

2015–16 Update to Arrest Warrant and Indictment Forms

Jeffrey B. Welty

UNC School of Government

This update contains thirty-six forms. Two factors explain the unusually large number. First, this update spans two years, instead of the usual annual update. Second, in the 2015 legislative session, the General Assembly revised and renumbered many of the sexual assault crimes, necessitating new forms for each.

Of the thirty-six forms, three are entirely new. They concern:

- G.S. 14-190.5A, disclosure of private images
- G.S. 14-321.2, unlawful transfer of custody
- G.S. 75A-10.3, death or serious injury by impaired boating

Three of the new forms replace multiple old forms. They are:

- G.S. 14-27.31, sexual activity by a substitute parent or custodian, replaces (1) sexual activity by a person who has assumed the position of a parent and (2) sexual activity by a custodian. Both superseded forms were associated with former G.S. 14-27.7(a).
- G.S. 14-27.32, sexual activity with student by school personnel, replaces (1) sexual activity with student by teacher [and specified others] and (2) sexual activity with student by school personnel other than teacher [and specified others]. Both superseded forms were associated with former G.S. 14-27.7(b).
- G.S. 14-202.4, taking indecent liberties with student by school personnel, replaces (1) taking indecent liberties with student by teacher [and specified others] and (2) taking indecent liberties with student by school personnel other than teacher [and specified others]. Both superseded forms were, like the new form, associated with G.S. 14-202.4.

The remaining forms are revisions to single existing forms and should replace the corresponding forms currently in the manual. The following are renumbered revisions of forms used in sexual assault cases:

- 14-27.21, first-degree forcible rape, together with the new form for G.S. 14-27.24, replaces the form associated with former G.S. 14-27.2
- 14-27.22, second-degree forcible rape, replaces the form associated with former G.S. 14-27.3
- 14-27.23, rape of a child by an adult, replaces the form associated with former G.S. 14-27.2A
- 14-27.24, first-degree statutory rape, together with the new form for G.S. 14-27.21, replaces the form associated with former G.S. 14-27.2
- 14-27.25, statutory rape of a person who is 15 years or younger, replaces the statutory rape form associated with former G.S. 14-27.7A
- 14-27.26, first-degree forcible sex offense, together with the new form for G.S. 14-27.29, replaces the form associated with former G.S. 14-27.4
- 14-27.27, second-degree forcible sex offense, replaces the form associated with former G.S. 14-27.5
- 14-27.28, sex offense with a child by an adult, replaces the form associated with former G.S. 14-27.4A
- 14-27.29, first-degree statutory sex offense, together with the new form for G.S. 14-27.26, replaces the form associated with former G.S. 14-27.4
- 14-27.30, statutory sex offense with a person who is 15 years or younger, replaces the sex offense form associated with former G.S. 14-27.7A
- 14-27.33, sexual battery, replaces the form associated with former G.S. 14-27.5A

One form revises and renumbers an existing form that is not a sexual assault offense:

- G.S. 14-7.36, armed habitual felon

The remainder of the forms are simple revisions of offenses that have kept the same statute number:

- 14-34.5, assault with a firearm on a law enforcement officer or a related professional
- 14-34.6, assault on a firefighter or specified medical personnel
- 14-34.7, assault on a law enforcement officer or a related professional inflicting serious bodily injury or physical injury
- 14-56, breaking or entering a vehicle
- 14-113.20A, trafficking in stolen identities
- 14-127, injury to real property
- 14-159.12, first-degree trespass
- 14-190.9, indecent exposure
- 14-196.3, cyberstalking
- 14-205.1, solicitation of prostitution
- 14-208.18, sex offender unlawfully on premises
- 14-230, willfully failing to discharge duties
- 14-258.1, providing contraband to inmate
- 14-269.2, weapons on campus or other educational property
- 14-415.21, concealed handgun permit violations
- 75A-10, boating while impaired
- 90-95(d1), possession of immediate precursor chemical
- 90-113.22, possession of drug paraphernalia

This update also contains an updated Table of Contents for the manual, reflecting all the above-described changes. For the first time, the Table of Contents indicates in parentheses when each form was most recently revised.

Drafts of these forms were reviewed by several capable lawyers at the North Carolina Administrative Office of the Courts as well as by my colleagues here at the School of Government, and I am grateful for their help. Of course, any remaining errors are my responsibility. I welcome comments, questions, and concerns regarding these forms. I can be reached at welty@sog.unc.edu or at (919) 843-8474.

TABLE OF CONTENTS

DECEMBER 2016

Updates to this edition are available online at www.sog.unc.edu/pubs/updates.
(*Italicized date in parentheses represents date form was last updated.*)

Introduction **xi**

List of AOC Charging Forms **xiii**

General Offenses **General Statute**

Aiding and abetting (11/10)	COMMON LAW
Conspiracy (11/10)	COMMON LAW AND G.S. 14-2.4
Attempt (11/10)	COMMON LAW AND G.S. 14-2.5
Solicitation to commit a crime (11/10)	COMMON LAW AND G.S. 14-2.6
Increased punishment for infamous misdemeanor, misdemeanor committed in secrecy and malice, or with deceit and intent to defraud (11/10)	COMMON LAW AND G.S. 14-3(b)
Increased punishment for misdemeanor committed because of prejudice (11/10)	G.S. 14-3(c)
Accessory before the fact to a felony (11/10)	G.S. 14-5.2
Accessory after the fact to a felony (11/10)	G.S. 14-7
Habitual felon (11/10)	G.S. 14-7.1
Violent habitual felon (6/12)	G.S. 14-7.7
Habitual breaking and entering (6/12)	G.S. 14-7.26
Armed habitual felon (12/16)	G.S. 14-7.36

Chapter 14 (Criminal Law) **General Statute**

Assault on court, executive, or legislative officer (7/15)	G.S. 14-16.6
Threatening court, executive, or legislative officer (7/15)	G.S. 14-16.7
Murder (11/10)	G.S. 14-17
Manslaughter (11/10)	G.S. 14-18
Murder of an unborn child (6/12)	G.S. 14-23.2
First-degree forcible rape (12/16)	G.S. 14-27.21
Second-degree forcible rape (12/16)	G.S. 14-27.22
Statutory rape of a child by an adult (12/16)	G.S. 14-27.23
First-degree statutory rape (12/16)	G.S. 14-27.24
Statutory rape of person who is 15 years old or younger (12/16)	G.S. 14-27.25
First-degree forcible sexual offense (12/16)	G.S. 14-27.26
Second-degree forcible sexual offense (12/16)	G.S. 14-27.27
Statutory sexual offense with a child by an adult (12/16)	G.S. 14-27.28
First-degree statutory sexual offense (12/16)	G.S. 14-27.29
Statutory sexual offense with a person who is 15 years old or younger (12/16)	G.S. 14-27.30
Sexual activity by a substitute parent or custodian (12/16)	G.S. 14-27.31
Sexual activity with student by school personnel (12/16)	G.S. 14-27.32
Sexual battery (12/16)	G.S. 14-27.33
Castration and maiming (11/10)	G.S. 14-28, -29, -30
Malicious throwing of corrosive acid or alkali (11/10)	G.S. 14-30.1
Note on assault terminology and charging "show of violence" theory of assault (11/10)	
Assault with deadly weapon with intent to kill inflicting serious injury (11/10)	G.S. 14-32(a)
Assault with deadly weapon inflicting serious injury (11/10)	G.S. 14-32(b)
Assault with deadly weapon with intent to kill (11/10)	G.S. 14-32(c)
Assaults on handicapped persons (12/13)	G.S. 14-32.1

Patient abuse and neglect (11/10)	G.S. 14-32.2
Domestic abuse or neglect of disabled or elder adults (11/10)	G.S. 14-32.3
Assault inflicting serious bodily injury (11/10)	G.S. 14-32.4(a)
Assault inflicting physical injury by strangulation (11/10)	G.S. 14-32.4(b)
Simple assault (11/10)	G.S. 14-33(a)
Simple affray (11/10)	G.S. 14-33(a)
Assault inflicting serious injury (11/10)	G.S. 14-33(c)(1)
Assault with a deadly weapon (11/10)	G.S. 14-33(c)(1)
Assault on a female by a male at least 18 (11/10)	G.S. 14-33(c)(2)
Assault on a child under 12 years of age (11/10)	G.S. 14-33(c)(3)
Assault on a government officer or employee (11/10)	G.S. 14-33(c)(4)
Assault on school personnel (11/10)	G.S. 14-33(c)(6)
Assault on a public transit operator (11/10)	G.S. 14-33(c)(7)
Assault in presence of minor (11/10)	G.S. 14-33(d)
Habitual misdemeanor assault (11/10)	G.S. 14-33.2
Assault by pointing a gun (11/10)	G.S. 14-34
Discharging firearm or air gun into occupied property (11/10)	G.S. 14-34.1
Assault with a firearm or other deadly weapon on government officer or employee or company or campus police officer (11/10)	G.S. 14-34.2
Going armed to the terror of the people (11/10)	COMMON LAW
Assault with a firearm on a law enforcement officer or a related professional (12/16)	G.S. 14-34.5
Assault on a firefighter or specified medical personnel (12/16)	G.S. 14-34.6
Assault on a law enforcement officer or a related professional inflicting serious bodily injury or physical injury (12/16)	G.S. 14-34.7
Discharging a firearm within an enclosure (12/13)	G.S. 14-34.10
First-degree kidnapping (11/10)	G.S. 14-39
Second-degree kidnapping (11/10)	G.S. 14-39
False imprisonment (11/10)	COMMON LAW
Abduction of children (11/10)	G.S. 14-41
Felonious restraint (11/10)	G.S. 14-43.3
Malicious injury or damage by explosives (11/10)	G.S. 14-49, -49.1
First-degree burglary (11/10)	G.S. 14-51
Second-degree burglary (11/10)	G.S. 14-51
Felonious breaking or entering (12/13)	G.S. 14-54(a)-(a1)
Misdemeanor breaking or entering (12/13)	G.S. 14-54(b)
Breaking or entering a place of religious worship (11/10)	G.S. 14-54.1
Preparation to commit burglary/possession of burglar's tools/etc. (11/10)	G.S. 14-55
Breaking or entering a vehicle (12/16)	G.S. 14-56
Breaking into a coin- or currency-operated machine (11/10)	G.S. 14-56.1
Damaging coin- or currency-operated machine (11/10)	G.S. 14-56.2
First-degree arson (11/10)	G.S. 14-58
Second-degree arson (11/10)	G.S. 14-58
Burning of a public building (11/10)	G.S. 14-59
Burning of a schoolhouse or other educational building (11/10)	G.S. 14-60
Burning of an uninhabited dwelling, a building used for trade, etc. (11/10)	G.S. 14-62
Burning of a building under construction (11/10)	G.S. 14-62.1
Burning of church, chapel, or meeting house (11/10)	G.S. 14-62.2
Occupant or owner burning dwelling house (11/10)	G.S. 14-65
Burning of personal property (11/10)	G.S. 14-66
Making a false report concerning a destructive device (11/10)	G.S. 14-69.1
Receiving stolen goods (11/10)	G.S. 14-71(a)
Receiving or possessing goods represented as stolen (11/10)	G.S. 14-71(b)

Possessing stolen goods (7/15)	G.S. 14-71.1, -72(a)
Larceny from the person (11/10)	G.S. 14-72(b)(1)
Larceny pursuant to burglary or breaking or entering (11/10)	G.S. 14-72(b)(2)
Larceny of a firearm (11/10)	G.S. 14-72(b)(4)
Habitual misdemeanor larceny (12/13)	G.S. 14-72(b)(6)
Shoplifting (concealment of merchandise) (11/10)	G.S. 14-72.1
Unauthorized use of motor-propelled conveyance (11/10)	G.S. 14-72.2
Larceny of motor fuel (11/10)	G.S. 14-72.5
Larceny from a construction site (11/10)	G.S. 14-72.6
Larceny by employee (11/10)	G.S. 14-74
Larceny of chose in action (11/10)	G.S. 14-75
Larceny of dog or livestock (11/10)	G.S. 14-81
Robbery with dangerous weapon (11/10)	G.S. 14-87
Common law robbery (11/10)	COMMON LAW AND G.S. 14-87.1
Safecracking (11/10)	G.S. 14-89.1
Embezzlement (11/10)	G.S. 14-90
Embezzlement by state officer or employee (11/10)	G.S. 14-91
Embezzlement by local or charitable officer or employee (11/10)	G.S. 14-92
Obtaining property by false pretenses (11/10)	G.S. 14-100
Possess fraudulent form of identification (11/10)	G.S. 14-100.1
Obtaining property by worthless check (12/13)	G.S. 14-106
Writing worthless checks (12/13)	G.S. 14-107
Defrauding innkeeper (11/10)	G.S. 14-110
Exploitation of elder or disabled adult (12/13)	G.S. 14-112.2
Financial transaction card theft: taking card (11/10)	G.S. 14-113.9(a)(1)
Financial transaction card theft: receiving stolen or lost cards (11/10)	G.S. 14-113.9(a)(1), (a)(2)
Financial transaction card theft: selling or buying card (11/10)	G.S. 14-113.9(a)(3)
Financial transaction card theft: using scanning device (11/10)	G.S. 14-113.9(a)(5)
Financial transaction card forgery (11/10)	G.S. 14-113.11
Financial transaction card fraud (11/10)	G.S. 14-113.13
Financial transaction card fraud: false statements (11/10)	G.S. 14-113.13(c), (d)
Financial transaction card fraud: payment for non-sale (11/10)	G.S. 14-113.13(c1)
Possession of financial transaction card forgery devices (11/10)	G.S. 14-113.14
Receiving goods or services obtained by financial transaction card fraud (11/10)	G.S. 14-113.15
Criminal factoring of financial transaction card records (11/10)	G.S. 14-113.15A
Identity theft (11/10)	G.S. 14-113.20
Trafficking in stolen identities (12/16)	G.S. 14-113.20A
Disposing of secured (mortgaged) personal property (11/10)	G.S. 14-114
Secreting personal property to hinder enforcement of security interest (11/10)	G.S. 14-115
Extortion (11/10)	G.S. 14-118.4
Theft of cable television service (11/10)	G.S. 14-118.5
Forging and counterfeiting of currency, notes, checks, and securities (11/10)	G.S. 14-119(a)
Possessing or transporting counterfeit instruments (11/10)	G.S. 14-119(a), (b)
Common law forgery (11/10)	COMMON LAW
Common law uttering of forged paper (11/10)	COMMON LAW
Uttering forged paper (11/10)	G.S. 14-120
Forging endorsement (11/10)	G.S. 14-120
Uttering paper with forged endorsement (11/10)	G.S. 14-120
Injury to real property (12/16)	G.S. 14-127
Forcible trespass (11/10)	COMMON LAW
Disorderly conduct in public building or facility (7/15)	G.S. 14-132(a)(1)
Domestic criminal trespass (11/10)	G.S. 14-134.3

