52-123	89-167	126-212	163-256	200-300	237-345	274-389
53-124	90-168	127-213	164-257	201-302	238-346	275-390
54-125	91-170	128-214	165-258	202-303	239-347	276-392
55-126	92-171	129-215	166-260	203-304	240-348	277-393
56-128	93-172	130-216	167-261	204-305	241-350	278-394
57-129	94-173	131-218	168-262	205-306	242-351	279-395
58-130	95-174	132-219	169-263	206-308	243-352	280-396
59-131	96-176	133-220	170-264	207-309	244-353	281-398
60-132	97-177	134-221	171-266	208-310	245-354	282-399
61-134	98-178	135-222	172-267	209-311	246-356	283-400
62-135	99-179	136-224	173-268	210-312	247-357	284-401
63-136	100-180	137-225	174-269	211-314	248-358	285-402
64-137	101-182	138-226	175-270	212-315	249-359	286-404
65-138	102-183	139-227	176-272	213-316	250-360	287-405
66-140	103-184	140-228	177-273	214-317	251-362	288-406
67-141	104-185	141-230	178-274	215-318	252-363	289-407
68-142	105-186	142-231	179-275	216-320	253-364	290-408
69-143	106-188	143-232	180-276	217-321	254-365	291-410
70-144	107-189	144-233	181-278	218-322	255-366	292-411
71-146	108-190	145-234	182-279	219-323	256-368	293-412
72-147	109-191	146-236	183-280	220-324	257-369	294-413
73-148	110-192	147-237	184-281	221-326	258-370	295-414
74-149	111-194	148-238	185-282	222-327	259-371	296-416
75-150	112-195	149-239	186-284	223-328	260-372	297-417
76-152	113-196	150-240	187-285	224-329	261-374	298-418
77-153	114-197	151-242	188-286	225-330	262-375	299-419
78-154	115-198	152-243	189-287	226-332	263-376	300-420
79-155	116-200	153-244	190-288	227-333	264-377	301-422
80-156	117-201	154-245	191-290	228-334	265-378	302-423
81-158	118-202	155-246	192-291	229-335	266-380	303-424
82-159	119-203	156-248	193-292	230-336	267-381	304-425
83-160	120-204	157-249	194-293	231-338	268-382	305-426
84-161	121-206	158-250	195-294	232-339	269-383	306-428
85-162	122-207	159-251	196-296	233-340	270-384	307-429
86-164	123-208	160-252	197-297	234-341	271-386	308-430
87-165	124-209	161-254	198-298	235-342	272-387	309-431

## SEX OFFENDER REGISTRATION

## SATELLITE BASED MONITORING





## **Sex Offender Registration**

- ▶ Static 99
- ▶ Sex Offender Flow Chart (March 2015)
- ▶ Typically 30 Years
- ▶ Lifetime Registration
  - ▶ a) Recidivist
  - ▶ b) Sexually Violent Predator
  - ▶ c) Aggravated Offense

## **AGGRAVATED OFFENSE**

- ▶ Offenses Committed on/after Oct. 1, 2001
- ▶ Sexual Act Involving Vaginal, Anal, or Oral Penetration;
  - ▶ (a) Victim of any age through the use of force or threat of serious violence, or
  - ▶ (b) Victim who is less than 12 years old.

## **AGGRAVATED OFFENSES**

- ▶ 1st-Deg. Stat. Rape (victim under 13, 14-27.2(a)(1)). State v. Clark, 714 S.E.2d 754 (2011).
- ▶ Stat. Rape (victim 13, 14, 15/def. 6 yrs. older, 14-27.7A(a)). State v. Sprouse, 719 S.E. 2d 234 (Dec. 6, 2011).

- ▶ 2nd-Deg. Rape (forcible, 14-27.3(a)(1)). State v. McCravey, 203 N.C. App. 627 (2010).
- ▶ 2nd-Deg. Rape (mentally disabled victim, 14-27.3(a)(2)). State v. Oxendine, 206 N.C. App. 205 (2010).
- ▶ 2nd-Deg. Rape (physically helpless victim, 14-27.3(a)(2)). State v. Talbert, 756 S.E.2d 98 (2014).

