

Sentencing Serious Felonies

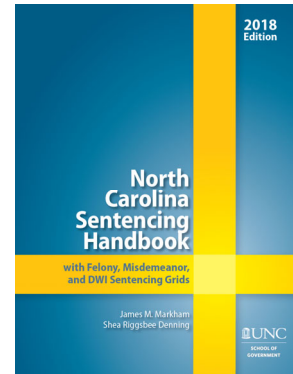
Jamie Markham
UNC School of Government
September 2021



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2018
Edition

North Carolina Sentencing Handbook

with Felony, Misdemeanor,
and DWI Sentencing Grids

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Shea Riggsbee Denning

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GOVERNMENT

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Objectives

- Grid fluency
- Know what sentences mean
- Know enhancement and mitigation options

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Felony Offenses Committed on or after October 1, 2013

Minimum sentence 1 year/30 days/60 days/90 days/120 days/180 days/240 days/300 days/360 days/420 days/480 days/540 days/600 days/660 days/720 days/780 days/840 days/900 days/960 days/1020 days/1080 days/1140 days/1200 days/1260 days/1320 days/1380 days/1440 days/1500 days/1560 days/1620 days/1680 days/1740 days/1800 days/1860 days/1920 days/1980 days/2040 days/2100 days/2160 days/2220 days/2280 days/2340 days/2400 days/2460 days/2520 days/2580 days/2640 days/2700 days/2760 days/2820 days/2880 days/2940 days/3000 days/3060 days/3120 days/3180 days/3240 days/3300 days/3360 days/3420 days/3480 days/3540 days/3600 days/3660 days/3720 days/3780 days/3840 days/3900 days/3960 days/4020 days/4080 days/4140 days/4200 days/4260 days/4320 days/4380 days/4440 days/4500 days/4560 days/4620 days/4680 days/4740 days/4800 days/4860 days/4920 days/4980 days/5040 days/5100 days/5160 days/5220 days/5280 days/5340 days/5400 days/5460 days/5520 days/5580 days/5640 days/5700 days/5760 days/5820 days/5880 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Most inmates in North Carolina's prisons are serving time for:

- A. Sexual assaults
- B. Drug crimes
- C. Property crimes
- D. Murder

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Prison Population (2020)

Total population: 28,399

- Murder 17 %
- Sexual assaults 12 %
- Robbery 9 %
- Non-trafficking drug 7 %

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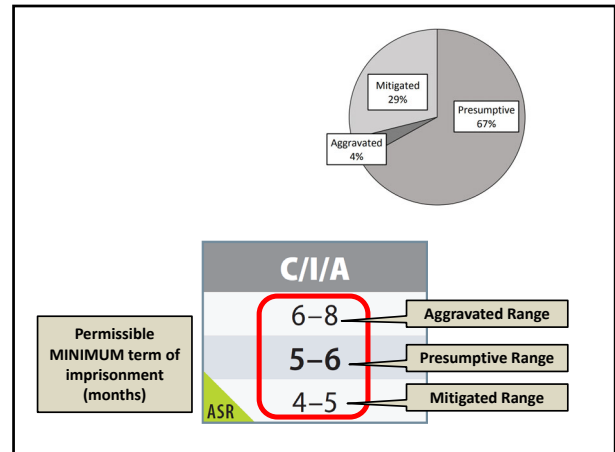
Felony Offenses Committed on or after October 1, 2013
INTERVENING OFFENSES AND DISCRETIONARY OFFENSES

OFFENSE CLASS	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100
A	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100

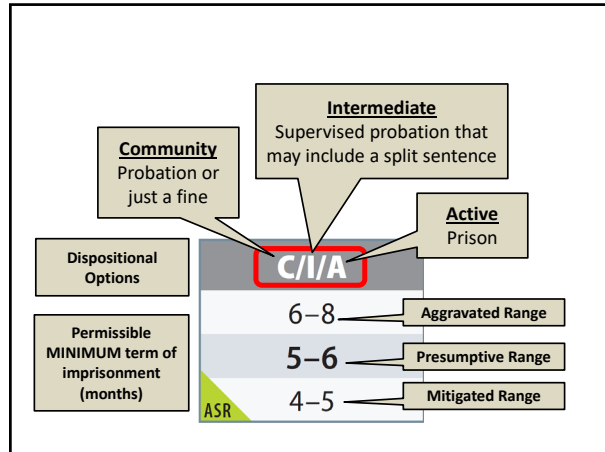
C/I/A
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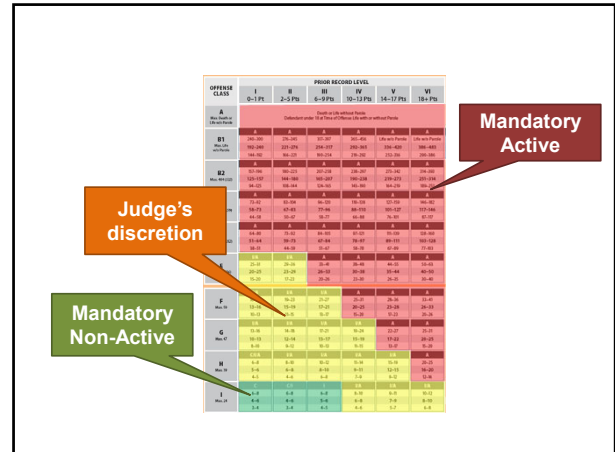
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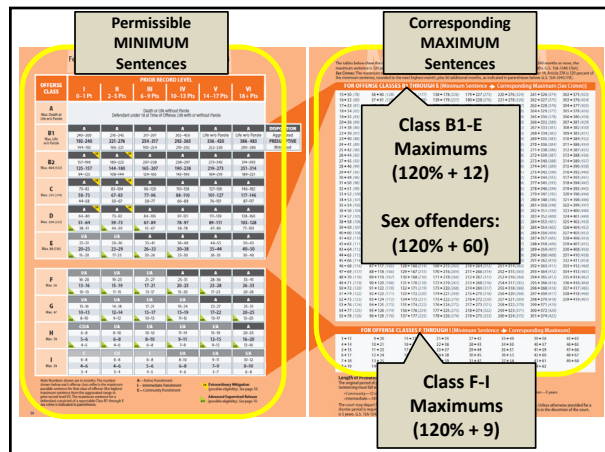
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Example (Class B1-E felony)