Desecrating grave site (11/10)	G.S. 14-148, -149
Interfering with utility meters (12/13)	G.S. 14-151
First-degree trespass (12/16)	G.S. 14-159.12
Second-degree trespass (11/10)	G.S. 14-159.13
Injury to personal property (11/10)	G.S. 14-160
Altering or removing permanent identification marks (11/10)	G.S. 14-160.1
Failure to return rental property (12/13)	G.S. 14-167
Conversion of property by bailee, lessee, etc. (12/13)	G.S. 14-168.1
Failure to return rental property with written purchase option (12/13)	G.S. 14-168.4
Crime against nature (11/10)	G.S. 14-177
Incest (11/10)	G.S. 14-178
Disseminating obscene writing or picture (11/10)	G.S. 14-190.1(a)(1)
Disseminating obscene movie, video, etc. (11/10)	G.S. 14-190.1(a)(4)
Possessing obscenity with intent to disseminate (11/10)	G.S. 14-190.1(e)
Preparing obscene photograph (11/10)	G.S. 14-190.5
Disclosure of private images (12/16)	G.S. 14-190.5A
Using minor to assist in obscenity offense (11/10)	G.S. 14-190.6
Disseminate obscenity to minor under 16 (11/10)	G.S. 14-190.7
Disseminate obscenity to minor under 13 (11/10)	G.S. 14-190.8
Indecent exposure (12/16)	G.S. 14-190.9
First-degree sexual exploitation of a minor (11/10)	G.S. 14-190.16
Second-degree sexual exploitation of a minor (11/10)	G.S. 14-190.17
Third-degree sexual exploitation of a minor (11/10)	G.S. 14-190.17A
Harassing telephone calls (11/10)	G.S. 14-196
Cyberstalking (12/16)	G.S. 14-196.3
Secret peeping (11/10)	G.S. 14-202
Taking indecent liberties with children (11/10)	G.S. 14-202.1
Solicit child by computer to commit sex act (11/10)	G.S. 14-202.3
Taking indecent liberties with student by school personnel (12/16)	G.S. 14-202.4
Prostitution (12/13)	G.S. 14-204
Solicitation of prostitution (12/16)	G.S. 14-205.1
Patronizing a prostitute (12/13)	G.S. 14-205.2
Promoting prostitution (12/13)	G.S. 14-205.3
Failure to register as a sex offender and related offenses (11/10)	G.S. 14-208.11
Sex offender residency restriction (11/10)	G.S. 14-208.16
Sex offender unlawfully on premises (12/16)	G.S. 14-208.18
Perjury (11/10)	G.S. 14-209
Subornation of perjury (11/10)	G.S. 14-210
Bribery of public official (11/10)	G.S. 14-217, -218
Altering, destroying, or stealing criminal evidence (11/10)	G.S. 14-221.1
Altering court document (11/10)	G.S. 14-221.2
Resist, delay, or obstruct public officer (11/10)	G.S. 14-223
False report to law enforcement officer or agency (11/10)	G.S. 14-225
Intimidating witnesses (6/12)	G.S. 14-226
Obstructing justice (11/10)	COMMON LAW
Willfully failing to discharge duties (12/16)	G.S. 14-230
Malfeasance of corporate officer (11/10)	G.S. 14-254
Escape from local jail or officer (11/10)	G.S. 14-256
Providing contraband to inmate (12/16)	G.S. 14-258.1
Malicious conduct by prisoner (11/10)	G.S. 14-258.4
Carrying a concealed weapon (7/15)	G.S. 14-269
Weapon on campus or other educational property (12/16)	G.S. 14-269.2

Carrying gun into assembly or alcoholic beverage establishment (11/10)	G.S. 14-269.3
Minor possessing handgun (11/10)	G.S. 14-269.7
Impersonating law enforcement officer (11/10)	G.S. 14-277(a)–(d)
Communicating threats (11/10)	G.S. 14-277.1
Stalking (11/10)	G.S. 14-277.3A
Making false ambulance request (11/10)	G.S. 14-286.1
Misdemeanor riot (11/10)	G.S. 14-288.2(a)
Felony riot (11/10)	G.S. 14-288.2(c)
Inciting to riot (11/10)	G.S. 14-288.2(d), (e)
Disorderly conduct (11/10)	G.S. 14-288.4
Possession of weapon of mass death and destruction (11/10)	G.S. 14-288.8
Gambling (11/10)	G.S. 14-292
Failing to store firearm to protect minor (11/10)	G.S. 14-315.1
Contributing to the delinquency or other condition of a minor (11/10)	G.S. 14-316.1
Misdemeanor child abuse (11/10)	G.S. 14-318.2
Felony child abuse (11/10)	G.S. 14-318.4
Transporting or keeping child out of state in violation of custody order (11/10)	G.S. 14-320.1
Unlawful transfer of custody (12/16)	G.S. 14-321.2
Abandonment or nonsupport of dependent spouse or child (11/10)	G.S. 14-322
Abandonment and nonsupport of child for six months (11/10)	G.S. 14-322.1
Cruelty to animals (11/10)	G.S. 14-360
Cockfighting (11/10)	G.S. 14-362
Animal fighting and baiting (11/10)	G.S. 14-362.1
Dog fighting and baiting (11/10)	G.S. 14-362.2
Littering (11/10)	G.S. 14-399
Ethnic intimidation (11/10)	G.S. 14-401.14
Purchase, sell, etc., pistol without permit (11/10)	G.S. 14-402
Unlawful solicitation of, or providing false information to, firearms dealer or seller (6/12)	G.S. 14-408.1(b)–(c)
Possession of firearm by convicted felon (11/10)	G.S. 14-415.1
Concealed handgun permit violations (12/16)	G.S. 14-415.21
Drunk and disruptive (11/10)	G.S. 14-444
Accessing a computer (11/10)	G.S. 14-454
Accessing a government computer (11/10)	G.S. 14-454.1
Damaging a computer (11/10)	G.S. 14-455
Computer trespass (11/10)	G.S. 14-458

Chapter 15A (Criminal Procedure) General Statute

Firearm or deadly weapon enhancement (11/10)	G.S. 15A-1340.16A
--	-------------------

Chapter 18B (Alcoholic Beverages) General Statute

Important definitions concerning alcoholic beverages (11/10)	
Possession, sale, or transportation of nontaxpaid alcoholic beverages (11/10)	G.S. 18B-111
Public possession or consumption of malt beverage or unfortified wine (11/10)	G.S. 18B-300/LOCAL ORDINANCE
Consumption of malt beverages or unfortified wine on premises with off-premises permit only (11/10)	G.S. 18B-300(b)
Consumption of fortified wine, spirituous liquor, or mixed beverages on public street or highway (11/10)	G.S. 18B-301(f)(1)
Public display of fortified wine, spirituous liquor, or mixed beverages at athletic contest (11/10)	G.S. 18B-301(f)(2)
Possession or consumption of fortified wine, spirituous liquor, or mixed beverages on unauthorized premises (11/10)	G.S. 18B-301(f)(3), (4)
Possession or consumption of malt beverages or unfortified wine on property owned or leased by a local school board (11/10)	G.S. 18B-301(f)(7)
Underage offenses involving malt beverages or unfortified wine (11/10)	G.S. 18B-302(a)(1), (a1)(1), (b)(1), (b)(3), (c)
Underage offenses involving fortified wine or spirituous liquor (11/10)	G.S. 18B-302(a)(2), (a1)(2), (b)(2), (b)(3), (c)

Underage offenses involving mixed beverages (11/10)	G.S. 18B-302(a)(2), (a1)(2), (b)(2), (b)(3), (c)
Fraudulent use or loan of identification to commit underage offense (11/10)	G.S. 18B-302(e), (f)
Sale of more alcoholic beverage than allowed (11/10)	G.S. 18B-303
Sale of alcoholic beverage without a permit or license (11/10)	G.S. 18B-304
Sale to intoxicated person (11/10)	G.S. 18B-305(a)
Manufacturing alcoholic beverage (11/10)	G.S. 18B-307(b)
Unlawful transportation of spirituous liquor or fortified wine (11/10)	G.S. 18B-401, -406
Consumption of malt beverage or unfortified wine by driver of motor vehicle (11/10)	G.S. 18B-401(a)
Sale of malt beverages, wine, or mixed beverages outside permitted hours (11/10)	G.S. 18B-1004

Chapter 20 (Motor Vehicles) General Statute

Possessing, receiving, or transferring stolen vehicle (11/10)	G.S. 20-106
Use of red or blue lights (11/10)	G.S. 20-130.1
Impaired driving (11/10)	G.S. 20-138.1
Impaired driving in commercial vehicle (11/10)	G.S. 20-138.2
Habitual impaired driving (11/10)	G.S. 20-138.5
Transporting open container of alcoholic beverage after consuming alcohol (11/10)	G.S. 20-138.7
Racing (11/10)	G.S. 20-141.3
Death or serious injury by vehicle (11/10)	G.S. 20-141.4
Speeding to elude arrest (11/10)	G.S. 20-141.5
Failure to heed light or siren of emergency vehicle (11/10)	G.S. 20-157(a)
Felonious hit and run (11/10)	G.S. 20-166(a)
Misdemeanor hit and run (11/10)	G.S. 20-166(b), (c), (c1)
Hit and run: failure to notify authorities (11/10)	G.S. 20-166.1(a)

Chapter 49 (Bastardy) General Statute

Nonsupport of illegitimate child (11/10)	G.S. 49-2
--	-----------

Chapter 50B (Domestic Violence) General Statute

Violating civil domestic violence protective order (11/10)	G.S. 50B-4.1
--	--------------

Chapter 58 (Insurance) General Statute

Insurance fraud (11/10)	G.S. 58-2-161
-------------------------	---------------

Chapter 75A (Boating and Water Safety) General Statute

Boating while impaired (12/16)	G.S. 75A-10(b1)
Death or serious injury by impaired boating (12/16)	G.S. 75A-10.3

Chapter 90 (Controlled Substances Act) General Statute

Rescheduling of substance by commission (11/10)	G.S. 90-88
Manufacture of a controlled substance (11/10)	G.S. 90-95(a)(1)
Sale or delivery of a controlled substance (6/12)	G.S. 90-95(a)(1)
Possession of controlled substance with intent to manufacture, sell, or deliver (11/10)	G.S. 90-95(a)(1)
Sale or delivery of counterfeit controlled substance (11/10)	G.S. 90-95(a)(2)
Simple possession of schedule I controlled substance (11/10)	G.S. 90-95(a)(3)
Simple possession of schedule II–IV controlled substance (11/10)	G.S. 90-95(a)(3)
Simple possession of schedule V controlled substance (11/10)	G.S. 90-95(a)(3)
Simple possession of schedule VI controlled substance (6/12)	G.S. 90-95(a)(3)
Possession of immediate precursor chemical (12/16)	G.S. 90-95(d1)
Prior drug convictions (11/10)	G.S. 90-95(e)

Selling or delivering a controlled substance to a person under 16 or to a pregnant woman (11/10)	G.S. 90-95(e)(5)
Selling, delivering, etc., controlled substance near school (11/10)	G.S. 90-95(e)(8)
Selling, delivering, etc., controlled substance near child care center (11/10)	G.S. 90-95(e)(8)
Possessing controlled substance in prison or jail (11/10)	G.S. 90-95(e)(9)
Selling, delivering, etc., controlled substance near public park (11/10)	G.S. 90-95(e)(10)
Drug trafficking (6/12)	G.S. 90-95(h), (i)
Continuing criminal enterprise (11/10)	G.S. 90-95.1
Employing minor to commit drug offense (11/10)	G.S. 90-95.4
Promoting drug sales by minor (11/10)	G.S. 90-95.6
Participating in drug violation by minor (11/10)	G.S. 90-95.7
Practitioner and others unlawfully dispensing a controlled substance (11/10)	G.S. 90-108(a)(2)
Maintaining a place for using, keeping, or selling controlled substances (11/10)	G.S. 90-108(a)(7)
Obtaining controlled substance by fraud or forgery (11/10)	G.S. 90-108(a)(10)
Possession of drug paraphernalia (12/16)	G.S. 90-113.22
Possession of marijuana drug paraphernalia (7/15)	G.S. 90-113.22A
Manufacture or delivery of drug paraphernalia (11/10)	G.S. 90-113.23
Delivery of drug paraphernalia to a minor (11/10)	G.S. 90-113.23
Advertisement of drug paraphernalia (11/10)	G.S. 90-113.24
Pseudoephedrine transaction limits (11/10)	G.S. 90-113.53
Chapter 108A (Social Services)	General Statute
Welfare fraud (11/10)	G.S. 108A-39
Food and nutrition benefit fraud (11/10)	G.S. 108A-53
Illegal possession or use of food and nutrition benefit (11/10)	G.S. 108A-53.1
Medicaid fraud by provider (11/10)	G.S. 108A-63
Medicaid fraud by recipient (11/10)	G.S. 108A-64
Chapter 115C (Elementary and Secondary Education)	General Statute
Violation of school compulsory attendance law (6/12)	G.S. 115C-378(a)
Chapter 148 (State Prison System)	General Statute
Escape from state prison system (11/10)	G.S. 148-45
Chapters 153A and 160A (County and City Government)	General Statute
City or county ordinance violation (11/10)	G.S. 153A-50, 160A-79

Introductory Comment:

This offense may be charged only by the “district attorney, in the district attorney’s discretion.” G.S. 14-7.38(a). Therefore, it should not be charged by a magistrate or other judicial official. A detailed discussion of the armed habitual felon law can be found at Jeff Welty, *Armed Habitual Felon*, N.C. CRIM. L., UNC SCH. OF GOV’T BLOG (Feb. 25, 2014), <http://nccriminallaw.sog.unc.edu/armed-habitual-felon/>.

Charging Language:

The jurors for the State upon their oath present that (*name defendant*) is an armed habitual felon in that on or about (*give date*) (*name defendant*) did commit (*name previous firearm-related felony and give statutory citation*) against (*name the state or other sovereign against which the previous firearm-related felony was committed*), and that on or about (*give date of guilty plea or conviction of previous firearm-related felony*), in (*name court in which conviction took place*), (*name defendant*) was convicted of the firearm-related felony of (*name firearm-related felony for which defendant was convicted*).

Notes about Charging Language:

- A firearm-related felony is defined to mean a felony “in which the [defendant] used or displayed a firearm while committing the felony.” G.S. 14-7.35(2). At least as to the defendant’s previous conviction, G.S. 14-7.36 requires that evidence of the defendant’s use or display of the gun “was needed to prove an element of the felony or was needed to establish the requirement for an enhanced or aggravated sentence.”
- Because this statute is patterned on the habitual felon statute, it is likely that the principles that apply to charging habitual felon will be held to apply to armed habitual felon as well. For example, a separate armed habitual felon indictment likely is not required for each substantive armed felony. *Cf. State v. Patton*, 342 N.C. 633 (1996). An armed habitual felon indictment likely need not allege the substantive felony being tried, *cf. State v. Cheek*, 339 N.C. 725 (1995), and this form does not request that information. And, while the State may allege more than one previous armed felony, it is likely that none of the armed felonies alleged in the indictment may be used to calculate the defendant’s prior record level in the event of a conviction. *Cf. State v. Lee*, 150 N.C. App. 701 (2003). For a longer discussion of charging issues in connection with habitual felon status, see Jeff Welty, *North Carolina’s Habitual Felon, Violent Habitual Felon, and Habitual Breaking and Entering Laws*, ADMIN. OF JUST. BULL. No. 2013/07 (UNC School of Government, Aug. 2013), www.sog.unc.edu/sites/www.sog.unc.edu/files/reports/aojb1307.pdf.
- “The indictment charging the defendant [as an armed habitual felon] shall be separate from the indictment charging the person with the principal firearm-related felony.” G.S. 14-7.38(a).

Sample Charge:

The jurors for the State upon their oath present that James Garman is an armed habitual felon in that on or about Feb. 8, 2008, James Garman did commit assault with a deadly weapon with intent to kill inflicting serious injury, G.S. 14-32(b), against the State of North Carolina, and that on or about June 21, 2008, in Alleghany County Superior Court, James Garman was convicted of the firearm-related felony of assault with a deadly weapon with intent to kill inflicting serious injury.

