

B1 FELONY, SENTENCE ENHANCEMENT, PRIOR B1 FELONY CONVICTIONS.  
G.S. 15A-1340.16B.<sup>1</sup>

NOTE WELL: Use when (1) the defendant has one or more prior convictions of a Class B1 felony, (2) the offense was committed against a victim who was 13 years of age or younger at the time of the offense, and (3) the court finds no mitigating factors in accordance with G.S. 15A-1340.16(e).<sup>2</sup> If the sentencing court finds mitigating factors, the court shall sentence the defendant in accordance with G.S. 15A-1340.17, which provides punishment limits for each class of offense and prior record level.<sup>3</sup>

See G.S. 15A-928 for provisions regarding indictment, bifurcated trial, verdict and judgment.

Having found the defendant guilty of (name felony), you must determine whether the defendant shall be sentenced to life imprisonment without parole, which requires the

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<sup>1</sup>G.S. 15A-1340.16B provides that, notwithstanding the sentencing provisions of G.S. 15A-1340.17, a defendant convicted of a class B1 felony shall be sentenced to life imprisonment without parole if: (1) the offense was committed against a victim who was 13 years of age or younger at the time of the offense; (2) the defendant has one or more prior convictions of a Class B1 felony; and (3) the court finds that there are no mitigating factors in accordance with G.S. 15A-1340.16(e).

<sup>2</sup>G.S. 15A-1340.16B(f).

<sup>3</sup>G.S. 15A-1340.16B(b).

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State to prove beyond a reasonable doubt the following  
three things<sup>4</sup>:

First, that there are no mitigating factors.

*NOTE WELL: Although the prosecution bears the burden of persuasion, the defendant first bears the burden of producing evidence of mitigating factors. If the defendant comes forward with any evidence of a mitigating factor he is entitled to instructions to the jury. The defendant is aided in this burden by the principle that the court must consider all evidence, both the state's and defendant's, in the light most favorable to the defendant.*

A mitigating factor is a fact or group of facts that do not constitute justification or excuse for a crime or reduce it to a lesser degree of that crime, but may be considered as extenuating or reducing the moral culpability of the crime or making it less deserving of extreme

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<sup>4</sup>U.S. Constitution requires that any fact, other than fact of prior conviction, that increases punishment for an offense beyond statutory maximum for that offense must be submitted to the jury and proved and found by them beyond a reasonable doubt. *Apprendi v. United States*, 530 U.S. 466, 120 S. Ct. 2348, 147 L.Ed. 435 (2000).

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punishment than life in prison without parole. Our law identifies several possible mitigating factors.

The State bears the burden of proving beyond a reasonable doubt that no mitigating factors exist.

(\_\_\_\_) Possible mitigating factors are listed.

NOTE WELL: *Submit to the jury the mitigating factors supported by the evidence. G.S. 15A-1340.16(e).*

- (01) The defendant committed the offense under duress, coercion, threat, or compulsion that was insufficient to constitute a defense but significantly reduced the defendant's culpability.
- (02) The defendant was a passive participant or played a minor role in the commission of the offense.
- (03) The defendant was suffering from a mental or physical condition that was insufficient to constitute a defense but significantly reduced the defendant's culpability for the offense.
- (04) The defendant's age, immaturity, or limited mental capacity at the time of commission of the offense significantly reduced the defendant's culpability for the offense.
- (05) The defendant has made substantial or full restitution to the victim.
- (06) The victim was more than 16 years of age and was a voluntary participant in the defendant's conduct or consented to it.
- (07) The defendant aided in the apprehension of another felon or testified truthfully on behalf of the prosecution in another prosecution of a felony.
- (08) The defendant acted under strong provocation, or the relationship between the defendant and the victim was otherwise extenuating.
- (09) The defendant could not reasonably foresee that the defendant's conduct would cause or threaten serious bodily

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harm or fear, or the defendant exercised caution to avoid such consequences.