- Discharge Weapon into Occupied Property (Class E)
- Prior Record Level I
- No aggravating or mitigating factors

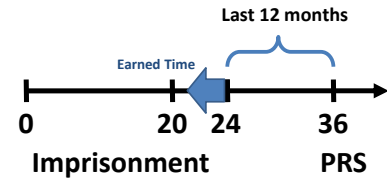
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Discharging a Weapon into Occupied Property Prior Record Level I

Felony Offenses Committed on or after October 1, 2013									
MINIMUM SENTENCES AND DISCRETIONARY OFFENSES									
OFFENSE CLASS	I	II	III	IV	V	VI	VI	VI	VI
A	1-1/2	2-1/2	3-1/2	4-1/2	5-1/2	6-1/2	7-1/2	8-1/2	9-1/2
B1	10-20	20-30	20-30	20-30	20-30	20-30	20-30	20-30	20-30
B2	10-20	20-30	20-30	20-30	20-30	20-30	20-30	20-30	20-30
C	10-20	20-30	20-30	20-30	20-30	20-30	20-30	20-30	20-30
D	10-20	20-30	20-30	20-30	20-30	20-30	20-30	20-30	20-30
E	10-20	20-30	20-30	20-30	20-30	20-30	20-30	20-30	20-30
F	10-20	20-30	20-30	20-30	20-30	20-30	20-30	20-30	20-30
G	10-20	20-30	20-30	20-30	20-30	20-30	20-30	20-30	20-30
H	10-20	20-30	20-30	20-30	20-30	20-30	20-30	20-30	20-30
I	10-20	20-30	20-30	20-30	20-30	20-30	20-30	20-30	20-30

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Class B1-E Sentence Administration



PRS period is 12 months

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Example (Class B1-E felony)

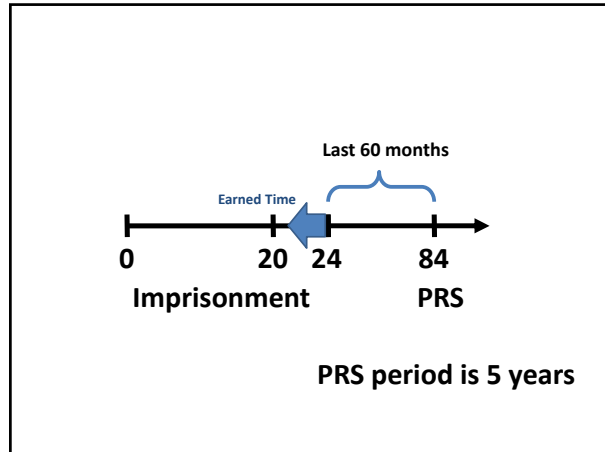
- Second-degree kidnapping (Class E)
- Victim is 15 years old
- Prior Record Level I
- No aggravating or mitigating factors

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Second-Degree Kidnapping Prior Record Level I

Felony Offenses Committed on or after October 1, 2013									
MINIMUM SENTENCES AND DISCRETIONARY OFFENSES									
OFFENSE CLASS	I	II	III	IV	V	VI	VI	VI	VI
A	1-1/2	2-1/2	3-1/2	4-1/2	5-1/2	6-1/2	7-1/2	8-1/2	9-1/2
B1	10-20	20-30	20-30	20-30	20-30	20-30	20-30	20-30	20-30
B2	10-20	20-30	20-30	20-30	20-30	20-30	20-30	20-30	20-30
C	10-20	20-30	20-30	20-30	20-30	20-30	20-30	20-30	20-30
D	10-20	20-30	20-30	20-30	20-30	20-30	20-30	20-30	20-30
E	10-20	20-30	20-30	20-30	20-30	20-30	20-30	20-30	20-30
F	10-20	20-30	20-30	20-30	20-30	20-30	20-30	20-30	20-30
G	10-20	20-30	20-30	20-30	20-30	20-30	20-30	20-30	20-30
H	10-20	20-30	20-30	20-30	20-30	20-30	20-30	20-30	20-30
I	10-20	20-30	20-30	20-30	20-30	20-30	20-30	20-30	20-30

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Appendix F: Crimes Requiring Sex Offender Registration (G.S. 14-200.6)