AOC Forms for This Offense:

None.

Punishment:

If the defendant is convicted of a firearm-related felony and is then determined to be an armed habitual felon, the principal felony is punished as a Class C felony with a minimum active sentence of 120 months. The sentence may not be suspended and the defendant may not be placed on probation. G.S. 14-7.41.

Introductory Comment:

Prior to the 2015 legislative session, this offense was set forth in G.S. 14-27.2, and charging documents for offenses committed before December 1, 2015, should refer to that statute. Both first- and second-degree forcible rape are typically charged using the short-form charging language provided in G.S. 15-144.1.

Charging Language:

. . . unlawfully, willfully, and feloniously did ravish and carnally know (*name victim*), by force and against the victim's will.

Notes about Charging Language:

- G.S. 15-144.1 provides that this charging language is sufficient to charge either first- or second-degree rape. This statute was upheld in *State v. Lowe*, 295 N.C. 596 (1978), *State v. Hunter*, 299 N.C. 29 (1980), and other cases. It is not necessary to include information that elevates the rape to first degree, such as the infliction of serious injury, though such information may be included if desired.
- Although G.S. 15-144.1(a) refers to the use of the averment "with force and arms," the absence of such language does not render an indictment defective, see G.S. 15-155, and this form does not include it.
- Although both G.S. 15-144.1 and the charging language above indicate that the name of the victim should be supplied, the Court of Appeals of North Carolina has approved of the use of the victim's initials in at least one sexual assault case. *State v. McKoy*, 196 N.C. App. 650 (2009) (use of initials provided adequate notice to the defendant where the defendant admitted that he knew the victim and did not claim that the use of initials made it difficult to prepare his defense).

Sample Charge:

. . . unlawfully, willfully, and feloniously did ravish and carnally know Wilma C. Sutton, by force and against the victim's will.

AOC Forms for This Offense:

AOC-CR-125 (Indictment)

Punishment:

Class B1 felony.

Introductory Comment:

Prior to the 2015 legislative session, this offense was set forth in G.S. 14-27.3, and charging documents for offenses committed before December 1, 2015, should refer to that statute. Both first- and second-degree rape are typically charged using the short-form charging language provided in G.S. 15-144.1.

Charging Language:**I. Forcible rape**

G.S. 14-27.22(a)(1)

... unlawfully, willfully, and feloniously did ravish and carnally know (*name victim*), by force and against the victim's will.

II. Mentally disabled, mentally incapacitated, or physically helpless victim G.S. 14-27.22(a)(2)

... unlawfully, willfully, and feloniously did carnally know and abuse (*name victim*), who was at the time (*choose one or more: mentally disabled; mentally incapacitated; physically helpless*). The defendant (*choose one or both: knew; should reasonably have known*) that the victim was (*choose one or more: mentally disabled; mentally incapacitated; physically helpless*).

Notes about Charging Language:

- G.S. 15-144.1 provides that this charging language is sufficient to charge either first- or second-degree rape. This statute was upheld in *State v. Lowe*, 295 N.C. 596 (1978), *State v. Hunter*, 299 N.C. 29 (1980), and other cases.
- For offense II, although G.S. 15-144.1 does not require the inclusion of an allegation regarding the defendant's knowledge of the victim's condition, this form includes such an allegation out of an abundance of caution and because the defendant's knowledge is an element of the offense.
- Although G.S. 15-144.1 refers to the use of the averment "with force and arms," the absence of such language does not render an indictment defective, see G.S. 15-155, and this form does not include it.
- Although both G.S. 15-144.1 and the charging language above indicate that the name of the victim should be supplied, the Court of Appeals of North Carolina has approved of the use of the victim's initials in at least one sexual assault case. *State v. McKoy*, 196 N.C. App. 650 (2009) (use of initials provided adequate notice to the defendant where the defendant admitted that he knew the victim and did not claim that the use of initials made it difficult to prepare his defense).

Sample Charges:**I. Forcible rape**

G.S. 14-27.22(a)(1)

... unlawfully, willfully, and feloniously did ravish and carnally know Louisa G. Applemyer, by force and against the victim's will.

II. Mentally disabled, mentally incapacitated, or physically helpless victim G.S. 14-27.22(a)(2)
... unlawfully, willfully, and feloniously did carnally know and abuse Roberta G. Exeter, who was at the time physically helpless. The defendant knew that the victim was physically helpless.

AOC Forms for This Offense:

AOC-CR-125 (Indictment)

Punishment:

Offenses I and II are Class C felonies.

Introductory Comment:

Prior to the 2015 legislative session, this offense was set forth at G.S. 14-27.2A, and charging documents for offenses committed before December 1, 2015, should refer to that statute. According to G.S. 14-27.23(e), first-degree statutory rape under G.S. 14-27.24 is a lesser-included offense of this crime.

Charging Language:

. . . unlawfully, willfully, and feloniously did engage in vaginal intercourse with (*name victim*), a child who was under the age of 13 years, namely, (*state victim's age*) years old. At the time, the defendant was at least 18 years of age, namely, (*state defendant's age*) years old.

Notes about Charging Language:

- It is not clear that the specific ages of the victim and the defendant must be included when charging this offense. This form requests that information for clarity and out of an abundance of caution.
- Although both G.S. 15-144.1 and the charging language above indicate that the name of the victim should be supplied, the Court of Appeals of North Carolina has approved of the use of the victim's initials in at least one sexual assault case. *State v. McKoy*, 196 N.C. App. 650 (2009) (use of initials provided adequate notice to the defendant where the defendant admitted that he knew the victim and did not claim that the use of initials made it difficult to prepare his defense).

Sample Charge:

. . . unlawfully, willfully, and feloniously did engage in vaginal intercourse with Jennifer Smith, a child who was under the age of 13 years, namely, 11 years old. At the time, the defendant was at least 18 years of age, namely, 32 years old.

AOC Forms for This Offense:

None.

Punishment:

Class B1 felony, subject to a mandatory minimum sentence of 300 months and other special sentencing provisions.

Introductory Comment:

Prior to the 2015 legislative session, this offense was included within G.S. 14-27.2, and charging documents for offenses committed before December 1, 2015, should refer to that statute. This offense is normally charged using the short-form charging language set forth in G.S. 15-144.1(b).

Charging Language:

... unlawfully, willfully, and feloniously did carnally know and abuse (*name victim*), a child under the age of 13 years.

Notes about Charging Language:

- G.S. 15-144.1(b) states that the language above may be used when the victim is “a female child under the age of 13 years.” If the victim is a male child, it may be safer to draft charging language that tracks the language of G.S. 14-27.24 rather than using the short-form language.
- The short-form language above may be used in juvenile petitions as well as adult charging documents. *Cf. In re J.F.*, 237 N.C. App. 218 (2014) (citing the statute regarding short-form indictments for sexual offenses, G.S. 15-144.1, in the context of a juvenile petition).
- Although both G.S. 15-144.1(b) and this form call for the name of the victim, the Court of Appeals of North Carolina has approved of the use of the victim’s initials in at least one sexual assault case. *State v. McKoy*, 196 N.C. App. 650 (2009) (use of initials provided adequate notice to the defendant where the defendant admitted that he knew the victim and did not claim that the use of initials made it difficult to prepare his defense).

Sample Charge:

... unlawfully, willfully, and feloniously did carnally know and abuse Gina Alexander, a child under the age of 13 years.

AOC Forms for This Offense:

AOC-CR-148 (Indictment)

Punishment:

Class B1 felony.

Introductory Comment:

Prior to the 2015 legislative session, this offense was set forth at G.S. 14-27.7A, and applied only to victims aged 13, 14, or 15. Charging documents for offenses committed before December 1, 2015, should refer to that statute.

Charging Language:**I. Defendant who was at least six years older than victim** **G.S. 14-27.25(a)**

... unlawfully, willfully, and feloniously did engage in vaginal intercourse with (*name victim*), a person of the age of (*give age, which must be 15 years or younger*) years. At the time of the offense, the defendant was at least 12 years old, at least six years older than the victim, and was not lawfully married to the victim.

II. Defendant who was more than four but less than six years older than victim **G.S. 14-27.25(b)**

... unlawfully, willfully, and feloniously did engage in vaginal intercourse with (*name victim*), a person of the age of (*give age, which must be 15 years or younger*) years. At the time of the offense, the defendant was at least 12 years old, was more than four but less than six years older than the victim, and was not lawfully married to the victim.

Notes about Charging Language:

- That the defendant was not married to the victim probably need not be alleged since it is an exception to the offense, but the allegation is included as a matter of caution. *Cf. State v. Bishop*, 119 N.C. App. 695 (1995) (ruling that an indictment for possession of a firearm by a convicted felon, G.S. 14-415.1, need not allege that the defendant did not possess the firearm in his home or place of business, which was at that time an exception to that offense).
- Although this form calls for the name of the victim, the Court of Appeals of North Carolina has approved of the use of the victim's initials in at least one sexual assault case. *State v. McKoy*, 196 N.C. App. 650 (2009) (use of initials provided adequate notice to the defendant where the defendant admitted that he knew the victim and did not claim that the use of initials made it difficult to prepare his defense).

Sample Charges:**I. Defendant who was at least six years older than victim** **G.S. 14-27.25(a)**

... unlawfully, willfully, and feloniously did engage in vaginal intercourse with Susan Smith, a person of the age of 14 years. At the time of the offense, the defendant was at least 12 years old, at least six years older than the victim, and was not lawfully married to the victim.

II. Defendant who was more than four but less than six years older than victim

G.S. 14-27.25(b)

. . . unlawfully, willfully, and feloniously did engage in vaginal intercourse with Bertha Jones, a person of the age of 15 years. At the time of the offense, the defendant was at least 12 years old, was more than four but less than six years older than the victim, and was not lawfully married to the victim.

AOC Forms for This Offense:

None.

Punishment:

Offense I is a Class B1 felony. Offense II is a Class C felony.

Introductory Comment:

Prior to the 2015 legislative session, this offense was set forth in G.S. 14-27.4, and charging documents for offenses committed before December 1, 2015, should refer to that statute. Both first- and second-degree sexual offense are typically charged using the short-form charging language provided in G.S. 15-144.2.

Charging Language:

. . . unlawfully, willfully, and feloniously did engage in a sex offense with (*name victim*) by force and against the victim's will.

Notes about Charging Language:

- G.S. 15-144.2 sets out the requirements for an indictment for sexual offense. Under that statute, it is not necessary to allege the aggravating elements for first-degree sexual offense, such as use of a weapon or infliction of serious personal injury, although that information may be added if desired. This statute was upheld in *State v. Edwards*, 305 N.C. 378 (1982).
- Although G.S. 15-144.2(a) refers to the use of the averment "with force and arms," the absence of such language does not render an indictment defective, see G.S. 15-155, and this form does not include it.
- Although both G.S. 15-144.2 and this form call for the name of the victim, the Court of Appeals of North Carolina has approved of the use of the victim's initials in at least one sexual assault case. *State v. McKoy*, 196 N.C. App. 650 (2009) (use of initials provided adequate notice to the defendant where the defendant admitted that he knew the victim and did not claim that the use of initials made it difficult to prepare his defense).

Sample Charge:

. . . unlawfully, willfully, and feloniously did engage in a sex offense with Susan F. Underwood, by force and against the victim's will.

AOC Forms for This Offense:

AOC-CR-128 (Indictment)

AOC-J-337 (Juvenile Petition)

Punishment:

Class B1 felony.

Introductory Comment:

Prior to the 2015 legislative session, this offense was set forth in G.S. 14-27.5, and charging documents for offenses committed before December 1, 2015, should refer to that statute. Both first- and second-degree sexual offense are typically charged using the short-form charging language provided in G.S. 15-144.2.

Charging Language:**I. Forcible sexual offense** **G.S. 14-27.27(a)(1)**

... unlawfully, willfully, and feloniously did engage in a sex offense with (*name victim*) by force and against the victim's will.

II. Mentally disabled, mentally incapacitated, or physically helpless victim **G.S. 14-27.27(a)(2)**

... unlawfully, willfully, and feloniously did engage in a sex offense with (*name victim*) who was at the time (*choose one or more: mentally disabled; mentally incapacitated; physically helpless*). The defendant (*choose one or both: knew; should reasonably have known*) that the victim was (*choose one or more: mentally disabled; mentally incapacitated; physically helpless*).

Notes about Charging Language:

- G.S. 15-144.2 sets out the requirements for an indictment for sexual offense. This statute was upheld in *State v. Edwards*, 305 N.C. 378 (1982).
- For offense II, although G.S. 15-144.2 does not require the inclusion of an allegation regarding the defendant's knowledge of the victim's condition, this form includes such an allegation out of an abundance of caution and because the defendant's knowledge is an element of the offense.
- Although G.S. 15-144.2(a) refers to the use of the averment "with force and arms," the absence of such language does not render an indictment defective, see G.S. 15-155, and this form does not include it.
- Although both G.S. 15-144.2 and this form call for the name of the victim, the Court of Appeals of North Carolina has approved of the use of the victim's initials in at least one sexual assault case. *State v. McKoy*, 196 N.C. App. 650 (2009) (use of initials provided adequate notice to the defendant where the defendant admitted that he knew the victim and did not claim that the use of initials made it difficult to prepare his defense).

Sample Charges:**I. Forcible sexual offense** **G.S. 14-27.27(a)(1)**

... unlawfully, willfully, and feloniously did engage in a sex offense with Wilbur S. Washington, by force and against the victim's will.

II. Mentally disabled, mentally incapacitated, or physically helpless victim G.S. 14-27.27(a)(2)
... unlawfully, willfully, and feloniously did engage in a sex offense with Deborah Baker, who was at the time mentally incapacitated and physically helpless. The defendant knew and should reasonably have known that the victim was mentally incapacitated and physically helpless.

AOC Forms for This Offense:

AOC-CR-128 (Indictment)

AOC-J-336 (Juvenile Petition)

Punishment:

Offenses I and II are Class C felonies.

Introductory Comment:

Prior to the 2015 legislative session, this offense was set forth at G.S. 14-27.4A, and charging documents for offenses committed before December 1, 2015, should refer to that statute. According to G.S. 14-27.28(d), first-degree statutory sexual offense under G.S. 14-27.29 is a lesser-included offense of this crime.

Charging Language:

. . . unlawfully, willfully, and feloniously did engage in a sexual act with (*name victim*), a child who was under the age of 13 years, namely, (*state victim's age*) years old. At the time, the defendant was at least 18 years of age, namely, (*state defendant's age*) years old.

Notes about Charging Language:

- It is not clear that the specific ages of the victim and the defendant must be included when charging this offense. This form requests that information for clarity and out of an abundance of caution.
- Although both G.S. 15-144.2 and this form call for the name of the victim, the Court of Appeals of North Carolina has approved of the use of the victim's initials in at least one sexual assault case. *State v. McKoy*, 196 N.C. App. 650 (2009) (use of initials provided adequate notice to the defendant where the defendant admitted that he knew the victim and did not claim that the use of initials made it difficult to prepare his defense).

Sample Charges:

. . . unlawfully, willfully, and feloniously did engage in a sexual act with Erik Erikson, a child who was under the age of 13 years, namely, 6 years old. At the time, the defendant was at least 18 years of age, namely, 24 years old.

AOC Forms for This Offense:

None.

Punishment:

Class B1 felony, subject to a mandatory minimum sentence of 300 months and other special sentencing provisions.

Introductory Comment:

Prior to the 2015 legislative session, this offense was set forth in G.S. 14-27.4(a)(1), and charging documents for offenses committed before December 1, 2015, should refer to that statute.

