

204.25 AGGRAVATING FACTOR INSTRUCTION. (This document includes a sample verdict sheet. See Instruction References.)

NOTE WELL: Other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed presumptive range must be submitted to a jury and proved beyond a reasonable doubt. See State v. Allen, 359 N.C. 425, 615 S.E. 2d 256 (1 July 2005), modifying and affirming, 166 N.C. App. 139, 601 S.E.2d 299 (N.C. Ct. App. 2004). Consistent with Allen and the United States Supreme Court's decision in Blakely v. Washington, 124 S. Ct. 2531 (2004), N.C. Gen. Stat. § 15A-1340.16 was substantially amended in June 2005, effective for offenses committed on or after 30 June 2005. Pursuant to section 15A-1340.16(a1), a defendant may admit to the existence of an aggravating factor and the factor so admitted shall be treated as though it were found by the jury. See N.C. Gen. Stat. § 15A-1022.1 for the procedure to be used in accepting admissions of the existence of aggravating factors in felonies. See also N.C. Gen. Stat. § 15A-1340.16(a2); N.C. Gen. Stat. § 15A-1026 (dealing with making and preserving a record of plea). If a defendant does not admit the existence of an aggravating factor under section 15A-1340.16(d), then only a jury may determine if the aggravating factor is present in an offense. Pursuant to section 15A-1230.16(a1), the trial judge may determine, when in the interests of justice, a separate sentencing proceeding is required. For procedural guidance, see N.C. Gen. Stat. § 15A-928.

Evidence necessary to prove an element of the offense shall not be used to prove any factor in aggravation, and the same item of evidence shall not be used to prove more than one factor in aggravation. In addition, evidence necessary to establish that an enhanced sentence is required under N.C. Gen. Stat. § 15A-1340.16A may not be used to prove any factor in aggravation.

In the event you find (have found) the defendant guilty of (*name offense*), you must then consider and answer the following question:

Do you find from the evidence beyond a reasonable doubt the existence of the following aggravating factor(s)?

NOTE WELL: Submit to the jury the aggravating factors supported by the evidence. N.C. Gen. Stat. § 15A-1340.16(d). Some of these aggravating factors are self-explanatory and require no further

definition. If a factor requires additional explanation, relevant pattern jury instructions, such as the capital sentencing instruction, may be consulted.

- 1) The defendant [induced others to participate in the commission of the offense] [occupied a position of leadership or dominance of other participants].
- 2) The defendant joined with more than one other person in committing the offense and was not charged with committing a conspiracy.
- 3) The offense was committed [for the benefit of] [at the direction of] any criminal gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, and the defendant was not charged with committing a conspiracy.
- 4) The offense was committed for the purpose of [avoiding or preventing a lawful arrest] [effecting an escape from custody].
- 5) The defendant was hired or paid to commit the offense.
- 6) The offense was committed to disrupt or hinder the lawful exercise of [any governmental function] [the enforcement of laws].
- 7) The offense [was committed against] [proximately caused serious injury to] a present or former [law enforcement officer] [employee of the Department of Correction] [jailer] [fireman] [emergency medical technician] [ambulance attendant] [social worker] [justice] [judge] [clerk of court] [assistant clerk of court] [deputy clerk of court] [magistrate] [prosecutor] [juror] [witness against the defendant], while engaged in the performance of that person's official duties or because of the exercise of that person's official duties.

NOTE WELL: The language including social worker in this statute is only applicable to offense committed on or after December 1, 2005.

- 8) The offense was especially heinous, atrocious, or cruel.
- 9) The defendant knowingly created a great risk of death to more than one person by means of a [weapon] [device] which would normally be hazardous to the lives of more than one person.
- 10) The defendant was a [firefighter] [rescue squad worker], and the offense is directly related to service as a [firefighter] [rescue squad worker].
- 11) The defendant held public office at the time of the offense and the offense related to the conduct of the office.
- 12) The defendant [was armed with] [used] a deadly weapon at the time of the crime.
- 13) The victim was [very young] [very old] [mentally infirm] [physically infirm] [handicapped].
- 14) The defendant committed the offense while on pretrial release on another charge.
- 15) The defendant involved a person under the age of 16 in the commission of the crime.
- 16) That defendant committed the offense and [knew] [reasonably believed] [should have known] that a person under the age of 18 who was not involved in the commission of the offense was in a position to [see] [hear] the offense.

NOTE WELL: Aggravating factor (16) is only applicable to offenses committed on or after December 1, 2015.

- 17) The offense involved [an [attempted] [actual] taking of property of great monetary value] [damage causing great monetary loss] [an unusually large quantity of contraband].
- 18) The defendant took advantage of a position of trust or confidence (which includes a domestic relationship) to commit the offense.

NOTE WELL: The language "including a domestic relationship" in the statute is only applicable to offenses committed on or after December 1, 2004.

- 19) The offense involved the sale or delivery of a controlled substance to a minor.
- 20) The offense was the manufacture of methamphetamine and was committed where a person under the age of 18 [lives] [was present] [was endangered by exposure to the drug, its ingredients, byproducts, or waste].

NOTE WELL: Aggravating factor (20), dealing with methamphetamine, is only applicable to offenses committed on or after December 1, 2004.

- 21) The offense was committed against a victim because of the victim's [race] [color] [religion] [nationality] [country of origin].
- 22) The defendant does not support the defendant's family.
- 23) The defendant has previously been adjudicated delinquent for an offense that would be a Class A, B1, B2, C, D, or E felony if committed by an adult.
- 24) The serious injury inflicted upon the victim is permanent and debilitating.