Crimes Requiring Sex Offender Registration (G.S. 14-200.6)	Registration Period
Sexual Offense (G.S. 14-202.1)	Completed on 12/31/20
Sexual Offense (G.S. 14-202.2)	Completed on 12/31/20
Sexual Offense (G.S. 14-202.3)	Completed on 12/31/20
Sexual Offense (G.S. 14-202.4)	Completed on 12/31/20
Sexual Offense (G.S. 14-202.5)	Completed on 12/31/20
Sexual Offense (G.S. 14-202.6)	Completed on 12/31/20
Sexual Offense (G.S. 14-202.7)	Completed on 12/31/20
Sexual Offense (G.S. 14-202.8)	Completed on 12/31/20
Sexual Offense (G.S. 14-202.9)	Completed on 12/31/20
Sexual Offense (G.S. 14-202.10)	Completed on 12/31/20
Sexual Offense (G.S. 14-202.11)	Completed on 12/31/20
Sexual Offense (G.S. 14-202.12)	Completed on 12/31/20
Sexual Offense (G.S. 14-202.13)	Completed on 12/31/20
Sexual Offense (G.S. 14-202.14)	Completed on 12/31/20
Sexual Offense (G.S. 14-202.15)	Completed on 12/31/20
Sexual Offense (G.S. 14-202.16)	Completed on 12/31/20
Sexual Offense (G.S. 14-202.17)	Completed on 12/31/20
Sexual Offense (G.S. 14-202.18)	Completed on 12/31/20
Sexual Offense (G.S. 14-202.19)	Completed on 12/31/20
Sexual Offense (G.S. 14-202.20)	Completed on 12/31/20
Sexual Offense (G.S. 14-202.21)	Completed on 12/31/20
Sexual Offense (G.S. 14-202.22)	Completed on 12/31/20
Sexual Offense (G.S. 14-202.23)	Completed on 12/31/20
Sexual Offense (G.S. 14-202.24)	Completed on 12/31/20
Sexual Offense (G.S. 14-202.25)	Completed on 12/31/20
Sexual Offense (G.S. 14-202.26)	Completed on 12/31/20
Sexual Offense (G.S. 14-202.27)	Completed on 12/31/20
Sexual Offense (G.S. 14-202.28)	Completed on 12/31/20
Sexual Offense (G.S. 14-202.29)	Completed on 12/31/20
Sexual Offense (G.S. 14-202.30)	Completed on 12/31/20
Sexual Offense (G.S. 14-202.31)	Completed on 12/31/20
Sexual Offense (G.S. 14-202.32)	Completed on 12/31/20
Sexual Offense (G.S. 14-202.33)	Completed on 12/31/20
Sexual Offense (G.S. 14-202.34)	Completed on 12/31/20
Sexual Offense (G.S. 14-202.35)	Completed on 12/31/20
Sexual Offense (G.S. 14-202.36)	Completed on 12/31/20
Sexual Offense (G.S. 14-202.37)	Completed on 12/31/20
Sexual Offense (G.S. 14-202.38)	Completed on 12/31/20
Sexual Offense (G.S. 14-202.39)	Completed on 12/31/20
Sexual Offense (G.S. 14-202.40)	Completed on 12/31/20
Sexual Offense (G.S. 14-202.41)	Completed on 12/31/20
Sexual Offense (G.S. 14-202.42)	Completed on 12/31/20
Sexual Offense (G.S. 14-202.43)	Completed on 12/31/20
Sexual Offense (G.S. 14-202.44)	Completed on 12/31/20
Sexual Offense (G.S. 14-202.45)	Completed on 12/31/20
Sexual Offense (G.S. 14-202.46)	Completed on 12/31/20
Sexual Offense (G.S. 14-202.47)	Completed on 12/31/20
Sexual Offense (G.S. 14-202.48)	Completed on 12/31/20
Sexual Offense (G.S. 14-202.49)	Completed on 12/31/20
Sexual Offense (G.S. 14-202.50)	Completed on 12/31/20
Sexual Offense (G.S. 14-202.51)	Completed on 12/31/20
Sexual Offense (G.S. 14-202.52)	Completed on 12/31/20
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Sexual Offense (G.S. 14-202.61)	Completed on 12/31/20
Sexual Offense (G.S. 14-202.62)	Completed on 12/31/20
Sexual Offense (G.S. 14-202.63)	Completed on 12/31/20
Sexual Offense (G.S. 14-202.64)	Completed on 12/31/20
Sexual Offense (G.S. 14-202.65)	Completed on 12/31/20
Sexual Offense (G.S. 14-202.66)	Completed on 12/31/20
Sexual Offense (G.S. 14-202.67)	Completed on 12/31/20
Sexual Offense (G.S. 14-202.68)	Completed on 12/31/20
Sexual Offense (G.S. 14-202.69)	Completed on 12/31/20
Sexual Offense (G.S. 14-202.70)	Completed on 12/31/20
Sexual Offense (G.S. 14-202.71)	Completed on 12/31/20
Sexual Offense (G.S. 14-202.72)	Completed on 12/31/20
Sexual Offense (G.S. 14-202.73)	Completed on 12/31/20
Sexual Offense (G.S. 14-202.74)	Completed on 12/31/20
Sexual Offense (G.S. 14-202.75)	Completed on 12/31/20
Sexual Offense (G.S. 14-202.76)	Completed on 12/31/20
Sexual Offense (G.S. 14-202.77)	Completed on 12/31/20
Sexual Offense (G.S. 14-202.78)	Completed on 12/31/20
Sexual Offense (G.S. 14-202.79)	Completed on 12/31/20
Sexual Offense (G.S. 14-202.80)	Completed on 12/31/20
Sexual Offense (G.S. 14-202.81)	Completed on 12/31/20
Sexual Offense (G.S. 14-202.82)	Completed on 12/31/20
Sexual Offense (G.S. 14-202.83)	Completed on 12/31/20
Sexual Offense (G.S. 14-202.84)	Completed on 12/31/20
Sexual Offense (G.S. 14-202.85)	Completed on 12/31/20
Sexual Offense (G.S. 14-202.86)	Completed on 12/31/20
Sexual Offense (G.S. 14-202.87)	Completed on 12/31/20
Sexual Offense (G.S. 14-202.88)	Completed on 12/31/20
Sexual Offense (G.S. 14-202.89)	Completed on 12/31/20
Sexual Offense (G.S. 14-202.90)	Completed on 12/31/20
Sexual Offense (G.S. 14-202.91)	Completed on 12/31/20
Sexual Offense (G.S. 14-202.92)	Completed on 12/31/20
Sexual Offense (G.S. 14-202.93)	Completed on 12/31/20
Sexual Offense (G.S. 14-202.94)	Completed on 12/31/20
Sexual Offense (G.S. 14-202.95)	Completed on 12/31/20
Sexual Offense (G.S. 14-202.96)	Completed on 12/31/20
Sexual Offense (G.S. 14-202.97)	Completed on 12/31/20
Sexual Offense (G.S. 14-202.98)	Completed on 12/31/20
Sexual Offense (G.S. 14-202.99)	Completed on 12/31/20
Sexual Offense (G.S. 14-202.100)	Completed on 12/31/20

- Sex offender registration
- Satellite-based monitoring (SBM)
- No-contact order
- Probation conditions

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Prior Record Level

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Prior Record Level

COUNT	DON'T COUNT
<ul style="list-style-type: none"> All felonies Class 1 and Class A1 non-traffic misdemeanors DWI, commercial DWI, and death by vehicle Prayer for Judgment (PJC) Crimes from other jurisdictions 	<ul style="list-style-type: none"> Class 2 & 3 misdemeanors Traffic misdemeanors (other than DWI, commercial DWI, and death by vehicle) Infractions Contempt adjudications Convictions used to habitualize Juvenile adjudications

Count only the most serious conviction from a single calendar week of superior court, or session of district court

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Bonus Points

- Under supervision (+1)
 - Committed while on probation, parole, post-release supervision, incarcerated, or on escape
- Same elements (+1)
 - All elements of the present offense included in a prior offense