Charging Language:

. . . unlawfully, willfully, and feloniously did engage in a sex offense with (*name victim*), a child under the age of 13 years.

Notes about Charging Language:

- This offense is typically charged using the short-form charging language set forth in G.S. 15-144.2. That language is used above. The statute was upheld in *State v. Edwards*, 305 N.C. 378 (1982).
- Although both G.S. 15-144.2 and this form call for the name of the victim, the Court of Appeals of North Carolina has approved of the use of the victim's initials in at least one sexual assault case. *State v. McKoy*, 196 N.C. App. 650 (2009) (use of initials provided adequate notice to the defendant where the defendant admitted that he knew the victim and did not claim that the use of initials made it difficult to prepare his defense).

Sample Charge:

. . . unlawfully, willfully, and feloniously did engage in a sex offense with Walter R. Kincaid, a child under the age of 13 years.

AOC Forms for This Offense:

AOC-CR-149 (Indictment)

AOC-J-335 (Juvenile Petition)

Punishment:

Class B1 felony.

Introductory Comment:

Prior to the 2015 legislative session, this offense was set forth at G.S. 14-27.7A, and applied only to victims aged 13, 14, or 15. Charging documents for offenses committed before December 1, 2015, should refer to that statute.

Charging Language:**I. Defendant who was at least six years older than victim** **G.S. 14-27.30(a)**

... unlawfully, willfully, and feloniously did engage in a sexual act with (*name victim*), a person of the age of (*give age, which must be 15 years or younger*) years. At the time of the offense, the defendant was at least 12 years old, at least six years older than the victim, and was not lawfully married to the victim.

II. Defendant who was more than four but less than six years older than victim **G.S. 14-27.30(b)**

... unlawfully, willfully, and feloniously did engage in a sexual act with (*name victim*), a person of the age of (*give age, which must be 15 years or younger*) years. At the time of the offense, the defendant was at least 12 years old, was more than four but less than six years older than the victim, and was not lawfully married to the victim.

Notes about Charging Language:

- That the defendant was not married to the victim probably need not be alleged since it is an exception to the offense, but the allegation is included as a matter of caution. *Cf. State v. Bishop*, 119 N.C. App. 695 (1995) (ruling that an indictment for possession of a firearm by a convicted felon, G.S. 14-415.1, need not allege that the defendant did not possess the firearm in his home or place of business, which was at that time an exception to that offense).
- Although this form calls for the name of the victim, the Court of Appeals of North Carolina has approved of the use of the victim's initials in at least one sexual assault case. *State v. McKoy*, 196 N.C. App. 650 (2009) (use of initials provided adequate notice to the defendant where the defendant admitted that he knew the victim and did not claim that the use of initials made it difficult to prepare his defense).

Sample Charges:**I. Defendant who was at least six years older than victim** **G.S. 14-27.30(a)**

... unlawfully, willfully, and feloniously did engage in a sexual act with Susan Smith, a person of the age of 14 years. At the time of the offense, the defendant was at least 12 years old, at least six years older than the victim, and was not lawfully married to the victim.

II. Defendant who was more than four but less than six years older than victim G.S. 14-27.30(b)
... unlawfully, willfully, and feloniously did engage in a sexual act with Bertha Jones, a person of the age of 15 years. At the time of the offense, the defendant was at least 12 years old, was more than four but less than six years older than the victim, and was not lawfully married to the victim.

AOC Forms for This Offense:

None.

Punishment:

Offense I is a Class B1 felony. Offense II is a Class C felony.

Introductory Comment:

Prior to the 2015 legislative session, the offenses in this section were set forth at G.S. 14-27.7(a), and charging documents for offenses committed before December 1, 2015, should refer to that statute.

Charging Language:**I. Sexual activity by a substitute parent**

G.S. 14-27.31(a)

. . . unlawfully, willfully, and feloniously did, having assumed the position of a parent in the home in which (*name victim*), a minor child under the age of 18 years, was residing, engage in (*choose one or both*: vaginal intercourse; a sexual act) with (*name victim*).

II. Sexual activity by a custodian

G.S. 14-27.31(b)

. . . unlawfully, willfully, and feloniously did engage in (*choose one or both*: vaginal intercourse; a sexual act) with (*name victim*) at a time when the victim was [*choose one*: in the custody of the defendant; in the custody of (*name person*) and the defendant was (*choose one or both*: an agent; an employee) of that person; in the custody of (*name institution*) and the defendant was (*choose one or both*: an agent; an employee) of that institution].

Notes about Charging Language:

- Consent is not a defense to the above offenses. G.S. 14-27.31(c).
- Although this form calls for the name of the victim, the Court of Appeals of North Carolina has approved of the use of the victim's initials in at least one sexual assault case. *State v. McKoy*, 196 N.C. App. 650 (2009) (use of initials provided adequate notice to the defendant where the defendant admitted that he knew the victim and did not claim that the use of initials made it difficult to prepare his defense).

Sample Charge:**II. Sexual activity by a custodian**

G.S. 14-27.31(b)

. . . unlawfully, willfully, and feloniously did engage in vaginal intercourse with Sally Wilson Montgomery at a time when the victim was in the custody of the Wake County Jail and the defendant was an employee of that institution.

AOC Forms for This Offense:

None.

Punishment:

Offenses I and II are both Class E felonies.

Introductory Comment:

Prior to the 2015 legislative session, the offenses defined in this section were set forth at G.S. 14-27.7(b), and charging documents for offenses committed before December 1, 2015, should refer to that statute. While the offenses defined in this section apply only when there has been vaginal intercourse or a sexual act, indecent liberties with a student, G.S. 14-202.4, may apply to additional conduct. Consent is not a defense to this charge. G.S. 14-27.32(d).

Charging Language:**I. Teacher, administrator, student teacher, safety officer, or coach** **G.S. 14-27.32(a)**

. . . unlawfully, willfully, and feloniously did engage in (*choose one*: vaginal intercourse; a sexual act) with (*name student*). At the time of this offense, the defendant was a (*choose one*: teacher; student teacher; school administrator; school safety officer; coach) at (*name school*) and the victim was a student at this same school.

II. Other school personnel, at least four years older than victim **G.S. 14-27.32(a)**

. . . unlawfully, willfully, and feloniously did engage in (*choose one*: vaginal intercourse; a sexual act) with (*name student*). At the time of this offense, the defendant was school personnel, namely, (*describe position at school*), at (*name school*) and the victim was a student at this same school. At the time of this offense, the defendant was at least four years older than the victim.

III. Other school personnel, less than four years older than victim **G.S. 14-27.32(b)**

. . . unlawfully, willfully, and feloniously did engage in (*choose one*: vaginal intercourse; a sexual act) with (*name student*). At the time of this offense, the defendant was school personnel, namely, (*describe position at school*), at (*name school*) and the victim was a student at this same school. At the time of this offense, the defendant was less than four years older than the victim.

Notes about Charging Language:

- Offenses I and II also include sexual activity between one of the referenced school employees and a student after the employee and student are no longer present together at the same school, provided the student is still a student in or below the twelfth grade. If that is the case, the charging language must be modified accordingly.
- For offense III, it is not clear from the statute that the defendant and the victim need to have been present at the same school. However, because that requirement does exist for offenses I and II and for the similar offenses under G.S. 14-202.4, and out of an abundance of caution, this form includes the same school allegation.
- For offenses I and II but not III, there is an exception in the statute if the defendant is married to the victim.
- Although this form calls for the name of the victim, the Court of Appeals of North Carolina has approved of the use of the victim's initials in at least one sexual assault case. *State v. McKoy*, 196 N.C. App. 650 (2009) (use of initials provided adequate notice to the defendant where the defendant admitted that he knew the victim and did not claim that the use of initials made it difficult to prepare his defense).

Sample Charge:

I. Teacher, administrator, student teacher, safety officer, or coach **G.S. 14-27.32(a)**

. . . unlawfully, willfully, and feloniously did engage in vaginal intercourse with Phyllis Smith. At the time of this offense, the defendant was a teacher at South Park High School, Park Ridge, North Carolina, and the victim was a student at this same school.

AOC Forms for This Offense:

None.

Punishment:

Offenses I and II are Class G felonies. Offense III is a Class I felony.

Introductory Comment:

Prior to the 2015 legislative session, this offense was set forth in G.S. 14-27.5A, and charging documents for offenses committed before December 1, 2015, should refer to that statute.

Charging Language:

. . . unlawfully and willfully did for the purpose of (choose one or more: sexual arousal; sexual gratification; sexual abuse) engage in sexual contact, (describe contact), with another person, (name person),
(*choose one or both*)

(1) by force and against the will of the other person.

(2) who was (*choose one or more*: mentally disabled; mentally incapacitated; physically helpless) and the defendant (*choose one or both*: knew; should reasonably have known) that the other person was (*choose one or more*: mentally disabled; mentally incapacitated; physically helpless).

Notes about Charging Language:

- “Sexual contact” is defined in G.S. 14-27.20(5).

Sample Charge:

. . . unlawfully and willfully did for the purpose of sexual arousal and sexual gratification engage in sexual contact, placing his hands on the victim’s breasts, with another person, Sallie Jones, by force and against the will of the other person.

AOC Forms for This Offense:

None.

Punishment:

Class A1 misdemeanor.

Introductory Comment:

None.

Charging Language:

I. Assault with a firearm on law enforcement officer, probation officer, or parole officer G.S. 14-34.5(a)

... unlawfully, willfully, and feloniously did assault (*name officer assaulted*), (*choose one*: a law enforcement officer of [*name law enforcement agency*]; a probation officer; a parole officer), with a firearm, (*describe firearm*), by (*describe assault*). At the time of this offense the officer was performing a duty of (*choose one*: his; her) office, (*describe duty*).

II. Assault with a firearm on member of North Carolina National Guard G.S. 14-34.5(a1)

... unlawfully, willfully, and feloniously did assault (*name victim*), a member of the North Carolina National Guard, with a firearm, (*describe firearm*), by (*describe assault*). At the time of this offense the victim was performing (*choose one*: his; her) duties, namely, (*describe duty*).

III. Assault with a firearm on employee of state or local detention facility G.S. 14-34.5(b)

... unlawfully, willfully, and feloniously did assault (*name employee assaulted*), who was employed at a detention facility, (*describe detention facility*), operated under the jurisdiction of (*choose one*: the State of North Carolina; *name local government*), with a firearm, (*describe firearm*), by (*describe assault*). At the time of this offense the employee was performing a duty of (*choose one*: his; her) employment, (*describe duty*).

Notes about Charging Language:

- It is probably not legally necessary to describe the type of firearm used. *See State v. Pickens*, 346 N.C. 628 (1997) (ruling that, when alleging discharging a firearm into an occupied dwelling, it is sufficient to allege that the defendant employed “a firearm,” and allegations regarding the specific type of firearm are surplusage). *But cf. State v. Langley*, 173 N.C. App. 194 (2005) (finding a fatal variance between an indictment charging the defendant with possession of a “handgun” and evidence that showed that the defendant possessed a sawed-off shotgun; the court viewed the two types of weapons as belonging to different classes of firearms). However, this form requests that information for clarity.
- It is probably not legally necessary to describe how the defendant committed the assault. *Cf. State v. Williams*, 201 N.C. App. 161 (2009) (holding that the specific manner of strangulation was surplusage in a case in which the defendant was charged with assault by strangulation); *State v. Muskelly*, 6 N.C. App. 174 (1969) (holding that the specific manner in which a firearm was used to injure the victim, i.e., whether the victim was shot or beaten with the gun, was surplusage and stating that “[t]he bill is complete without evidentiary matters descriptive of the manner and means by which the offense was committed”). However, this form requests that information for clarity.
- Although a description of the specific duty being performed is not required, *State v. Waller*, 37 N.C. App. 133 (1978), this form requests that information.

Sample Charge:

I. Assault with a firearm on law enforcement officer, probation officer, or parole officer G.S. 14-34.5(a)

. . . unlawfully, willfully, and feloniously did assault Susan Thomas, a law enforcement officer of the Smithville Police Department, with a firearm, a .22 caliber pistol, by shooting at her two times. At the time of this offense the officer was performing a duty of her office, investigating a breaking and entering of a house on 1212 Racine Street, Smithville, N.C.

AOC Forms for This Offense:

None.

Punishment:

Offenses I, II, and III are Class E felonies.

Introductory Comment:

None.

Charging Language:**I. Assault causing physical injury** **G.S. 14-34.6(a)**

. . . unlawfully, willfully, and feloniously did assault (*name person assaulted*), (*choose one*: an emergency medical technician; an emergency health care provider; a medical responder; a hospital personnel; a licensed healthcare provider who was providing and attempting to provide health care services to a patient in a hospital; a firefighter). The defendant (*describe assault*) and caused physical injury on the victim, (*describe injury*). At the time of this offense, the victim of the assault was (*choose one*: discharging; attempting to discharge) official duties, (*describe duties*).

II. Assault inflicting serious bodily injury or using deadly weapon other than a firearm **G.S. 14-34.6(b)**

. . . unlawfully, willfully, and feloniously did assault (*name person assaulted*), (*choose one*: an emergency medical technician; an emergency health care provider; a medical responder; a hospital personnel; a licensed healthcare provider who was providing and attempting to provide health care services to a patient in a hospital; a firefighter). The defendant (*describe assault*) and (*choose one or both*: inflicted serious bodily injury on the victim, (*describe injury*); caused physical injury on the victim, (*describe injury*), and the assault was committed with a deadly weapon other than a firearm (*describe weapon*)). At the time of this offense, the victim of the assault was (*choose one*: discharging; attempting to discharge) official duties (*describe duties*).

III. Assault with a firearm **G.S. 14-34.6(c)**

. . . unlawfully, willfully, and feloniously did assault (*name person assaulted*), (*choose one*: an emergency medical technician; an emergency health care provider; a medical responder; a hospital personnel; a licensed healthcare provider who was providing and attempting to provide health care services to a patient in a hospital; a firefighter). The defendant (*describe assault*) and caused physical injury on the victim, (*describe injury*). The assault was committed with a firearm (*describe firearm*). At the time of this offense, the victim of the assault was (*choose one*: discharging; attempting to discharge) official duties, (*describe duties*).

Notes about Charging Language:

- The statute does not define “physical injury.” However, G.S. 14-34.7 defines the term as cuts, scrapes, bruises, or other physical injury that is not a serious injury.
- It is probably legally unnecessary to describe how the defendant committed the assault. *Cf. State v. Williams*, 201 N.C. App. 161 (2009) (holding that the specific manner of strangulation was surplusage in a case in which the defendant was charged with assault by strangulation); *State v. Muskelly*, 6 N.C. App. 174 (1969) (holding that the specific manner in which a firearm was used to injure the victim, i.e., whether the victim was shot or beaten with the gun, was surplusage and stating that “[t]he bill is complete without evidentiary matters descriptive of the manner and means by which the offense was committed”). However, this form requests that information for clarity.
- It is probably legally unnecessary to describe the nature of the physical injury inflicted. *Cf. State v. Gregory*, 223 N.C. 415 (1943) (holding that a charge of assault with a deadly weapon inflicting serious injury was sufficient when it alleged only that the victim suffered “serious injuries” without further detail). However, this form requests that information for clarity.
- Effective December 1, 2015, subdivision (a)(3) of the statute covers “[h]ospital personnel and licensed healthcare providers who are providing or attempting to provide health care services to a patient in a hospital.” It is unclear whether the “provid[ing] health care services” requirement applies to “hospital personnel” or only to “licensed healthcare providers.”
- Offenses II and III apply “[u]nless [the] person’s conduct is covered under some other provision of law providing greater punishment.” G.S. 14-34.6(c).