- (10) The defendant reasonably believed that the defendant's conduct was legal.
- (11) Prior to arrest or at an early stage of the criminal process, the defendant voluntarily acknowledged wrongdoing in connection with the offense to a law enforcement officer.
- (12) The defendant has been a person of good character or has had a good reputation in the community in which the defendant lives.
- (13) The defendant is a minor and has reliable supervision available.
- (14) The defendant has been honorably discharged from the United States armed services.
- (15) The defendant has accepted responsibility for the defendant's criminal conduct.
- (16) The defendant has entered and is currently involved in or has successfully completed a drug treatment program or an alcohol treatment program subsequent to arrest and prior to trial.
- (17) The defendant supports the defendant's family.
- (18) The defendant has a support system in the community.
- (19) The defendant has a positive employment history or is gainfully employed.
- (20) The defendant has a good treatment prognosis, and a workable treatment plan is available.
- (21) Any other mitigating factor reasonably related to the purposes of sentences.

Second, that the victim was 13 years of age or younger at the time of the offense.

And Third, that the defendant has one or more prior convictions of a Class B1 felony. (*Name prior conviction(s)*) is a Class B1 felony. For you to find that the defendant has been previously convicted of a Class B1 felony, the State must prove beyond a reasonable doubt that on (*name date*) the defendant [was convicted of] [pled

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guilty to] the felony of (*name felony*), that was committed  
on (*name date*) in violation of the law of the [State of  
North Carolina] [State of (*name other state*)] [United  
States]. (*Name felony*) is a Class B1 felony.

If you find from the evidence beyond a reasonable  
doubt that no mitigating factors exist, answering issue one  
"yes," and you further find beyond a reasonable doubt that  
the victim was 13 years or younger at the time of the  
offense and the defendant has a prior conviction of a Class  
B1 felony, answering issues two and three "yes," then you  
would answer issue four "yes" requiring the court to  
sentence the defendant to life imprisonment without parole.  
If you do not so find or have a reasonable doubt as to one  
or more of these things; and therefore, have answered  
issues one, two, or three "no," then you would also answer  
issue four "no," finding the defendant not subject to a  
sentence of life imprisonment without parole.

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STATE OF NORTH CAROLINA  
COUNTY OF \_\_\_\_\_

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
FILE NO.

STATE OF NORTH CAROLINA  
vs.

Verdict

\_\_\_\_\_  
Defendant

Issue One

Do you find from the evidence beyond a reasonable doubt  
that there are no mitigating factors?

Answer: \_\_\_\_\_

Before you answer issue one, consider each of the following  
mitigating factors. If you find beyond a reasonable doubt that a  
mitigating factor does not exist, write "no" in the space after  
that mitigating factor. If you do not so find write "yes" in the  
space.

If in one or more of the following spaces you write "yes,"  
then you would write "no" in the space after issue one. If in  
all of the following spaces you write "no," then you would write  
"yes" in the space after issue one.

NOTE WELL: *Modify verdict sheet and submit to the  
jury only the mitigating factors supported by the evidence.  
G.S. 15A-1340.16(e).*

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(01) The defendant committed the offense under duress, coercion, threat, or compulsion that was insufficient to constitute a defense but significantly reduced the defendant's culpability.

Answer: \_\_\_\_\_

(02) The defendant was a passive participant or played a minor role in the commission of the offense.

Answer: \_\_\_\_\_

(03) The defendant was suffering from a mental or physical condition that was insufficient to constitute a defense but significantly reduced the defendant's culpability for the offense.

Answer: \_\_\_\_\_

(04) The defendant's age, immaturity, or limited mental capacity at the time of commission of the offense significantly reduced the defendant's culpability for the offense.

Answer: \_\_\_\_\_

(05) The defendant has made substantial or full restitution to the victim.

Answer: \_\_\_\_\_

(06) The victim was more than 16 years of age and was a voluntary participant in the defendant's conduct or consented to it.