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Prior record “bonus points”

- Under supervision (+1)
 - Committed while on probation, parole, post-release supervision, incarcerated, or on escape
 - State must give 30 days notice of intent to pursue this point, and then prove it beyond a reasonable doubt if the defendant doesn’t admit to it



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STATE OF NORTH CAROLINA		File No.
County		In The General Court Of Justice Superior Court Division
STATE VERSUS	NOTICE OF AGGRAVATING FACTORS G.S. 15A-1340.16(a)(1)	
Name Of Defendant	Pursuant to G.S. 15A-1340.16(a)(1), the defendant is hereby notified that the State of North Carolina intends to prove the existence of aggravating factor(s) under G.S. 15A-1340.16(a) and/or the existence of a prior record level point under G.S. 15A-1340.14(b)(7), as indicated below.	
AGGRAVATING FACTORS		
The State intends to prove the following aggravating factors:		
1. The Defendant: <input type="checkbox"/> a. induced others to participate in the commission of the offense. <input type="checkbox"/> b. occupied a position of leadership or dominance of other participants in the commission of the offense. 2. The defendant joined with more than one other person in committing the offense and was not charged with committing a conspiracy. 3a. The offense was committed for the benefit of, or at the direction of, any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, and the defendant was not charged with committing a conspiracy. 3b. The offense was committed for the purpose of: <input type="checkbox"/> a. avoiding or preventing a lawful arrest. <input type="checkbox"/> b. effecting an escape from custody. 4. The defendant was: <input type="checkbox"/> a. hired to commit the offense. <input type="checkbox"/> b. paid to commit the offense. 5. The offense was committed to: <input type="checkbox"/> a. disrupt <input type="checkbox"/> b. hinder the lawful exercise of a governmental function or the enforcement of laws. 6. The offense was committed against or proximately caused serious injury to a present or former law enforcement officer, employee of the Division of Adult Correction, jailer, fireman, emergency medical technician, ambulance attendant, social worker, justice of the peace, clerk or assistant or deputy clerk of court, magistrate, prosecutor, juror, or witness against the defendant, while engaged in the performance of that person's official duties or because of the exercise of that person's official duties. 7. The offense was committed against or proximately caused serious harm as defined in G.S. 14-163.1 or death to a law enforcement agency animal, an assistance animal, or a search and rescue animal (Applies to offenses committed on or after December 1, 2019) as defined in G.S. 14-163.1, while engaged in the performance of the animal's official duties. 8. The offense was especially heinous, atrocious or cruel. 9. The defendant knowingly created a great risk of death to more than one person by means of a weapon or device which would normally be hazardous to the lives of more than one person. 9a. (select appropriate option depending on date of offense) <input type="checkbox"/> a. use for offenses committed prior to December 1, 2012: The defendant held public office at the time of the offense and the offense related to the conduct of the office. <input type="checkbox"/> b. use for offenses committed on or after December 1, 2012: The defendant held public elected or appointed office or public employment at the time of the offense and the offense directly related to the conduct of the office or employment. (NOTE: See the charging requirement in G.S. 15A-1340.16(b).) 9b. The defendant is a firefighter or rescue squad worker, and the offense is directly related to service as a firefighter or rescue squad worker. (Applies to offenses committed on or after December 1, 2013.) 10. The defendant: <input type="checkbox"/> a. was armed with a deadly weapon at the time of the crime. <input type="checkbox"/> b. used a deadly weapon at the time of the crime. 11. The victim was: <input type="checkbox"/> a. very young. <input type="checkbox"/> b. very old. <input type="checkbox"/> c. mentally infirm. <input type="checkbox"/> d. physically infirm. <input type="checkbox"/> e. handicapped.		

23


PRIOR RECORD POINT		
<input type="checkbox"/> The State intends to prove that the offense was committed while the defendant <input type="checkbox"/> was on supervised or unsupervised probation, parole, or post-release supervision. <input type="checkbox"/> was serving a sentence of imprisonment. <input type="checkbox"/> was on escape from a correctional institution while serving a sentence of imprisonment.		
SIGNATURE OF PROSECUTOR		
Date	Name Of Prosecutor (Type Or Print)	Signature Of Prosecutor
CERTIFICATE OF SERVICE		
I certify that a copy of this notice was served by:		
<input type="checkbox"/> delivering a copy personally to the <input type="checkbox"/> defendant's attorney. <input type="checkbox"/> defendant <input type="checkbox"/> depositing a copy, enclosed in a postpaid properly addressed envelope, in a post office or office of care and custody of the U.S. Postal Service directed to the <input type="checkbox"/> defendant's attorney <input type="checkbox"/> below. Address <input type="checkbox"/> leaving a copy at the office of the defendant's attorney with a partner or employee. Name And Title Of Person With Whom Copy Left		

24

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 DCI-CCH.

☒ 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.

25

Prior record "bonus points"

- Same elements (+1)
 - All elements of the present offense included in a prior offense
 - Defendant may not stipulate to this question of law



26

Out-of-State Prior Convictions

☐ 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 DCI-CCH.

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

☐ If an 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.

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

Date _____ Signature Of Presiding Judge _____

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

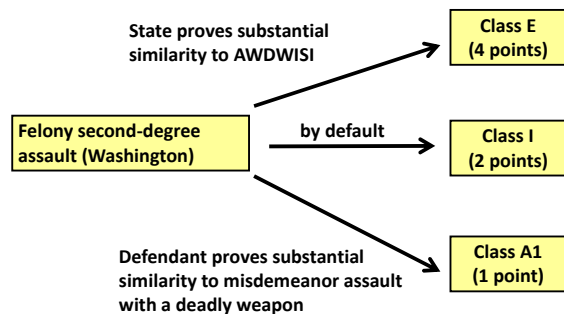
27

Out-of-State Prior Convictions

- By default:
 - Prior out-of-state felonies: Class I (2 points)
 - Prior out-of-state misdemeanors: Class 3 (0 points)
- With "substantial similarity" determination:
 - Count like the similar North Carolina offense
 - Proponent must prove by preponderance of evidence
 - Court must make findings; stipulations ineffective

28

Crimes from other jurisdictions



29

Crimes from other jurisdictions

- No stipulations to substantial similarity
 - Similarity is a question of law
 - Must be determined by trial judge

30

Crimes from other jurisdictions

5+ III	15+ VI
<input type="checkbox"/> The Court has determined the number of prior convictions to be _____ and the level to be as shown above. <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 DCI-CCH.	<input type="checkbox"/> The Court finds the prior convictions, prior record points and the prior record level of the defendant to be as shown herein. <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 DCI-CCH.
<input checked="" type="checkbox"/> The Court finds that all of the elements of the present offense are included in a prior offense. <input 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.	
<input type="checkbox"/> The Court finds that the defendant and the defendant have stipulated in open court to the prior convictions, points and record level.	
Date _____	Signature Of Presiding Judge _____

For each out-of-state conviction...the court finds by a preponderance of the evidence that the offense is substantially similar to a North Carolina offense and that ...classification assigned to this offense in Section V is correct.