Sample Charge:**I. Assault causing physical injury**

G.S. 14-34.6(a)

. . . unlawfully, willfully, and feloniously did assault Helen Smith, an emergency medical technician. The defendant hit the victim on her arm and caused physical injury on the victim, a bruise on her right hand. At the time of this offense, the victim of the assault was discharging official duties in treating Howard Patton for a gunshot wound.

AOC Forms for This Offense:

None.

Punishment:

Offense I is a Class I felony. Offense II is a Class H felony. Offense III is a Class F felony.

**G.S. 14-34.7 ASSAULT ON A LAW ENFORCEMENT OFFICER OR A RELATED PROFESSIONAL
INFLECTING SERIOUS BODILY INJURY OR PHYSICAL INJURY**
page one of three

Introductory Comment:

Prior to the 2015 legislative session, there was an inconsistency between the text of G.S. 14-34.7(a)–(b), which included the term “serious bodily injury,” and the caption of the statute, which referred to “serious injury.” Relying on the caption, the Court of Appeals of North Carolina ruled in *State v. Crawford*, 167 N.C. App. 777 (2005), that the legislature intended G.S. 14-34.7(a)–(b) to apply to assaults on covered persons resulting in “serious injury.” However, in 2015 the General Assembly amended the caption, removing the reference to “serious injury.” This appears to undermine *Crawford*, and this form now refers to “serious bodily injury” when addressing the offenses defined in G.S. 14-34.7(a)–(b) as well as the offense created in 2015 in G.S. 14-34.7(a1).

Charging Language:

I. Assault inflicting serious bodily injury on law enforcement officer, probation officer, or parole officer **G.S. 14-34.7(a)**

. . . unlawfully, willfully, and feloniously did assault (*name officer assaulted*), (*choose one: a law enforcement officer of [name law enforcement agency]; a probation officer; a parole officer*), by (*describe the assault*), thereby inflicting serious bodily injury (*describe injury*). At the time of this offense the officer was (*choose one: discharging; attempting to discharge*) a duty of (*choose one: his; her*) office, namely, (*describe duty*).

II. Assault inflicting serious bodily injury on member of North Carolina National Guard **G.S. 14-34.7(a1)**

. . . unlawfully, willfully, and feloniously did assault (*name victim*), a member of the North Carolina National Guard, by (*describe the assault*), thereby inflicting serious bodily injury (*describe injury*). At the time of this offense the victim was (*choose one: discharging; attempting to discharge*) (*choose one: his; her*) official duties, namely, (*describe duty*).

III. Assault inflicting serious bodily injury on employee of state or local detention facility **G.S. 14-34.7(b)**

. . . unlawfully, willfully, and feloniously did assault (*name employee assaulted*), who was employed at a detention facility, (*describe detention facility*), operated under the jurisdiction of (*choose one: the State of North Carolina; name local government*), by (*describe the assault*), thereby inflicting serious bodily injury (*describe injury*). At the time of this offense the employee was performing a duty of (*choose one: his; her*) employment, namely, (*describe duty*).

**G.S. 14-34.7 ASSAULT ON A LAW ENFORCEMENT OFFICER OR A RELATED PROFESSIONAL
INFLECTING SERIOUS BODILY INJURY OR PHYSICAL INJURY**

page two of three

**IV. Assault inflicting physical injury on law enforcement officer,
probation officer, or parole officer** **G.S. 14-34.7(c)(1)**

... unlawfully, willfully, and feloniously did assault (*name officer assaulted*), (*choose one*; a law enforcement officer of [*name law enforcement agency*]; a probation officer; a parole officer), by (*describe the assault*), thereby inflicting physical injury (*describe injury*). At the time of this offense, the officer was (*choose one*: discharging; attempting to discharge) a duty of (*choose one*: his; her) office, namely, (*describe duty*).

**V. Assault inflicting physical injury on employee of state or local
detention facility** **G.S. 14-34.7(c)(2)**

... unlawfully, willfully, and feloniously did assault (*name employee assaulted*), who was employed at a detention facility, (*describe detention facility*), operated under the jurisdiction of (*choose one*: the State of North Carolina; *name local government*), by (*describe the assault*), thereby inflicting physical injury (*describe injury*). At the time of this offense the employee was performing a duty of (*choose one*: his; her) employment, namely, (*describe duty*).

**VI. Assault inflicting physical injury on member of North Carolina
National Guard** **G.S. 14-34.7(c)(3)**

... unlawfully, willfully, and feloniously did assault (*name victim*), a member of the North Carolina National Guard, by (*describe the assault*), thereby inflicting physical injury (*describe injury*). At the time of this offense, the victim was (*choose one*: discharging; attempting to discharge) (*choose one*: his; her) official duties, namely, (*describe duty*).

Notes about Charging Language:

- Although a description of the specific duty being performed is not required, *State v. Waller*, 37 N.C. App. 133 (1978), this form requests that information.
- It is probably legally unnecessary to describe how the defendant committed the assault. *Cf. State v. Williams*, 201 N.C. App. 161 (2009) (holding that the specific manner of strangulation was surplusage in a case in which the defendant was charged with assault by strangulation); *State v. Muskelly*, 6 N.C. App. 174 (1969) (holding that the specific manner in which a firearm was used to injure the victim, i.e., whether the victim was shot or beaten with the gun, was surplusage and stating that “[t]he bill is complete without evidentiary matters descriptive of the manner and means by which the offense was committed”). However, this form requests that information for clarity.
- For offenses I, II, and III, “serious bodily injury” is not defined in G.S. 14-34.7. A court likely would apply the definition in G.S. 14-32.4(a), which is “bodily injury that creates a substantial risk of death, or that causes serious permanent disfigurement, coma, a permanent or protracted condition that causes extreme pain, or permanent or protracted loss or impairment of the function of any bodily member or organ, or that results in prolonged hospitalization.” *See generally* N.C.P.I.—CRIM. 208.94 (incorporating this definition).

Introductory Comment:

In the 2015 legislative session, the General Assembly enacted G.S. 14-56(b), which generally provides that it is not a violation of this statute to break or enter a vehicle in order to provide emergency medical assistance to a person therein.

Charging Language:

... unlawfully, willfully, and feloniously did break and enter a (*choose one*: motor vehicle; aircraft; boat; railroad car; trailer), a (*describe the vehicle or other thing broken into, including the name of the owner*), which contained things of value, with the intent to commit (*choose one*: larceny; a felony) therein.

Notes about Charging Language:

- The statute makes it an offense to either break *or* enter; if there was only a breaking and no entry, you may strike the words “and enter”; if there was an entry but no breaking, you may strike the words “break and”.
- The statute also covers watercraft other than boats. If the vehicle broken into is a watercraft but not a boat, substitute “watercraft” for “boat”.
- The statute also covers breaking out of a railroad car, motor vehicle, trailer, aircraft, or boat after having committed larceny or another felony therein. This form should be modified in such a case.
- Unlike burglary or breaking or entering a building, a larceny committed pursuant to this offense is not automatically a felony regardless of the value of the property taken. Thus, if the defendant’s intent was to steal items worth less than \$1,000, it may be improper to allege that the defendant intended to commit a felony.

Sample Charge:

... unlawfully, willfully, and feloniously did break and enter a motor vehicle, a 2004 Oldsmobile belonging to Roger Leonard, which contained things of value, with the intent to commit larceny therein.

AOC Forms for This Offense:

None.

Punishment:

Class I felony.

Introductory Comment:

None.

Charging Language:

. . . unlawfully, willfully, and feloniously did (*choose one or more*: sell to; transfer to; purchase from [*name person to whom sold or transferred, or from whom purchased, if known, or state an unknown person*]) the identifying information, (*describe information*), of another person, (*name person*), (*choose one or both*: with the intent to commit identity theft; to assist another person, [*name person*], in committing identity theft) as set forth in G.S. 14-113.20.

Notes about Charging Language:

- G.S. 14-113.20(b) defines “identifying information” as social security or tax identification numbers; driver’s license or state identification card numbers; passport numbers; checking account numbers; savings account numbers; credit card numbers; debit card numbers; PIN codes as defined in G.S. 14-113.8(6); electronic identification numbers; email addresses and certain other internet-related information; digital signatures; any other numbers or information that can be used to access a person’s financial resources; biometric data; fingerprints; passwords; and a parent’s legal surname before marriage.
- At least when charging this offense based on the sale or transfer of identifying information, it is necessary to allege “the name of the recipient or that the recipient’s name is unknown.” *State v. Jones*, 367 N.C. 299 (2014).

Sample Charge:

. . . unlawfully, willfully, and feloniously did sell to James Bell the identifying information, the social security number, of another person, Phyllis Brown, to assist another person, James Bell, in committing identity theft as set forth in G.S. 14-113.20.

AOC Forms for This Offense:

None.

Punishment:

Class E felony.

Introductory Comment:

None.

Charging Language:

. . . unlawfully and willfully did wantonly damage, injure, and destroy real property, (*describe and provide address of real property*), the property of (*describe the person or entity that owns the property*).

Notes about Charging Language:

- “Ideally, an indictment for injury to real property should include the street address or other clear designation . . . of the real property alleged to have been injured.” *State v. Spivey*, 368 N.C. 739 (2016).
- It is not a legal requirement that the ownership of the property must be alleged, much less that the owner is legally capable of owning property. *State v. Spivey*, 368 N.C. 739 (2016) (“The indictment needs to identify the real property itself, not the owner or ownership interest.”). However, this form requests information about ownership because it may be helpful in identifying the property in question.

Sample Charge:

. . . unlawfully and willfully did wantonly damage, injure, and destroy real property, two windows of a house at 49 Main Street, Apex, N.C., the property of Howard and Betty Jones.

AOC Forms for This Offense:

AOC-CR-146 (Arrest Warrant)

AOC-CR-147 (Summons)

AOC-J-322 (Juvenile Petition)

Punishment:

Class 1 misdemeanor.

Introductory Comment:

None.

Charging Language:

. . . unlawfully and willfully did without authorization enter and remain
(choose one)

- (1) in the building of (*name the owner or possessor of the building*), located at (*give location*).
- (2) on the premises of (*name the owner or possessor of the premises*), located at (*give location*),
so enclosed and secured as to demonstrate clearly an intent to keep out intruders.

Notes about Charging Language:

- G.S. 14-159.11 defines “building” as a “structure or part of a structure, other than a conveyance, enclosed so as to permit reasonable entry . . . through a door and roofed to protect it from the elements.”
- G.S. 14-159.14 provides that first- and second-degree trespass are lesser-included offenses of breaking or entering offenses in G.S. 14-54 (felonious and misdemeanor breaking or entering of a building) and G.S. 14-56 (felonious breaking or entering of motor vehicle, boat, etc.).
- Effective December 1, 2016, there are two aggravated versions of this offense. They apply when (1) “[t]he offense occurs on real property where the person has reentered after having previously been removed pursuant to the execution of a valid order or writ for possession,” or (2) “[t]he offense occurs under color of title where the person has knowingly created or provided materially false evidence of an ownership or possessory interest.” S.L. 2016-26, § 1. If one of these conditions applies, replace “unlawfully and willfully” with “unlawfully, willfully, and feloniously” and add at the end of the charging language a sentence alleging the facts that make the offense a felony.

Sample Charge:

. . . unlawfully and willfully did without authorization enter and remain in the building of Samuel Jones, located at 123 East Main Street, Patterson, N.C.

AOC Forms for This Offense:

AOC-J-311 (Juvenile Petition)

Punishment:

Class 2 misdemeanor. The aggravated forms of this offense described in the notes above are Class I felonies, and the punishment “shall include a fine of not less than [\$1,000] for each violation.”

Introductory Comment:

This offense was enacted in the 2015 legislative session and is commonly called the “revenge porn” statute. The statute contains certain exceptions, including for the disclosure of images in the course of law enforcement activities and medical proceedings. G.S. 14-190.5A(d).

Charging Language:

... unlawfully, willfully, and feloniously did knowingly disclose an image of (*name victim*) with the intent to

(*choose one or both*)

(1) (*choose one or more: coerce; harass; intimidate; demean; humiliate; cause financial loss to*)

(2) cause others to (*choose one or more: coerce; harass; intimidate; demean; humiliate; cause financial loss to*)

(*name victim*). (*Name victim*) was identifiable from the disclosed image itself and information offered in connection with the image. (*Choose one or both: The victim’s intimate parts were exposed in the disclosed image; The victim was engaged in sexual conduct in the disclosed image*). The defendant disclosed the image without the affirmative consent of the victim. The defendant disclosed the image under circumstances such that the defendant knew and should have known that the victim had a reasonable expectation of privacy. (*If applicable, state: The defendant was 18 years of age or older at the time of the offense.*)

Notes about Charging Language:

- If the defendant is under 18, a first offense is a misdemeanor. In such a case, strike “feloniously” from the charging language above.
- If the defendant is under 18, a second or subsequent offense is a felony. In such a case, leave the word “feloniously” in the charging language and add a second count alleging the defendant’s prior conviction in accordance with G.S. 15A-928.

Sample Charge:

... unlawfully, willfully, and feloniously did knowingly disclose an image of Samantha Scott with the intent to harass, intimidate, demean, and humiliate Samantha Scott. Samantha Scott was identifiable from the disclosed image itself and information offered in connection with the image. The victim was engaged in sexual conduct in the disclosed image. The defendant disclosed the image without the affirmative consent of the victim. The defendant disclosed the image under circumstances such that the defendant knew and should have known that the victim had a reasonable expectation of privacy. The defendant was 18 years of age or older at the time of the offense.

AOC Forms for This Offense:

None.

Punishment:

If the defendant is 18 or older, Class H felony. If the defendant is under 18, Class 1 misdemeanor, unless it is the defendant's second or subsequent offense, in which case, Class H felony. The court may also order the destruction of any image "made in violation of this section."

Introductory Comment:

In the 2015 legislative session, the General Assembly added subsections (a2), (a4), and (a5) to the statute. They generally address indecent exposure on, or from, private property. This form does not provide charging language for those offenses because they seem unlikely to be charged frequently.

Charging Language:**I. Misdemeanor indecent exposure** **G.S. 14-190.9(a)**

... unlawfully and willfully did expose (*choose one*: his; her) private parts, (*describe parts*), in a public place, (*describe place*), in the presence of another (*choose one*: person; persons), (*name person or persons*).

II. Felony indecent exposure **G.S. 14-190.9(a1)**

... unlawfully, willfully, and feloniously did expose (*choose one*: his; her) private parts, (*describe parts*), in a public place, (*describe place*), in the presence of another person, (*name person*), who was less than 16 years of age, namely, (*give age*), for the purpose of arousing and gratifying the defendant's sexual desire. At the time of this offense, the defendant was at least 18 years old, namely, (*give age*).

Notes about Charging Language:

- Appellate court rulings on the meaning of “private parts” and “public place” are summarized in JESSICA SMITH, NORTH CAROLINA CRIMES: A GUIDEBOOK ON THE ELEMENTS OF CRIME 290 (UNC School of Government, 7th ed. 2012). This charge cannot be based on the exposure of a woman's breast during breastfeeding. G.S. 14-190.9(b).
- For offense I, the statute exempts exposure in places designated for a public purpose where same-sex exposure is incidental to a permitted activity.
- Offense I also covers a person who as owner, manager, lessee, director, promoter, or agent who knowingly hires, leases, or permits the land, building, or premises of which he or she is owner, lessee, or tenant, or over which he or she has control, to be used for the commission of this offense. Of course, the charging language above would need to be altered in such a situation.
- Offense II is not a lesser-included offense of G.S. 14-202.1 (taking indecent liberties with children).