NOTE WELL: If alleged in the indictment and supported by the evidence, N.C. Gen. Stat. § 15A-1340.16(d)(20) provides for the presentation of any other aggravating factor reasonably related to the purposes of sentencing. See N.C. Gen. Stat. § 15A-924(a)(7), providing that a criminal pleading must contain a plain and concise

factual statement indicating the factor or factors the State intends to use under section N.C. Gen. Stat. § 15A-1340.16(d)(20).

(You are instructed that the same evidence cannot be used as a basis for finding more than one aggravating factor.)

If you find from the evidence beyond a reasonable doubt that (insert aggravating factor(s) supported by the evidence), then you will write yes in the space after the(se) aggravating factor(s) on the verdict sheet. If you have found the existence of (one or more of) the aggravating factor(s) and have written “yes” in the space after the(se) aggravating factor(s), then you will also answer Issue One “yes” and write “yes” in the space after Issue One on the verdict sheet. If you do not so find, then you will leave blank the space(s) after the aggravating factor(s).

STATE OF NORTH CAROLINA IN THE GENERAL COURT OF JUSTICE

COUNTY OF _____ SUPERIOR COURT DIVISION

FILE NO.

STATE OF NORTH CAROLINA

vs. Verdict Sheet

Defendant

Issue One:

Do you find from the evidence beyond a reasonable doubt the existence of the following aggravating factor(s)?

Answer: _____

Before you answer the question above, consider (each of) the following aggravating factor(s). If you find beyond a reasonable doubt that a (the) factor exists, you would write "yes" in the space after that factor. If you write "yes" in (one or more of) the following space(s), then you would write "yes" in the space after the question above.

NOTE WELL: Modify verdict sheet and submit to the jury only the aggravating factor(s) supported by the evidence. N.C. Gen. Stat. § 15A-1340.16(d). Remove the Note Wells as appropriate before submitting to the jury.

- 1) The defendant [induced others to participate in the commission of the offense] [occupied a position of leadership or dominance of other participants].

Answer: _____

- 2) The defendant joined with more than one other person in committing the offense and was not charged with committing a conspiracy.

Answer: _____

- 3) The offense was committed [for the benefit of] [at the direction of] any criminal gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, and the defendant was not charged with committing a conspiracy.

Answer: _____

- 4) The offense was committed for the purpose of [avoiding or preventing a lawful arrest] [effecting an escape from custody].

Answer: _____

- 5) The defendant was hired or paid to commit the offense.

Answer: _____

- 6) The offense was committed to disrupt or hinder the lawful exercise of [any governmental function] [the enforcement of laws].

Answer: _____

- 7) The offense [was committed against] [proximately caused serious injury to] a present or former [law enforcement officer] [employee of the Department of Correction] [jailer] [fireman] [emergency medical technician] [ambulance attendant] [social worker] [justice or judge] [clerk of court] [assistant clerk of court] [deputy clerk of court] [magistrate] [prosecutor] [juror] [witness against the defendant], while engaged in the performance of that person's official duties or because of the exercise of that person's official duties.

Answer: _____

NOTE WELL: The language including social worker in this statute is only applicable to offenses committed on or after December 1, 2005.

- 8) The offense was especially heinous, atrocious, or cruel.
Answer: _____
- 9) The defendant knowingly created a great risk of death to more than one person by means of a [weapon] [device] which would normally be hazardous to the lives of more than one person.
Answer: _____
- 10) The defendant was a [firefighter] [rescue squad worker], and the offense is directly related to service as a [firefighter] [rescue squad worker].
Answer: _____
- 11) The defendant held public office at the time of the offense and the offense related to the conduct of the office.
Answer: _____
- 12) The defendant [was armed with] [used] a deadly weapon at the time of the crime.
Answer: _____
- 13) The victim was [very young] [very old] [mentally infirm] [physically infirm] [handicapped].
Answer: _____
- 14) The defendant committed the offense while on pretrial release on another charge.
Answer: _____
- 15) The defendant involved a person under the age of 16 in the commission of the crime.
Answer: _____

16) That defendant committed the offense and [knew] [reasonably believed] [should have known] that a person under the age of 18 who was not involved in the commission of the offense was in a position to [see] [hear] the offense.

Answer: _____

NOTE WELL: Aggravating factor (16), is only applicable to offenses committed on or after December 15, 2015.

17) The offense involved [an [attempted] [actual] taking of property of great monetary value] [damage causing great monetary loss] [an unusually large quantity of contraband].

Answer: _____

18) The defendant took advantage of a position of trust or confidence (which includes a domestic relationship) to commit the offense.

Answer: _____

NOTE WELL: The language "including a domestic relationship" in the statute is only applicable to offenses committed on or after December 1, 2004.

19) The offense involved the sale or delivery of a controlled substance to a minor.

Answer: _____

20) The offense was the manufacture of methamphetamine and was committed where a person under the age of 18 [lives] [was present] [was endangered by exposure to the drug, its ingredients, byproducts, or waste].

Answer: _____

NOTE WELL: Aggravating factor (20), dealing with methamphetamine, is only applicable to offenses committed on or after December 1, 2004.

21) The offense was committed against a victim because of the victim's [race] [color] [religion] [nationality] [country of origin].

Answer: _____

22) The defendant does not support the defendant's family.

Answer: _____

23) The serious injury inflicted upon the victim is permanent and debilitating.

Answer: _____

24) The defendant has previously been adjudicated delinquent for an offense that would be a Class A, B1, B2, C, D, or E felony if committed by an adult.

Answer: _____

25) The defendant engaged in (describe other aggravating factor alleged in the indictment and supported by the evidence reasonably related to the purpose of sentencing).

Answer: _____

This the ____ day of _____, _____.

Foreperson