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Prior Record Level

- Improper stipulations
 - Substantial similarity of out-of-state offenses
 - All the elements of the present offense included in a prior offense
- Permissible stipulations
 - Prior PDP did not involve marijuana (1 vs. 0)
 - Prior second-degree murder was Class B1 (9 vs. 6)

32

STATE VER. - JR

PRIOR CONVICTIONS

Convictions used to habitualize
 Convictions from same court week
 Class 2 and 3 misdemeanors
 Traffic offenses
 Improper stipulations

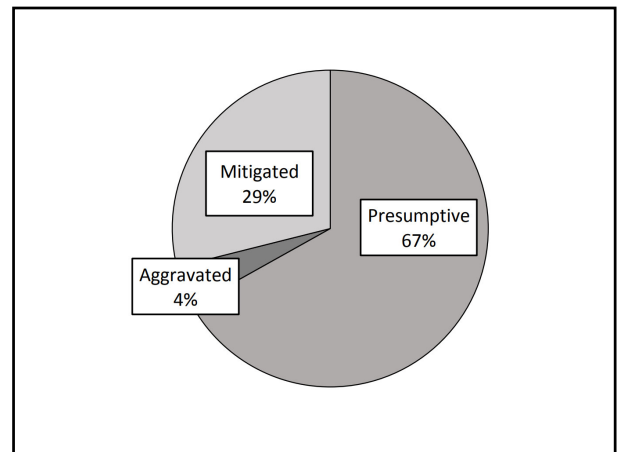
33

Aggravating Factors

34

H Max. 39	C/I/A
	6-8
	5-6
D Max. 204 (252)	4-5
	A
	64-80
	51-64
	38-51

35



36

Aggravating Factors: Procedure

- State must give 30-day notice of intent to prove
 - Statutory aggravators need not be pled
 - Non-statutory aggravators must be pled
- Aggravating factors must be proved to jury beyond a reasonable doubt (or pled to)
- Prohibited aggravating factors
 - Evidence necessary to prove an element
 - Same item of evidence may not be used to prove more than one aggravating factor
 - Exercise of right to jury trial cannot be an aggravator

37

STATE OF NORTH CAROLINA
County: _____
In the General Court of Justice
District: _____ Superior Court Division

STATE VERSUS
Name of Defendant: _____
Offense: _____

NOTICE OF AGGRAVATING FACTORS
G.S. 15A-1340.16
NOTE: When consolidating offenses for judgment, findings of aggravating factors and mitigating factors should be made only for the most serious offense. Separate findings of aggravating factors and mitigating factors should be made for other offenses that are not consolidated.

AGGRAVATING FACTORS

- The Defendant:
 - ☐ a. induced others to participate in the commission of the offense.
 - ☐ b. occupied a position of leadership or dominance of other participants in the commission of the offense.
- The defendant joined with more than one other person in committing the offense and was not charged with committing a conspiracy.
- The offense was committed for the benefit of, or at the direction of, any (prior) gang. ☐ (offenses committed Dec. 1, 1997 - Nov. 30, 2017) criminal street gang, ☐ (offenses committed on or after Dec. 1, 2017) criminal gang as defined by G.S. 14-50.16(a)(1), with the specific intent to promote, further, or assist in any criminal conduct by gang members, and the defendant was not charged with committing a conspiracy.
- The offense was committed for the purpose of:
 - ☐ a. avoiding or preventing a lawful arrest.
 - ☐ b. effecting an escape from custody.
- The defendant was:
 - ☐ a. hired to commit the offense.
 - ☐ b. paid to commit the offense.
- The offense was committed to:
 - ☐ a. disrupt
 - ☐ b. hinder
 - ☐ c. the lawful exercise of a governmental function or the enforcement of laws.
- The offense was committed against or proximately caused serious injury to a present or former law enforcement officer, employee of the Division of Adult Correction and Juvenile Justice, jailer, fireman, emergency medical technician, ambulance attendant, social worker, justice or judge, clerk or assistant or deputy clerk of court, magistrate, prosecutor, juror, or witness against the defendant, while engaged in the performance of that person's official duties or because of the exercise of that person's official duties.
- The offense was committed against or proximately caused serious harm as defined in G.S. 14-163.1 or death to a law enforcement agency animal, an assistance animal, or a search and rescue animal (Applies to offenses committed on or after December 1, 2009) as defined in G.S. 14-163.1, while engaged in the performance of the animal's official duties.
- The offense was especially heinous, atrocious or cruel.
- The defendant knowingly created a great risk of death to more than one person by means of a weapon or device which would normally be hazardous to the lives of more than one person.
- Select appropriate option depending on date of offense:
 - ☐ a. use for offenses committed prior to December 1, 2012: The defendant held public office at the time of the offense and the offense related to the conduct of the office.
 - ☐ b. use for offenses committed on or after December 1, 2012: The defendant held public office at the time of the offense and the offense related to the conduct of the office and the offense directly related to the conduct of the office or employment. (NOTE: The court must notify the State Treasurer as required by G.S. 15A-1340.16(f).)