Sample Charges:**I. Misdemeanor indecent exposure** **G.S. 14-190.9(a)**

... unlawfully and willfully did expose his private parts, his penis, in a public place, the parking lot of Livingston High School, Livingston, N.C., in the presence of another person, Sally Smith.

II. Felony indecent exposure

G.S. 14-190.9(a1)

. . . unlawfully, willfully, and feloniously did expose his private parts, his penis, in a public place, on Main Street, Billingham, N.C., in the presence of another person, Peter Jones, who was less than 16 years of age, namely, 12 years of age, for the purpose of arousing and gratifying the defendant's sexual desire. At the time of this offense, the defendant was at least 18 years old, namely, 43 years old.

AOC Forms for This Offense:

None.

Punishment:

Offense I is a Class 2 misdemeanor. Offense II is a Class H felony.

Introductory Comment:

None.

Charging Language:**I. Threatening language**

G.S. 14-196.3(b)(1)

. . . unlawfully and willfully did use words and language in an (*choose one or both*: electronic communication; electronic mail) to (*name person with whom communicated*) threatening to inflict (*choose one or more*: bodily harm on [*name person threatened*]; physical injury to the property of [*name person whose property was threatened*]).

II. Extorting language

G.S. 14-196.3(b)(1)

. . . unlawfully and willfully did use words and language in an (*choose one or both*: electronic communication; electronic mail) to (*name person with whom communicated*) for the purpose of extorting money or other things of value from (*name person who was the object of the extortion*).

III. Harassing communications

G.S. 14-196.3(b)(2)

. . . unlawfully and willfully did (*choose one or both*: electronically communicate with; electronically mail [*name person to whom the defendant communicated*]) repeatedly for the purpose of (*choose one or more*: abusing; annoying; threatening; terrifying; harassing; embarrassing [*name person the defendant intended to abuse, annoy, threaten, etc.*]).

IV. False statement about death, injury

G.S. 14-196.3(b)(3)

. . . unlawfully and willfully did in an (*choose one or both*: electronic communication; electronic mail) to (*name person to whom the defendant communicated*) knowingly make a false statement about the (*choose one or more*: death; injury; illness; disfigurement; indecent conduct; criminal conduct) of (*choose one*: [*name person with whom communicated*]; [*name person about whom communicated*]), a member of (*name person with whom communicated*)'s (*choose one or both*: family; household) with the intent to (*choose one*: abuse; annoy; threaten; terrify; harass; embarrass).

V. Use of electronic tracking device without consent

G.S. 14-196.3(b)(5)

. . . unlawfully and willfully did knowingly (*choose one or more*: install; place; use; cause to be installed; cause to be placed; cause to be used) an electronic tracking device to track the location of (*name victim*) without the consent of (*name victim*).

Notes about Charging Language:

- “Electronic communication” is defined in G.S. 14-196.3(a)(1).
- “Electronic mail” is defined in G.S. 14-196.3(a)(2).
- “Electronic tracking device” is defined in G.S. 14-196.3(a)(3).
- This statute also applies to any person who knowingly permits an electronic communication device under his or her control to be used to commit any of the above offenses.
G.S. 14-196.3(b)(4).
- For offense I, the statute covers “words or language threatening to inflict bodily harm to any person or to that person’s child, sibling, spouse, or dependent.” G.S. 14-196.3(b)(1) (emphasis added). Given the use of the broad term “any person”, it does not seem that the reference to “that person’s child, sibling, spouse, or dependent” places any limitation on the scope of this offense. Perhaps one could argue that the statute was intended to require that the recipient of the communication be either the person threatened or the parent, sibling, etc. of the person threatened. To avoid any possible issue in this regard, you may wish to specify the relationship between the person receiving the communication and the person threatened if it is one of the relationships listed in the statute.
- The statute contains several exceptions to offense V, allowing tracking devices to be used for certain business purposes, certain law enforcement purposes, and for certain investigations conducted by licensed private investigators. *See* G.S. 14-196.3(b)(5). These appear to be exceptions to the offense rather than elements, and so the lack of applicability of the exceptions is not included in the charging language above.

Sample Charges:

I. Threatening language G.S. 14-196.3(b)(1)
 . . . unlawfully and willfully did use words and language in an electronic communication to Maureen Smith threatening to inflict bodily harm on Maureen Smith.

II. Extorting language G.S. 14-196.3(b)(1)
 . . . unlawfully and willfully did use words and language in an electronic mail to Nancy Albertson for the purpose of extorting money or other things of value from David Albertson.

III. Harassing communications G.S. 14-196.3(b)(2)
 . . . unlawfully and willfully did electronically communicate with Samuel Jones repeatedly for the purpose of annoying and harassing Samuel Jones.

IV. False statement about death, injury G.S. 14-196.3(b)(3)
 . . . unlawfully and willfully did in an electronic communication to James Sampson knowingly make a false statement about the death of Sarah Sampson, a member of James Sampson’s family, with the intent to terrify and harass.

V. Use of tracking device without consent

G.S. 14-196.3(b)(5)

... unlawfully and willfully did knowingly use an electronic tracking device to track the location of Joan Byers without the consent of Joan Byers.

AOC Forms for This Offense:

None.

Punishment:

Class 2 misdemeanor.

Introductory Comment:

This offense applies to a variety of sexual activity between school personnel and students. This form supersedes both prior forms concerning G.S. 14-202.4; the prior forms generally separated offenses involving teachers and coaches from offenses involving other school personnel. If the conduct includes intercourse or a “sexual act,” the offense set forth in G.S. 14-27.32 may apply.

Charging Language:**I. Teacher, administrator, student teacher, safety officer, or coach** **G.S. 14-202.4(a)**

... unlawfully, willfully, and feloniously did take indecent liberties with (*name student*). At the time of this offense, the defendant was a (*choose one*: teacher; school administrator; student teacher; school safety officer; coach) at (*name school*) and the victim was a student at this same school.

II. Other school personnel, at least four years older than victim **G.S. 14-202.4(a)**

... unlawfully, willfully, and feloniously did take indecent liberties with (*name student*). At the time of this offense, the defendant was school personnel, namely, (*describe position at school*), at (*name school*) and the victim was a student at this same school. At the time of this offense, the defendant was at least four years older than the victim.

III. Other school personnel, less than four years older than victim **G.S. 14-202.4(b)**

... unlawfully, willfully, and feloniously did take indecent liberties with (*name student*). At the time of this offense, the defendant was school personnel, namely, (*describe position at school*), at (*name school*) and the victim was a student at this same school. At the time of this offense, the defendant was less than four years older than the victim.

Notes about Charging Language:

- “Indecent liberties” is defined in G.S. 14-202.4(d)(1). It does not include vaginal intercourse or a sexual act—see G.S. 14-27.32 for an offense that includes these sex acts.
- It is not necessary to describe the act that constitutes the indecent liberty. *Cf. State v. Youngs*, 141 N.C. App. 220 (2000).
- “School personnel” is defined in G.S. 14-202.4(d)(3).
- “School safety officer” is defined in G.S. 14-202.4(d)(3a).
- “Student” is defined in G.S. 14-202.4(d)(4).
- “School” is defined in G.S. 14-202.4(d)(2) and “same school” is defined in G.S. 14-202.4(d)(1a).
- At least offenses I and II also include the taking of indecent liberties by school personnel with a student after the employee and student are no longer present together at the same school, provided the student is still a student in a school system. If that is the case, the charging language must be modified accordingly.
- G.S. 14-202.4(c) provides that consent is not a defense to this offense.
- G.S. 14-202.4(a) states in part that, “[a] person is not guilty of taking indecent liberties with a student if the person is lawfully married to the student.” Whether this limitation applies to offense III, which is defined in G.S. 14-202.4(b), is not clear.

Sample Charge:

I. Teacher, administrator, student teacher, safety officer, or coach **G.S. 14-202.4(a)**
... unlawfully, willfully, and feloniously did take indecent liberties with Phyllis Smith. At the time of this offense, the defendant was a teacher at South Park High School, Park Ridge, N.C., and the victim was a student at this same school.

AOC Forms for This Offense:

None.

Punishment:

Offenses I, II, and III are all Class I felonies.

Introductory Comment:

A minor suspected of soliciting as a prostitute is immune from prosecution under this section and instead shall be taken into custody as an undisciplined juvenile. G.S. 14-205.1(b).

Charging Language:**I. Solicitation of prostitution**

... unlawfully and willfully did solicit another, (*name person solicited, if known*), for the purpose of prostitution.

II. Solicitation of minor for prostitution

... unlawfully, willfully, and feloniously did solicit a minor, (*name person solicited, if known*), for the purpose of prostitution. The defendant was 18 years of age or older at the time of the solicitation.

III. Solicitation of mentally disabled person for prostitution

... unlawfully, willfully, and feloniously did solicit a person who was (*choose one or both: severely; profoundly*) mentally disabled, (*name person solicited, if known*), for the purpose of prostitution.

Notes about Charging Language:

- Offense I is a felony if it is the defendant's second or subsequent offense. In such a case, substitute "unlawfully, willfully, and feloniously" for "unlawfully and willfully" and allege the defendant's prior conviction in conformity with G.S. 15A-928.
- For offense II, this form calls for the name of the minor who was solicited. The Court of Appeals of North Carolina has approved of the use of the victim's initials in at least one sexual assault case. *State v. McKoy*, 196 N.C. App. 650 (2009) (use of initials provided adequate notice to the defendant where the defendant admitted that he knew the victim and did not claim that the use of initials made it difficult to prepare his defense). It is unclear whether it would be permissible to use initials to identify the minor in offense II.
- For offense III, it is probably not necessary to describe the nature of the mental disability. *Cf. State v. Collins*, 221 N.C. App. 604 (2012) (holding, in the context of assault on a handicapped person, that it is not necessary to describe the nature of the handicap in the charging document). It is also probably not improper to include that information if desired, though some individuals may not want public court records to contain detailed descriptions of their disabilities.

Sample Charges:**I. Solicitation of prostitution**

... unlawfully and willfully did solicit another, Tracy Sensebaugh, for the purpose of prostitution.

II. Solicitation of minor for prostitution

... unlawfully, willfully, and feloniously did solicit a minor, LaKisha Lewis, for the purpose of prostitution. The defendant was 18 years of age or older at the time of the solicitation.

III. Solicitation of mentally disabled person for prostitution

. . . unlawfully, willfully, and feloniously did solicit a person who was severely mentally disabled, Ann Clark, for the purpose of prostitution.

AOC Forms for This Offense:

None.

Punishment:

Offense I is a Class 1 misdemeanor for a first offense and a Class H felony for a second or subsequent offense. Offense II is a Class G felony. Offense III is a Class E felony. A defendant convicted of any of these offenses is ineligible for a prayer for judgment continued (PJC). G.S. 14-205.1(a).

Introductory Comment:

In two rulings, one in 2015 and the other in 2016, a federal judge determined that certain aspects of G.S. 14-208.18 were unconstitutional. During the 2016 legislative session, the General Assembly amended G.S. 14-208.18 in response to these rulings. The amendments are effective September 1, 2016, for offenses committed on or after that date. However, the legislation amending the statute provides that the amendments “shall be repealed” if the federal court’s rulings are “stayed or overturned.” S.L. 2016-102, § 2. At the time of this writing, the federal court’s rulings have been affirmed by a panel of the Fourth Circuit Court of Appeals. *Doe v. Cooper*, 842 F.3d 833 (4th Cir. 2016). Because further review by the Fourth Circuit or by the United States Supreme Court is still possible, this form presents two versions of the charging language, one under the amended version of G.S. 14-208.18 and one under the original version that will again become effective if the existing decisions are reversed.

Charging Language:**I. Charging language under the new version of G.S. 14-208.18 adopted during the 2016 legislative session**

... unlawfully, willfully, and feloniously was, as a person required to register under Article 27A of Chapter 14 of the General Statutes, knowingly present at the following location:

(choose one)

- (1) on the premises of *(name or describe place)*, a place intended primarily for the *(choose one or more: use; care; supervision)* of minors. The defendant was required to register as a result of having previously committed *(choose one or more: [name prior offense])*, an offense in Article 7B of Chapter 14 of the General Statutes; *[name prior offense]*, a *[choose one: federal offense; offense committed in another state]* that is substantially similar to an offense in Article 7B of Chapter 14 of the General Statutes; *[name prior offense]*, an offense where the victim of the offense was under the age of 18 years at the time of the offense).
- (2) within 300 feet of *(name or describe location)*, a location intended primarily for the *(choose one or more: use; care; supervision)* of minors that is located on *(name or describe premises)*, premises that are not intended primarily for the use, care, or supervision of minors. The defendant was required to register as a result of having previously committed *(choose one or more: [name prior offense])*, an offense in Article 7B of Chapter 14 of the General Statutes, and a finding was made on or about *[date]* in *[name court]* that the defendant *[choose one: presents; may present]* a danger to minors under the age of 18; *[name prior offense]*, a *[choose one: federal offense; offense committed in another state]* that is substantially similar to an offense in Article 7B of Chapter 14 of the General Statutes and a finding was made on or about *[date]* in *[name court]* that the defendant *[choose one: presents; may present]* a danger to minors under the age of 18; *[name prior offense]*, an offense where the victim of the offense was under the age of 18 years at the time of the offense).

(3) at (*name or describe place*), a place where minors frequently congregate, when minors were present. The defendant was required to register as a result of having previously committed (*choose one or more: [name prior offense]*, an offense in Article 7B of Chapter 14 of the General Statutes; [*name prior offense*], a [*choose one: federal offense; offense committed in another state*] that is substantially similar to an offense in Article 7B of Chapter 14 of the General Statutes; [*name prior offense*], an offense where the victim of the offense was under the age of 18 years at the time of the offense).

(4) on the (*choose one*)

- a. State Fairgrounds during the period of time that the State Fair was being conducted.
- b. Western North Carolina Agricultural Center grounds during the period of time that the Mountain State Fair was being conducted.
- c. (*name or describe place*), a fairgrounds, during the period of time that an agricultural fair was being conducted.

The defendant was required to register as a result of having previously committed (*choose one or more: [name prior offense]*, an offense in Article 7B of Chapter 14 of the General Statutes; [*name prior offense*], a [*choose one: federal offense; offense committed in another state*] that is substantially similar to an offense in Article 7B of Chapter 14 of the General Statutes; [*name prior offense*], an offense where the victim of the offense was under the age of 18 years at the time of the offense).

II. Charging language under the previous version of G.S. 14-208.18, which would become effective again if the federal court's rulings were stayed or reversed

... unlawfully, willfully, and feloniously was, as a person required by Article 27A of Chapter 14 of the General Statutes to register as a result of having committed (*choose one or more: [name prior offense]*, an offense in Article 7B of Chapter 14 of the General Statutes; [*name prior offense*], a [*choose one: federal offense; offense committed in another state*] that is substantially similar to an offense in Article 7B of Chapter 14 of the General Statutes; [*name prior offense*] an offense where the victim of the offense was under the age of 16 years at the time of the offense), knowingly present at the following location:

(*choose one*)

- (1) on the premises of (*name or describe place*), a place intended primarily for the (*choose one or more: use; care; supervision*) of minors.