## **Satellite Based Monitoring (SBM)**

- ▶ **Effective date on or after August 16, 2006**
- ▶ (1) Commit a Reportable Offense;
- ▶ (2) Sentenced to Intermediate Punishment;
- ▶ (3) Released from Prison by Parole/PRS; or
- ▶ (4) Sentence Served Not on PRS or Parole.

## **LIFETIME SBM**

- ▶ 1. SEXUALLY VIOLENT PREDATOR (14-208.6(6)).
- ▶ 2. RECIDIVIST (14-208.6(2b)).
- ▶ 3. COMMITTED AN AGGRAVATED OFFENSE (14-208.6(1a)).
- ▶ 4. RAPE OR SEXUAL OFFENSE WITH MINOR BY ADULT (14-27.2A; -27.4A).

## LIFETIME SBM???

- ▶ *Grady v. North Carolina*, 575 U.S. \_\_\_, 135 S. Ct. 1368 (Mar. 30, 2015) (per curiam).
- ▶ Reversing North Carolina Courts,
- ▶ SBM Constitutes a Search Under the Fourth Amendment.
- ▶ "a State ... conducts a search when it attaches a device to a person's body, without consent, for the purpose of tracking that individual's movements."

## LIFETIME SBM???

- ▶ Ultimate Question?
- ▶ Is SBM Reasonable
- ▶ *State v. Blue*, 783 S.E.2d 524, (March 15, 2016)
- ▶ *State v. Morris*, 783 S.E.2d 528, (March 15, 2016)

## **DETERMINING REASONABLENESS**

- ▶ Totality of the Circumstances,
  - ▶ Nature and Purpose of the Search and
  - ▶ Extent the Search Intrudes upon Reasonable Privacy Expectations.
- 
- ▶ State's Burden to Prove SBM is Reasonable.

## **Samson v. California,** **547 U.S. 843 (2006)**

- ▶ "Totality of the Circumstances" Approach
- ▶ Balance "the degree to which it (search) intrudes upon an individual's privacy"
- ▶ Against "the degree to which it (search) is needed for the promotion of legitimate governmental interests."

## **Vernonia School District 47J v. Acton, 515 U.S. 646 (1995)**

- ▶ Evaluated Reasonableness by Considering Three Factors:
- ▶ Nature of the Privacy Interest,
- ▶ Intrusiveness of the Search, and
- ▶ Nature and Immediacy of Governmental Concern.

## **Belleau v Wall, 811 F.3d 929 (7<sup>th</sup> Cir. 2016)**

- ▶ 73-year-old man, sex offender & recidivist
- ▶ Civil Commitment as Sexually Violent Person
- ▶ Not Under Community Supervision
- ▶ Psychologist "No more likely than not to reoffend"
- ▶ Wisconsin's SBM Violated his 4th Amendment Rights.
- ▶ Federal District Court Wisconsin SBM Unconstitutional

## **Belleau v Wall,** **811 F.3d 929 (7<sup>th</sup> Cir. 2016)**

- ▶ The Seventh Circuit Reversed SBM was Reasonable and Permissible.
- ▶ Judge Posner's Opinion Addresses Key Issues
- ▶ Invasiveness of the Search;
- ▶ Studies on Sex Offender Recidivism; and
- ▶ Reasonableness of Sex Offender's Expectation of Privacy.

## **Permanent No Contact Order**

- ▶ N.C.G.S. 15A-1340.50
- ▶ Criminal Offense Requiring Registration
- ▶ Offenses Committed After December 1, 2009
- ▶ Imposed As Part of Sentence (AOC-CR-620)
- ▶ Intended to Protect Only Victim
- ▶ State v Barnett, 784 S.E. 2d 188 (Jan. 2016)