38

Mitigating Factors: Procedure

- Defendant must be given an opportunity to prove mitigating factors
- Defendant must prove to the judge by a preponderance of the evidence

39

STATE OF NORTH CAROLINA
County: _____
In the General Court of Justice
District: _____ Superior Court Division

STATE VERSUS
Name of Defendant: _____
Offense: _____

FELONY JUDGMENT
FINDINGS OF AGGRAVATING
AND MITIGATING FACTORS
(STRUCTURED SENTENCING)
G.S. 15A-1340.16

NOTE: When consolidating offenses for judgment, findings of aggravating factors and mitigating factors should be made only for the most serious offense. Separate findings of aggravating factors and mitigating factors should be made for other offenses that are not consolidated.

AGGRAVATING FACTORS

- The Defendant:
 - ☐ a. induced others to participate in the commission of the offense.
 - ☐ b. occupied a position of leadership or dominance of other participants in the commission of the offense.
- The defendant joined with more than one other person in committing the offense and was not charged with committing a conspiracy.
- The offense was committed for the benefit of, or at the direction of, any (prior) gang. ☐ (offenses committed Dec. 1, 1997 - Nov. 30, 2017) criminal street gang, ☐ (offenses committed on or after Dec. 1, 2017) criminal gang as defined by G.S. 14-50.16(a)(1), with the specific intent to promote, further, or assist in any criminal conduct by gang members, and the defendant was not charged with committing a conspiracy.
- The offense was committed for the purpose of:
 - ☐ a. avoiding or preventing a lawful arrest.
 - ☐ b. effecting an escape from custody.
- The defendant was:
 - ☐ a. hired to commit the offense.
 - ☐ b. paid to commit the offense.
- The offense was committed to:
 - ☐ a. disrupt
 - ☐ b. hinder
 - ☐ c. the lawful exercise of a governmental function or the enforcement of laws.
- The offense was committed against or proximately caused serious injury to a present or former law enforcement officer, employee of the Division of Adult Correction and Juvenile Justice, jailer, fireman, emergency medical technician, ambulance attendant, social worker, justice or judge, clerk or assistant or deputy clerk of court, magistrate, prosecutor, juror, or witness against the defendant, while engaged in the performance of that person's official duties or because of the exercise of that person's official duties.
- The offense was committed against or proximately caused serious harm as defined in G.S. 14-163.1 or death to a law enforcement agency animal, an assistance animal, or a search and rescue animal (Applies to offenses committed on or after December 1, 2009) as defined in G.S. 14-163.1, while engaged in the performance of the animal's official duties.
- The offense was especially heinous, atrocious or cruel.
- The defendant knowingly created a great risk of death to more than one person by means of a weapon or device which would normally be hazardous to the lives of more than one person.
- Select appropriate option depending on date of offense:
 - ☐ a. use for offenses committed prior to December 1, 2012: The defendant held public office at the time of the offense and the offense related to the conduct of the office.
 - ☐ b. use for offenses committed on or after December 1, 2012: The defendant held public office at the time of the offense and the offense related to the conduct of the office and the offense directly related to the conduct of the office or employment. (NOTE: The court must notify the State Treasurer as required by G.S. 15A-1340.16(f).)

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MITIGATING FACTORS	
<input type="checkbox"/>	1. The defendant committed the offense under: <input type="checkbox"/> a. duress which was insufficient to constitute a defense but significantly reduced the defendant's culpability. <input type="checkbox"/> b. coercion which was insufficient to constitute a defense but significantly reduced the defendant's culpability. <input type="checkbox"/> c. threat which was insufficient to constitute a defense but significantly reduced the defendant's culpability. <input type="checkbox"/> d. compulsion which was insufficient to constitute a defense but significantly reduced the defendant's culpability.
<input type="checkbox"/>	2. The defendant: <input type="checkbox"/> a. was a passive participant in the commission of the offense. <input type="checkbox"/> b. played a minor role in the commission of the offense.
<input type="checkbox"/>	3. The defendant was suffering from a: <input type="checkbox"/> a. mental condition that was insufficient to constitute a defense but significantly reduced the defendant's culpability for the offense. <input type="checkbox"/> b. physical condition that was insufficient to constitute a defense but significantly reduced the defendant's culpability for the offense.
<input type="checkbox"/>	4. The defendant's: <input type="checkbox"/> a. age, or immaturity, at the time of the commission of the offense significantly reduced the defendant's culpability for the offense. <input type="checkbox"/> b. limited mental capacity at the time of the commission of the offense significantly reduced the defendant's culpability for the offense.
<input type="checkbox"/>	5. The defendant has made: <input type="checkbox"/> a. substantial restitution to the victim. <input type="checkbox"/> b. full restitution to the victim.
<input type="checkbox"/>	6. The victim was more than 16 years of age and: <input type="checkbox"/> a. was a voluntary participant in the defendant's conduct. <input type="checkbox"/> b. consented to the defendant's conduct.
<input type="checkbox"/>	7. The defendant: <input type="checkbox"/> a. aided in the apprehension of another felon. <input type="checkbox"/> b. testified truthfully on behalf of the State in another prosecution of a felony.
<input type="checkbox"/>	8. a. The defendant acted under strong provocation. <input type="checkbox"/> b. The relationship between the defendant and the victim was otherwise extenuating.
<input type="checkbox"/>	9. The defendant: <input type="checkbox"/> a. could not reasonably foresee that the defendant's conduct would cause or threaten serious bodily harm or fear. <input type="checkbox"/> b. exercised caution to avoid serious bodily harm or fear to other persons.
<input type="checkbox"/>	10. The defendant reasonably believed that the defendant's conduct was legal.
<input type="checkbox"/>	11. The defendant voluntarily acknowledged wrongdoing in connection with the offense to a law enforcement officer: <input type="checkbox"/> a. at an early stage of the criminal process. <input type="checkbox"/> b. prior to arrest.
<input type="checkbox"/>	12. The defendant has been a person of good character or has had a good reputation in the community in which the defendant lives.
<input type="checkbox"/>	13. The defendant is a minor and has reliable supervision available.
<input type="checkbox"/>	14. The defendant has been honorably discharged from the United States Armed Services.
<input type="checkbox"/>	15. The defendant has accepted responsibility for the defendant's criminal conduct.
<input type="checkbox"/>	16. The defendant has entered and is currently involved in or has successfully completed a drug treatment program or an alcohol treatment program subsequent to arrest and prior to trial.
<input type="checkbox"/>	17. The defendant supports the defendant's family.
<input type="checkbox"/>	18. The defendant has a record of service to the community.