- (2) within 300 feet of (*name or describe location*), a location intended primarily for the (*choose one or more: use; care; supervision*) of minors that is located on (*name or describe premises*), premises that are not intended primarily for the use, care, or supervision of minors.
- (3) (*name or describe place*), a place where minors gather for regularly scheduled (*choose one or more: educational; recreational; social*) programs.

Notes about Charging Language:

- This offense does not apply to a parent or guardian of a minor in need of emergency medical care who takes the child to an appropriate location for treatment, G.S. 14-208.18(b); to a parent or guardian of a minor who is on school property for certain purposes and under certain conditions, G.S. 14-208.18(d); to voters to the extent described in G.S. 14-208.18(e); to public school students if permitted to attend public school under G.S. 14-208.18(f); or to juveniles receiving medical or mental health treatment to the extent set forth in G.S. 14-208.18(g).
- The charging document should describe the place or location in a way that makes clear the connection between the place or location and children. For example, alleging that the defendant was *at the playground* at a specific park would be better than alleging only that the defendant was at the park, as it may be unclear whether a park is intended primarily for the use of minors. *Cf. State v. Daniels*, 224 N.C. App. 608 (2012) (holding the statute unconstitutional as applied to a defendant charged with being “kind of close to the parking lot area” of a park that contained youth sports fields, because a reasonable person would not be able to know whether being in that location would violate the statute).

Sample Charge:**II. Charging language under the previous version of G.S. 14-208.18, which would become effective again if the federal court’s rulings were stayed or reversed**

... unlawfully, willfully, and feloniously was, as a person required by Article 27A of Chapter 14 of the General Statutes to register as a result of having committed second-degree rape, an offense in Article 7B of Chapter 14 of the General Statutes, knowingly present at the following location: on the premises of Jumping Beans Trampoline Center, a place intended primarily for the use of minors.

AOC Forms for This Offense:

None.

Punishment:

Class H felony.

Introductory Comment:

In the 2015 legislative session, the General Assembly added subsection (b) to this statute, which provides in part that “[n]o magistrate recusing in accordance with G.S. 51-5.5 may be charged under this section for recusal to perform marriages.” At this writing, the constitutionality of G.S. 51-5.5 is the subject of litigation. It is unclear what effect, if any, a ruling that G.S. 51-5.5 is unconstitutional would have on G.S. 14-230(b).

Charging Language:

. . . unlawfully and willfully did, as a (*name public office*), (*choose one or more: omit; neglect; refuse*) to discharge a duty of (*choose one: his; her*) office, (*describe duty and how defendant omitted, neglected, or refused to discharge it*), and did thereby cause injury to the public.

Notes about Charging Language:

- Public officials covered by this statute include a “clerk of any court of record, sheriff, magistrate, school board member, county commissioner, county surveyor, coroner, treasurer, or official of any of the State institutions, or of any county, city or town.” G.S. 14-230(a).
- The state is not legally required to specify the duty that the defendant failed to discharge. *State v. Birdsong*, 325 N.C. 418 (1989); *State v. Rhome*, 120 N.C. App. 278 (1995). This form nonetheless asks for that information.
- Although the statute does not refer to injury to the public as an element of the offense, this form includes an allegation regarding injury to the public because case law indicates that such an injury may be an element. *State v. Birdsong*, 325 N.C. 418 (1989) (citing *State v. Anderson*, 196 N.C. 771 (1929)); *State v. Rhome*, 120 N.C. App. 278 (1995).

Sample Charge:

. . . unlawfully and willfully did, as a magistrate of Essex County, omit, neglect, and refuse to discharge a duty of her office by collecting cash bond monies for secured bonds and willfully and corruptly failing to turn over those monies, as required, to the Clerk of Superior Court of Essex County, and did thereby cause injury to the public.

AOC Forms for This Offense:

None.

Punishment:

Class 1 misdemeanor. G.S. 14-230 also provides that as part of the punishment for this offense, the sentencing judge may remove the official from office.

Introductory Comment:

G.S. 14-258.1 addresses providing contraband to inmates. This form covers the felony offenses set forth in subsection (a), concerning the provision of weapons, ammunition, drugs, and poison; subsection (d), concerning the provision of mobile phones and wireless devices; and subsection (g), concerning the possession of mobile phones and wireless devices. It does not cover the misdemeanor offenses set forth in statute concerning alcohol, tobacco, and vapor products.

Charging Language:**I. Providing weapon, ammunition, drugs, or poison**

G.S. 14-258.1(a)

... unlawfully, willfully, and feloniously did (*choose one*: give; sell)

(*choose one or more*)

- (1) a deadly weapon, a (*describe weapon*),
- (2) ammunition for a firearm, (*describe ammunition*),
- (3) a controlled substance, (*name substance*), which is included in Schedule (*state schedule number*) of the Controlled Substances Act,
- (4) a poisonous substance, (*name substance*),

to (*name the inmate the contraband was given or sold to*), who was at the time an inmate of (*name the institution*), which is a (*choose one*: penal institution; local confinement facility; mental institution; charitable institution).

II. Providing mobile phone or wireless device

G.S. 14-258.1(d)

... unlawfully, willfully, and feloniously did knowingly (*choose one*: give; sell) a (*choose one or more*: mobile telephone; wireless communications device; component of a mobile telephone; component of a wireless communications device) to (*name inmate/juvenile*), who was at the time (*choose one*)

- (1) an inmate in the custody of the Division of Adult Correction of the Department of Public Safety,
- (2) a delinquent juvenile in the custody of the Division of Juvenile Justice of the Department of Public Safety
- (3) an inmate in the custody of (*name facility*), a local confinement facility.

III. Possession of mobile phone or wireless device

G.S. 14-258.1(g)

... unlawfully, willfully, and feloniously did possess a (*choose one or more*: mobile telephone; wireless communications device; component of a mobile telephone; component of a wireless communications device) while an inmate in the custody of (*choose one*: the Division of Adult Correction of the Department of Public Safety; (*name facility*), a local confinement facility).

Notes about Charging Language:

- As to offense I, the statute also prohibits conspiring with, aiding, abetting, soliciting, advising, or encouraging others to provide the contraband. If the defendant did not actually give or sell the contraband himself or herself, choose the proper wording from the statute.
- As to offense I, in alternative (1), if the weapon is considered a deadly weapon only because of the way it was used, describe how it was used to show that it was a deadly weapon.
- As to offense I, alternative (3) does not apply to controlled substances provided “under the general supervision of a practitioner,” and alternative (4) does not apply to a poisonous substance prescribed by a physician.
- Offense II applies when the juvenile in question is in a “youth development center or detention facility as defined in G.S. 7B-1501, and shall include transportation of a juvenile to or from confinement.” G.S. 14-258.1(d).
- As to offense II, when the person to whom the phone or device was given or sold is a juvenile, it may be appropriate to identify that person by his or her initials rather than by his or her full name. Using the person’s full name might run afoul of the juvenile confidentiality provisions in G.S. 7B-3100(b).
- As to offense II, the statute also makes it unlawful to knowingly give or sell a covered item to a person who is not an inmate for delivery to an inmate. In an appropriate case, modify the charging language accordingly.

Sample Charge:

I. Providing weapon, ammunition, drugs, or poison **G.S. 14-258.1(a)**
... unlawfully, willfully, and feloniously did give a controlled substance, marijuana, which is included in Schedule VI of the Controlled Substances Act, to Hansen G. Willingham, who was at the time an inmate of the Mecklenburg County Jail, a local confinement facility.

AOC Forms for This Offense:

None.

Punishment:

Offenses I, II, and III are Class H felonies. As to offense I, if the defendant is an officer or employee of any state institution or local confinement facility, the defendant must be dismissed from his or her employment upon conviction.

Introductory Comment:

None.

Charging Language:**I. Misdemeanor possession of a weapon other than firearm** **G.S. 14-269.2(d)**

. . . unlawfully and willfully did possess a (*choose one and describe item*: BB gun; stun gun; air rifle; air pistol; bowie knife [*see other weapons listed in statute*]) on educational property, (*describe educational property*).

II. Misdemeanor possession of a firearm **G.S. 14-269.2(f)**

. . . unlawfully and willfully did knowingly possess a (*choose one and describe item*: gun; rifle; pistol; firearm) on educational property, (*describe educational property*).

III. Felony possession of a firearm **G.S. 14-269.2(b)**

. . . unlawfully, willfully, and feloniously did knowingly possess a (*choose one and describe item*: gun; rifle; pistol; firearm) on educational property, (*describe educational property*).

IV. Felony discharging a firearm **G.S. 14-269.2(b)**

. . . unlawfully, willfully, and feloniously did discharge a firearm, (*describe firearm*), on educational property, (*describe educational property*).

V. Felony involving a bomb or other powerful explosive **G.S. 14-269.2(b1)**

. . . unlawfully, willfully, and feloniously did possess a (*choose one and describe item*: dynamite cartridge; bomb; grenade; mine; powerful explosive as defined in G.S. 14-284.1) on educational property, (*describe educational property*).

Notes about Charging Language:

- The statute applies whether the weapon in question is possessed openly or concealed.
- It ordinarily is a Class I felony to possess a firearm on educational property. G.S. 14-269.2(b). However, it is a Class 1 misdemeanor rather than a Class I felony for certain persons to possess a firearm on educational property when the firearm is unloaded and locked in a container or rack inside a vehicle. G.S. 14-269.2(f). When the misdemeanor provision applies, use option II, above. When the felony provision applies, use option III.
- Fireworks are not explosives for purposes of offense V but are, rather, among the weapons listed in the statute to which offense I would apply.
- “Educational property” is defined in G.S. 14-269.2(a)(1). Note that the offenses in options II, III, and V, above, may be committed at a curricular or extracurricular activity sponsored by a school, even if the activity is not located on educational property. In such a case, modify the charging language accordingly.

- When describing the educational property, it generally is sufficient to provide the name of the educational institution to which the property pertains. Listing the street address of the property is not required. *See State v. Huckelba*, ___ N.C. App. ___, 771 S.E.2d 809 (“We agree with the State that the physical address for High Point University listed in the indictment is surplusage because the indictment already described the ‘educational property’ element as ‘High Point University.’”), *rev’d in part on other grounds*, 368 N.C. 569 (2015).
- G.S. 14-269.2(c), (c1), and (e) set out specific provisions for people who aid and abet a minor under 18 to commit felony and misdemeanor violations.
- The following people, among others, are exempted from the statute while they are discharging official duties: law enforcement officers, firefighters, emergency service personnel, private police employed by educational institutions, and military personnel. The statute also exempts weapons used solely for educational or school-sanctioned ceremonial purposes. G.S. 14-269.2(g), (h).

Sample Charges:

I. Misdemeanor possession of a weapon other than firearm G.S. 14-269.2(d)

... unlawfully and willfully did possess a BB gun, manufactured by Air Express, Inc., on educational property, Smith High School, Smithville, N.C.

II. Misdemeanor possession of a firearm G.S. 14-269.2(f)

... unlawfully and willfully did possess a rifle, a .308 caliber bolt-action manufactured by Remington, on educational property, Rashkis Elementary School, Chapel Hill, N.C.

III. Felony possession of a firearm G.S. 14-269.2(b)

... unlawfully, willfully, and feloniously did possess a gun, a Smith and Wesson .45 caliber, on educational property, Jamestown High School, Jamestown, N.C.

IV. Felony discharging a firearm G.S. 14-269.2(b)

... unlawfully, willfully, and feloniously did discharge a firearm, a Smith and Wesson .45 caliber, on educational property, Jamestown High School, Jamestown, N.C.

V. Felony involving a bomb or other powerful explosive G.S. 14-269.2(b1)

... unlawfully, willfully, and feloniously did possess a bomb on educational property, Livingston High School, Livingston, N.C.

AOC Forms for This Offense:

AOC-J-316 (Juvenile Petition)

Punishment:

Offenses I and II are Class 1 misdemeanors. Offense III is a Class I felony. Offense IV is a Class F felony. Offense V is a Class G felony.

Introductory Comment:

The General Assembly enacted this offense during the 2016 legislative session. It is effective December 1, 2016, for offenses committed on or after that date.

Charging Language:**I. Unlawful transfer of custody** **G.S. 14-321.2(a)(1)**

. . . unlawfully and willfully did, as a parent of (*name child*), a minor child, (*choose one*: effect; attempt to effect) an unlawful transfer of custody of the child to (*name person to whom custody was to be transferred, if known, or state*: an unknown person).

II. Accepting unlawful transfer of custody **G.S. 14-321.2(a)(2)**

. . . unlawfully and willfully did (*choose one*: accept; attempt to accept) custody pursuant to an unlawful transfer of custody of (*name child*), a minor child.

III. Soliciting the unlawful transfer of custody **G.S. 14-321.2(a)(3)**

. . . unlawfully and willfully did (*choose one or more*: advertise; recruit; solicit) the unlawful transfer of custody of a minor child (*name child, if known*).

Notes about Charging Language:

- The statute defines several pertinent terms, including “unlawful transfer of custody”, which means “the transfer of physical custody of a minor child, in willful violation of applicable adoption law or by grossly negligent omission in the care of the child, by the child’s parent, without a court order or other authorization under law, to a person other than a relative or another individual having a substantial relationship with the child.” G.S. 14-321.2(b)(4). The statute also lists a number of actions that do not fall within the concept of unlawful transfer of custody.
- For offense II, there is an exception for “a person to receive custody of a child from a parent who intends to effect an unlawful transfer of custody of that parent’s minor child if the person promptly notifies law enforcement or child protective services . . . and promptly makes the child available to law enforcement or child protective services.” G.S. 14-321.2(a)(2).
- This form calls for the name of the minor. The Court of Appeals of North Carolina has approved of the use of the victim’s initials in at least one sexual assault case. *State v. McKoy*, 196 N.C. App. 650 (2009) (use of initials provided adequate notice to the defendant where the defendant admitted that he knew the victim and did not claim that the use of initials made it difficult to prepare his defense). It is unclear whether it would be permissible to use initials to identify the minor in the offenses set forth in this form.
- Offense III may also be committed by aiding, abetting, conspiring with, or seeking the assistance of another to advertise, recruit, or solicit an unlawful transfer. In an appropriate case, alter the charging language to so reflect.

- Offenses I, II, and III are felonies if the conduct in question results in serious physical injury to the child. In such a case, replace “unlawfully and willfully” with “unlawfully, willfully, and feloniously” and add a sentence at the end of the charging language as follows: “This resulted in serious physical injury to the child.” Serious physical injury is not defined in the statute. The nature of the injury likely need not be alleged, *cf. State v. Gregory*, 223 N.C. 415 (1943), but it is not improper to include that information if desired.

Sample Charge:**I. Unlawful transfer of custody**

G.S. 14-321.2(a)(1)

. . . unlawfully and willfully did, as a parent of Taylor Spinks, a minor child, attempt to effect an unlawful transfer of custody of Taylor Spinks to Alexis Sevier.

AOC Forms for This Offense:

None.

Punishment:

Offenses I, II, and III are Class A1 misdemeanors unless the child suffered serious physical injury as a result of the defendant’s conduct. In that case, the offenses are Class G felonies.

Introductory Comment:

G.S. 14-415.21 creates several different offenses involving violation of the concealed handgun permit laws. Three are set out below.

Charging Language:**I. Carrying a concealed handgun without a permit in possession** **G.S. 14-415.21(a)**

... unlawfully and willfully did, having been issued a valid concealed handgun permit by the Sheriff of (*name county*), carry a concealed handgun, (*describe handgun*), without the permit in the defendant's possession.