Answer: \_\_\_\_\_

(07) The defendant aided in the apprehension of another felon or testified truthfully on behalf of the prosecution in another prosecution of a felony.

Answer: \_\_\_\_\_

(08) The defendant acted under strong provocation, or the relationship between the defendant and the victim was otherwise extenuating.

Answer: \_\_\_\_\_

(09) The defendant could not reasonably foresee that the defendant's conduct would cause or threaten serious bodily harm or fear, or the defendant exercised caution to avoid such consequences.

Answer: \_\_\_\_\_

(10) The defendant reasonably believed that the defendant's conduct was legal.

Answer: \_\_\_\_\_

(11) Prior to arrest or at an early stage of the criminal process, the defendant voluntarily acknowledged wrongdoing in connection with the offense to a law enforcement officer.

Answer: \_\_\_\_\_

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- (12) The defendant has been a person of good character or has had a good reputation in the community in which the defendant lives.  
Answer: \_\_\_\_\_
- (13) The defendant is a minor and has reliable supervision available.  
Answer: \_\_\_\_\_
- (14) The defendant has been honorably discharged from the united States armed services.  
Answer: \_\_\_\_\_
- (15) The defendant has accepted responsibility for the defendant's criminal conduct.  
Answer: \_\_\_\_\_
- (16) The defendant has entered and is currently involved in or has successfully completed a drug treatment program or an alcohol treatment program subsequent to arrest and prior to trial.  
Answer: \_\_\_\_\_
- (17) The defendant supports t he defendant's family.  
Answer: \_\_\_\_\_
- (18) The defendant has a support system in the community.  
Answer: \_\_\_\_\_
- (19) The defendant has a positive employment history or is gainfully employed.  
Answer: \_\_\_\_\_
- (20) The defendant has a good treatment prognosis, and a workable treatment plan is available.  
Answer: \_\_\_\_\_
- (21) Any other mitigating factor reasonably related to the purposes of sentences.  
Answer: \_\_\_\_\_



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IF YOU ANSWERED ISSUE ONE "NO," THEN YOU WOULD SKIP ISSUES TWO AND THREE AND ANSWER ISSUE FOUR "NO," FINDING THE DEFENDANT NOT SUBJECT TO A SENTENCE OF LIFE IMPRISONMENT WITHOUT PAROLE. IF YOU ANSWERED ISSUE ONE "YES," THEN PROCEED TO ANSWER ISSUE TWO.

Issue Two

Do you find from the evidence beyond a reasonable doubt that the victim was 13 years of age or younger at the time of the offense?

Answer: \_\_\_ Yes or \_\_\_ No

IF YOU ANSWERED ISSUE TWO "NO," THEN SKIP ISSUE THREE AND ANSWER ISSUE FOUR "NO," FINDING THE DEFENDANT NOT SUBJECT TO A SENTENCE OF LIFE IMPRISONMENT WITHOUT PAROLE. IF YOU ANSWERED ISSUE TWO "YES," THEN PROCEED TO ANSWER ISSUE THREE.

Issue Three

Do you find from the evidence beyond a reasonable doubt that the defendant has one or more prior convictions of a Class B1 felony?

Answer: \_\_\_ Yes or \_\_\_ No

IF YOU ANSWER ISSUE THREE "NO," THEN YOU WOULD ANSWER ISSUE FOUR "NO," FINDING THE DEFENDANT NOT SUBJECT TO A SENTENCE OF LIFE IMPRISONMENT WITHOUT PAROLE. IF YOU ANSWERED ISSUE THREE "YES," AND HAVE ANSWERED ISSUES ONE AND TWO "YES" THEN YOU WOULD ANSWER ISSUE FOUR "YES," FINDING THE DEFENDANT SUBJECT TO A SENTENCE OF LIFE IMPRISONMENT WITHOUT PAROLE.

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Issue Four

We, the jury, unanimously find the defendant subject to a sentence of life imprisonment without parole.

Answer: \_\_\_ Yes or \_\_\_ No

This the \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Foreperson