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Weighing factors

- A matter of judicial discretion
- Not a mathematical balance
- Presumptive range always permissible after consideration of offered factors

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Extraordinary Mitigation

43

Extraordinary mitigation

- Allows an Intermediate sentence in certain "A"-only cells of the sentencing grid based on the presence of extraordinary factor(s)

44

The screenshot shows a portion of a sentencing grid. A red callout box labeled "Mandatory Active" points to a cell in the B1 row. A green callout box labeled "Mandatory Non-Active" points to a cell in the F row. An orange callout box labeled "Judge's discretion" points to a cell in the B2 row.

45

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

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Page 10

EM

Grid cells in which EM might be possible are flagged with this symbol.

OFFENSE CLASS	I 0-1 Pts	II 2-5 Pts	III 6-9 Pts	IV 10-13 Pts	V 14-17 Pts	VI 18+ Pts
A Max 10 yrs or Life without Parole Death or Life without Parole	A	A	A	A	A	A
B1 Max 15 yrs or Life without Parole	240-260	270-290	300-320	330-350	360-380	390-410
B2 Max 10 yrs or 120 hrs	120-140	150-170	180-200	210-230	240-260	270-290
C Max 5 yrs or 60 hrs	60-70	70-80	80-90	90-100	100-110	110-120
D Max 3 yrs or 30 hrs	30-35	35-40	40-45	45-50	50-55	55-60
E Max 18 mos	18-20	20-22	22-24	24-26	26-28	28-30
F Max 15 mos	15-16	16-17	17-18	18-19	19-20	20-21
G Max 12 mos	12-13	13-14	14-15	15-16	16-17	17-18
H Max 9 mos	9-10	10-11	11-12	12-13	13-14	14-15
I Max 6 mos	6-7	7-8	8-9	9-10	10-11	11-12

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Extraordinary mitigation

- Permissible 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

48

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

49

Example

- 18-year-old defendant has intercourse with a 13-year-old victim
- No prior record

C Max. 231 (279)	A <small>EM</small>
	73–92
	58–73
	44–58

50

Example

- 18-year-old defendant has intercourse with a 13-year-old victim
- No prior record

C Max. 231 (279)	A <small>EM</small>	16-month split sentence
	73–92	
	58–73	
	44–58	

44-65

51

Felony Death by Vehicle

Felony death by vehicle is a Class D felony. Notwithstanding the provisions of G.S. 15A-1340.17, intermediate punishment is authorized for a defendant who is a Prior Record Level I offender.

D Max. 204 (252)	A <small>EM</small>
	64–80
	51–64
	<small>ASR</small> 38–51

52

Advanced Supervised Release

53

Advanced Supervised Release

- Created by Justice Reinvestment Act
- Allows early release from prison to post-release supervision for identified defendants who complete “risk reduction incentives” in prison
- Used 123 times in 2019

54

Eligibility

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



Grid cells in which ASR might be possible are flagged with this symbol.

Page 10

OFFENSE CLASS	PRIOR RECORD LEVEL					
	0-1 Pts	2-5 Pts	6-8 Pts	9-11 Pts	12-13 Pts	14-17 Pts
Credit or Life without Parole						
Subsequent credit 120 days of release on without Parole						
B1	100-150	150-200	200-250	250-300	300-350	350-400
B2	100-150	150-200	200-250	250-300	300-350	350-400
C	100-150	150-200	200-250	250-300	300-350	350-400
D	100-150	150-200	200-250	250-300	300-350	350-400
E	100-150	150-200	200-250	250-300	300-350	350-400
F	100-150	150-200	200-250	250-300	300-350	350-400
G	100-150	150-200	200-250	250-300	300-350	350-400
H	100-150	150-200	200-250	250-300	300-350	350-400
I	100-150	150-200	200-250	250-300	300-350	350-400

55

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/I/A
6-8
5-6
4-5

4-14 month sentence
ASR date: 3.2 months

56

Example

- PRL III defendant convicted of Obtaining Property by False Pretenses
 - Regular sentence: 8-19 months (presumptive)

H	C/I/A	I/A	I/A
Max. 39	6-8	8-10	10-12
	5-6	6-8	8-10
	4-5	4-6	6-8

What is the ASR date?

57

Example

- PRL III defendant convicted of Obtaining Property by False Pretenses
 - Regular sentence: 8-19 months

H	C/I/A	I/A	I/A
Max. 39	6-8	8-10	10-12
	5-6	6-8	8-10
	4-5	4-6	6-8

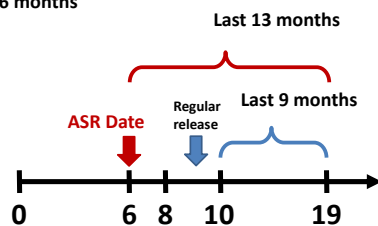
☐ to Life Imprisonment With Parole, pursuant to G.S. Chapter 15A, Article 81B, Part 2A.

for a minimum term of: **8** months and a maximum term of: **19** months ~~ASR term (Order No. 4, Side Two)~~ **6** months

The defendant shall be given credit for _____ days spent in confinement prior to the date of this Judgment.

58

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



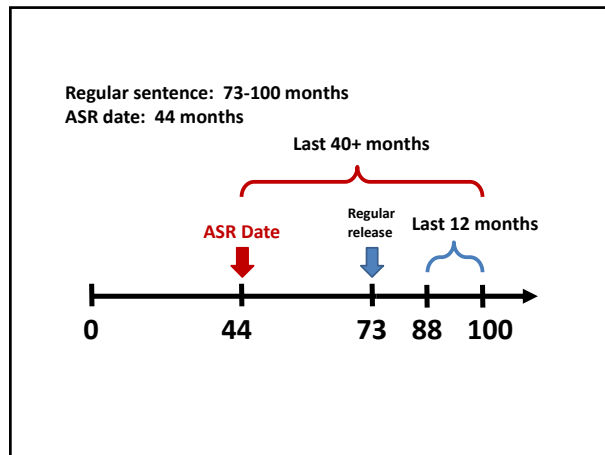
59

ASR Date (Class D, Level II)