II. Failure to disclose permit and weapon to officer **G.S. 14-415.21(a)**

... unlawfully and willfully did, having been issued a valid concealed handgun permit by the Sheriff of (*name county*), carry a concealed handgun, (*describe handgun*), without disclosing to (*name officer*), a law enforcement officer of (*name department*) who had (*choose one or both: approached; addressed*) the defendant, that the defendant held a valid concealed handgun permit and was carrying a concealed handgun, in violation of G.S. 14-415.11.

III. Other violations of concealed handgun statutes **G.S. 14-415.21(b)**

... unlawfully and willfully did violate the provisions of Article 54B of Chapter 14 of the North Carolina General Statutes by (*describe violation*).

Notes about Charging Language:

- The statute also creates offenses for permit holders who carry concealed handguns on private property where they are prohibited (G.S. 14-415.21(a), an infraction with a fine of up to \$500) and for permit holders who consume alcohol while carrying a firearm (G.S. 14-415.21(a1), a Class 1 misdemeanor). Modify the charging language as appropriate in such a case.

Sample Charge:**I. Carrying a concealed handgun without a permit in possession** **G.S. 14-415.21(a)**

... unlawfully and willfully did, having been issued a valid concealed handgun permit by the Sheriff of Warren County, carry a concealed handgun, a .22 caliber pistol, without the permit in the defendant's possession.

AOC Forms for This Offense:

None.

Punishment:

Offenses I and II are infractions punished under G.S. 14-3.1. However, the statute provides that in lieu of paying the penalty for the infraction, the defendant may surrender his or her permit. Offense III is a Class 2 misdemeanor.

Introductory Comment:

None.

Charging Language:

. . . unlawfully and willfully did operate a vessel on the waters of North Carolina, namely, (*name or describe body of water*),

(*choose one or both*)

- (1) while under the influence of an impairing substance.
- (2) after having consumed sufficient alcohol such that the defendant had, at a relevant time after the boating, an alcohol concentration of 0.08 or more.

Notes about Charging Language:

- The charging language above is somewhat different from the charging language for driving while impaired because G.S. 20-138.1(c) specifically provides that certain language be used in charging driving while impaired. G.S. Chapter 75A has no analogous provision.
- “Impairing substance” is defined in G.S. 20-4.01(14a). Under G.S. 75A-10(b2), that definition is applicable to boating cases as well.

Sample Charge:

. . . unlawfully and willfully did operate a vessel on the waters of North Carolina, namely, Jordan Lake, while under the influence of an impairing substance.

AOC Forms for This Offense:

None.

Punishment:

Class 2 misdemeanor. The statute provides that the defendant shall be fined at least \$250 “in addition to any other penalty imposed.” G.S. 75A-10(b4).

Introductory Comment:

These offenses were enacted by the General Assembly in 2016 and are effective for offenses committed on or after December 1, 2016. These offenses parallel the impaired driving death or serious injury offenses in G.S. 20-141.4.

Charging Language:**I. Felony death by impaired boating****G.S. 75A-10.3(a)**

. . . unlawfully, willfully, and feloniously did unintentionally cause the death of (*name person*) while engaged in the offense of impaired boating under G.S. 75A-10(b1), in that the defendant unlawfully and willfully did operate a vessel on the waters of North Carolina, namely, (*name and/or describe body of water*), while (*choose one or both: under the influence of an impairing substance; after having consumed sufficient alcohol such that the defendant had, at a relevant time after the boating, an alcohol concentration of 0.08 or more*). The impaired boating offense was the proximate cause of the death.

II. Felony serious injury by impaired boating**G.S. 75A-10.3(b)**

. . . unlawfully, willfully, and feloniously did unintentionally cause serious injury to (*name person*) while engaged in the offense of impaired boating under G.S. 75A-10(b1), in that the defendant unlawfully and willfully did operate a vessel on the waters of North Carolina, namely, (*name and/or describe body of water*), while (*choose one or both: under the influence of an impairing substance; after having consumed sufficient alcohol such that the defendant had, at a relevant time after the boating, an alcohol concentration of 0.08 or more*). The impaired boating offense was the proximate cause of the serious injury.

III. Aggravated felony serious injury by impaired boating**G.S. 75A-10.3(c)*****Charging Language for an Arrest Warrant or Magistrate's Order***

. . . unlawfully, willfully, and feloniously did unintentionally cause serious injury to (*name person*) while engaged in the offense of impaired boating under G.S. 75A-10(b1), in that the defendant unlawfully and willfully did operate a vessel on the waters of North Carolina, namely, (*name and/or describe body of water*), while (*choose one or both: under the influence of an impairing substance; after having consumed sufficient alcohol such that the defendant had, at a relevant time after the boating, an alcohol concentration of 0.08 or more*). The impaired boating offense was the proximate cause of the serious injury. The defendant has a previous conviction involving impaired boating within seven years of this offense, having been convicted of (*name offense*) on (*name date of conviction*) in (*name court in which conviction occurred*).

Charging Language for an Indictment or Information***First Count***

. . . unlawfully, willfully, and feloniously did unintentionally cause serious injury to *(name person)* while engaged in the offense of impaired boating under G.S. 75A-10(b1), in that the defendant unlawfully and willfully did operate a vessel on the waters of North Carolina, namely, *(name and/or describe body of water)*, while *(choose one or both: under the influence of an impairing substance; after having consumed sufficient alcohol such that the defendant had, at a relevant time after the boating, an alcohol concentration of 0.08 or more)*. The impaired boating offense was the proximate cause of the serious injury.

Second Count

. . . ~~unlawfully, willfully, and feloniously did~~ The defendant has a previous conviction of impaired boating under G.S. 75A-10(b1) within seven years of this offense, having been convicted of *(name offense)* on *(name date of conviction)* in *(name court in which conviction occurred)*.

IV. Aggravated felony death by impaired boating**G.S. 75A-10.3(d)*****Charging Language for an Arrest Warrant or Magistrate's Order***

. . . unlawfully, willfully, and feloniously did unintentionally cause the death of *(name person)* while engaged in the offense of impaired boating under G.S. 75A-10(b1), in that the defendant unlawfully and willfully did operate a vessel on the waters of North Carolina, namely, *(name and/or describe body of water)*, while *(choose one or both: under the influence of an impairing substance; after having consumed sufficient alcohol such that the defendant had, at a relevant time after the boating, an alcohol concentration of 0.08 or more)*. The impaired boating offense was the proximate cause of the death. The defendant has a previous conviction involving impaired boating within seven years of this offense, having been convicted of *(name offense)* on *(name date of conviction)* in *(name court in which conviction occurred)*.

Charging Language for an Indictment or Information***First Count***

. . . unlawfully, willfully, and feloniously did unintentionally cause the death of *(name person)* while engaged in the offense of impaired boating under G.S. 75A-10(b1), in that the defendant unlawfully and willfully did operate a vessel on the waters of North Carolina, namely, *(name and/or describe body of water)*, while *(choose one or both: under the influence of an impairing substance; after having consumed sufficient alcohol such that the defendant had, at a relevant time after the boating, an alcohol concentration of 0.08 or more)*. The impaired boating offense was the proximate cause of the death.

Second Count

... ~~unlawfully, willfully, and feloniously did~~ The defendant has a previous conviction of impaired boating under G.S. 75A-10(b1) within seven years of this offense, having been convicted of (*name offense*) on (*name date of conviction*) in (*name court in which conviction occurred*).

V. Repeat felony death by impaired boating

G.S. 75A-10.3(e)

Charge felony death by impaired boating or aggravated felony death by impaired boating as indicated above, and then add the following to the arrest warrant or magistrate's order or as an additional count in the indictment or information.

The defendant has a previous conviction under

(choose one):

- (1) G.S. 75A-10.3(a),
- (2) G.S. 75A-10.3(d),
- (3) G.S. 14-17, and the basis of the conviction was the unintentional death of another person while engaged in the offense of impaired boating under G.S. 75A-10(b1),
- (4) G.S. 14-18, and the basis of the conviction was the unintentional death of another person while engaged in the offense of impaired boating under G.S. 75A-10(b1),

having been convicted of (*name offense*) on (*name date of conviction*) in (*name court in which conviction occurred*).

Notes about Charging Language:

- The charging language above is somewhat different from the charging language for the parallel impaired driving offenses because G.S. 20-138.1(c) specifically provides that certain language be used in charging driving while impaired. G.S. Chapter 75A has no analogous provision.
- "Impairing substance" is defined in G.S. 20-4.01(14a). Under G.S. 75A-10(b2), that definition is applicable to boating cases as well.
- When charging offenses II and III, the nature of the serious injury likely need not be alleged. *Cf. State v. Gregory*, 223 N.C. 415 (1943). It is not improper to include that information if desired.
- The statute provides: "No person who has been placed in jeopardy upon a charge of death by impaired boating may be prosecuted for the offense of manslaughter arising out of the same death; and no person who has been placed in jeopardy upon a charge of manslaughter may be prosecuted for death by impaired boating arising out of the same death." G.S. 75A-10.3(g).

Sample Charge:

I. Felony death by impaired boating

G.S. 75A-10.3(a)

. . . unlawfully, willfully, and feloniously did unintentionally cause the death of Riley McKirahan while engaged in the offense of impaired boating under G.S. 75A-10(b1), in that the defendant unlawfully and willfully did operate a vessel on the waters of North Carolina, namely, Lake Norman, while under the influence of an impairing substance. The impaired boating offense was the proximate cause of the death.

AOC Forms for This Offense:

None.

Punishment:

Offense I is a Class D felony; offense II is a Class F felony; offense III is a Class E felony; offense IV is a Class D felony and requires sentencing in the aggravated range; offense V is a Class B2 felony.

Introductory Comment:

For a list of immediate precursor chemicals, see G.S. 90-95(d2). Note that the precursor chemicals designated under G.S. 90-88 are incorporated into the list by reference.

Charging Language:**I. Possession with intent to manufacture immediate precursor chemical (not involving methamphetamine) G.S. 90-95(d1)(1)**

... unlawfully, willfully, and feloniously did possess an immediate precursor chemical, (*name chemical*), with the intent to manufacture a controlled substance, (*name controlled substance*).

II. Possession with intent to manufacture immediate precursor chemical (involving methamphetamine) G.S. 90-95(d1)(2)

... unlawfully, willfully, and feloniously did possess an immediate precursor chemical, (*name chemical*), with the intent to manufacture methamphetamine, a controlled substance.

III. Possession or distribution of immediate precursor chemical (not involving methamphetamine) G.S. 90-95(d1)(1)

... unlawfully, willfully, and feloniously did (*choose one or both: possess; distribute*) an immediate precursor chemical, (*name chemical*), (*choose one or both: knowing; having reasonable cause to believe*) that the immediate precursor chemical would be used to manufacture a controlled substance, (*name controlled substance*).

IV. Possession or distribution of immediate precursor chemical (involving methamphetamine) G.S. 90-95(d1)(2)

... unlawfully, willfully, and feloniously did (*choose one or both: possess; distribute*) an immediate precursor chemical, (*name chemical*), (*choose one or both: knowing; having reasonable cause to believe*) that the immediate precursor chemical would be used to manufacture methamphetamine, a controlled substance.

V. Possession of pseudoephedrine by person with prior methamphetamine conviction G.S. 90-95(d1)(1)c.

... unlawfully, willfully, and feloniously did possess (*name or describe product*), a pseudoephedrine product. The defendant had a prior conviction for (*choose one or more: possession of methamphetamine; possession with intent to sell or deliver methamphetamine; selling or delivering methamphetamine; trafficking methamphetamine; possession of an immediate precursor chemical; manufacture of methamphetamine*). Specifically, the defendant was convicted of (*name offense*) on or about (*date*) in (*court*).

Notes about Charging Language:

- The prior conviction discussed in offense V may be from “any jurisdiction within the United States.” G.S. 90-95(d1)(1)c. Provide appropriate detail about the court in which the conviction took place, such as the county and—at least if it is not North Carolina—the state the court serves.
- It is not clear whether offense V may be charged when a defendant’s only pertinent prior conviction is for possession of an immediate precursor chemical, and the chemical is used in the manufacture of a controlled substance other than methamphetamine.

Sample Charges:**I. Possession with intent to manufacture immediate precursor chemical (not involving methamphetamine) G.S. 90-95(d1)(1)**

... unlawfully, willfully, and feloniously did possess an immediate precursor chemical, sulfuric acid, with the intent to manufacture a controlled substance, heroin.

II. Possession with intent to manufacture immediate precursor chemical (involving methamphetamine) G.S. 90-95(d1)(2)

... unlawfully, willfully, and feloniously did possess an immediate precursor chemical, pseudoephedrine, with the intent to manufacture methamphetamine, a controlled substance.

III. Possession or distribution of immediate precursor chemical (not involving methamphetamine) G.S. 90-95(d1)(1)

... unlawfully, willfully, and feloniously did possess an immediate precursor chemical, sulfuric acid, knowing and having reasonable cause to believe that the immediate precursor chemical will be used to manufacture a controlled substance, heroin.

IV. Possession or distribution of immediate precursor chemical (involving methamphetamine) G.S. 90-95(d1)(2)

... unlawfully, willfully, and feloniously did possess an immediate precursor chemical, pseudoephedrine, knowing and having reasonable cause to believe that the immediate precursor chemical will be used to manufacture methamphetamine, a controlled substance.

V. Possession of pseudoephedrine by person with prior methamphetamine conviction G.S. 90-95(d1)(1)c.

... unlawfully, willfully, and feloniously did possess SUDAFED 12 Hour, a pseudoephedrine product. The defendant had a prior conviction for possession of methamphetamine. Specifically, the defendant was convicted of possession of methamphetamine on or about November 9, 2014, in Catawba County Superior Court.

AOC Forms for This Offense:

None.

Punishment:

Offenses I, III, and V are Class H felonies. Offenses II and IV are Class F felonies.

Introductory Comment:

In the 2014 legislative session, the General Assembly amended this statute to exclude marijuana-related paraphernalia. At the same time, it enacted G.S. 90-113.22A to address marijuana-related paraphernalia, but at a lower punishment level. In the 2015 legislative session, the General Assembly expanded the nonprosecution provision in G.S. 90-113.22(c). The provision now states: “If there is a hypodermic needle or other sharp object on [a] person, on the person’s premises, or in the person’s vehicle and the person alerts [an] officer of that fact prior to [a] search, the person shall not be charged with or prosecuted for possession of drug paraphernalia for the needle or sharp object, or for residual amounts of a controlled substance contained in the needle or sharp object.”

Charging Language:

. . . unlawfully and willfully did knowingly possess with intent to use drug paraphernalia, (*describe paraphernalia*), to (*choose one or more*: plant; propagate; cultivate; grow; harvest; manufacture; compound; convert; produce; process; prepare; test; analyze; package; repack; store; contain; conceal; introduce into the body) a controlled substance other than marijuana which it would be unlawful to possess.

Notes about Charging Language:

- “Drug paraphernalia” is defined in G.S. 90-113.21.
- G.S. 90-113.22(a) makes it unlawful to “use, or to possess with intent to use” the specified paraphernalia. Because it is improbable, if not impossible, to use paraphernalia without possessing it with the intent to use it, this form simplifies the charging language by alleging only possession with intent to use. If, in a particular case, there is some reason to include an allegation of use in addition to or instead of the allegation of possession with intent to use, modify the charging language accordingly.

Sample Charge:

. . . unlawfully and willfully did knowingly possess with intent to use drug paraphernalia, two miniature cocaine spoons, to introduce into the body a controlled substance other than marijuana which it would be unlawful to possess.

AOC Forms for This Offense:

AOC-J-332 (Juvenile Petition)

Punishment:

Class 1 misdemeanor.