A	EM
73-92	
59-73	
44-59	

Regular sentence: 73-100 months
Regular release: ~75 months
ASR: 44 months

60



61

Habitual Felon Habitual B/E

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Habitual Status Offenses (p. 8-9)

- Habitual felon
 - Defendants with 3+ prior felonies
 - Four-class sentence enhancement
- Habitual breaking and entering
 - Defendants with 1+ prior B/E
 - Sentenced as Class E

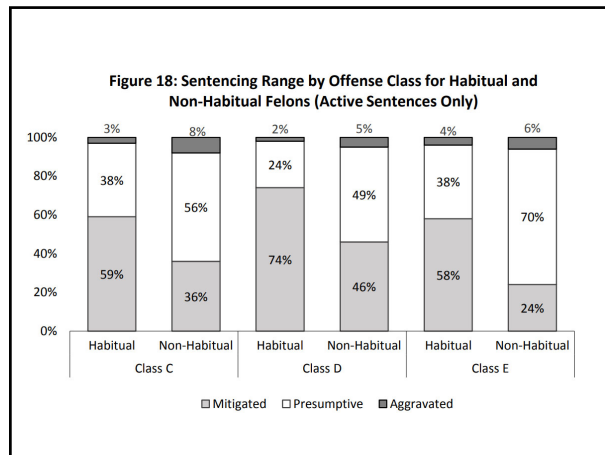
63

Habitual Felon

- Prior convictions used to habitualize do not count toward prior record level
 - State may choose which convictions to allege
 - State may allege more than three priors

C 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 64-80 51-64 38-51	A 73-92 59-73 44-59	A 84-105 67-84 51-67

64



65

Drug Trafficking

66

Drug Trafficking

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.

Offense Class and Minimum Fines for Drug Trafficking	Class	Structure/Range
Heroin		
10-100 lbs.	H	\$ 5,000
50-100 lbs.	G	\$ 25,000
2,000-5,000	F	\$ 50,000
10,000 or more	D	\$200,000
1,000-4,000 dosage units	G	\$ 25,000
Marijuana		
5,000-10,000	F	\$ 50,000
10,000 or more	D	\$200,000
Cocaine		
25-100 grams	G	\$ 50,000
250-300	F	\$100,000
400 or more	D	\$250,000
Marijuana/Cocaine		
25-100 grams	F	\$ 50,000
250-300	E	\$100,000
400 or more	C	\$250,000
Amphetamine		
25-100 grams	H	\$ 5,000
250-300	G	\$ 25,000
400 or more	E	\$100,000
Opioids, Oxycodone, Oxycodone or Heroin		
4-13 grams	F	\$ 50,000
14-27	E	\$100,000
28 or more	C	\$250,000
LSD		
100-400 units	G	\$ 25,000
500-900	F	\$ 50,000
1,000 or more	D	\$200,000
MDA/MDMA		
100-400 units (25-100 grams)	G	\$ 25,000
500-900 units (250-300 grams)	F	\$ 50,000
1,000 or more (250-300 grams or more)	D	\$200,000
Substituted Cathinone		
25-100 grams	F	\$ 50,000
250-300	E	\$100,000
400 or more	C	\$250,000
Synthetic Cannabinoids		
In excess of 10-240 dosage units**	H	\$ 5,000
250-3,000	G	\$ 25,000
1,200-3,700	F	\$ 50,000
3,700 or more	D	\$200,000

67

- Drug Trafficking**
- Substantial assistance
 - Attempted trafficking
 - First Step Act

68

Substantial Assistance

- Drug trafficking only
- “Substantial assistance in the identification, arrest, or conviction of any accomplices, accessories, co-conspirators, or principals.”
 - Not limited to accomplices, etc., in *this case*
- Judge has discretion to give reduced sentence, reduced fine, or probation

69

Substantial Assistance

2017
452 trafficking convictions
78 probationary sentences

70

Attempted Trafficking

- Reverts to regular sentencing grid for that class of offense

Class E	90	120
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E Max. 88 (136)	I/A 25–31 20–25 15–20	I/A 29–36 23–29 17–23
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- No mandatory fine

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Habitual Trafficking

- Trafficking convictions may be sentenced under the habitual felon law. *State v. Eaton* (2011)

Class	Minimum	Maximum
Class C	225 mos.	282
Class D	175	222
Class E	90	120
Class F	70	93
Class G	35	51
Class H	25	39

C Max. 231 (279)	A 73–92 58–73 44–58
D Max. 204 (252)	I/A 64–80 51–64 38–51
E Max. 88 (136)	I/A 25–31 20–25 15–20
F Max. 59	I/A 16–20 13–16 10–13
G Max. 47	I/A 13–16 10–13 8–10
H Max. 39	C/I/A 6–8 5–6 4–5

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First Step Act

- Applicable to Trafficking by Possession of Lowest Drug Amount
- Allows departure from mandatory sentence if defendant meets 11 conditions, including
 - No prior felony drug convictions
 - No violence or weapons used in the commission of offense
 - Admission to substance abuse disorder
 - Reasonable assistance in identifying accomplices
- Sentenced according to regular sentencing grid

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Consecutive Sentences

- *“Sentences imposed under this section shall run consecutively with and shall commence at the expiration of any sentence being served by the person sentenced under this section.”*
 - Habitual felon
 - Habitual DWI
 - Habitual B/E
 - Drug trafficking
- Always interpreted to allow consolidated or concurrent sentences for convictions sentenced together



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“Contingent” Sentences

- Probationary sentences
 - Probation *periods* must run concurrently with one another
 - A probationary sentence may run consecutively to an Active sentence (“contingent”)

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The screenshot shows a legal form titled "SUSPENSION OF SENTENCE". It contains several sections with checkboxes and text boxes. Two blue callout boxes are overlaid on the form. The first callout box, labeled "when the defendant is released from incarceration", points to a section that includes checkboxes for "1. The Court finds that a [] longer [] shorter period of probation is necessary than..." and "2. The Court finds that it is NOT appropriate to delegate to the Section of Community Corrections...". The second callout box, labeled "at the expiration of the sentence", points to a section that includes checkboxes for "3. This period of probation shall begin [] when the defendant is released from incarceration [] at the expiration of the sentence...". The form also includes fields for "File No.", "Offense", "County", "Court", and "Date".

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