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Sexual Assault Cases Based on Conduct before 2001

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Introduction

Allegations of sexual assault sometimes are made based on conduct that occurred many years ago. Cases based on such allegations present difficulties for everyone involved. Some of the problems are evidentiary, as important physical evidence may no longer exist and witnesses may have died, moved, or forgotten relevant facts. Other difficulties arise because judges and lawyers handling such cases are often unfamiliar with the law in effect at the time of the alleged assault. Prosecutors may not know what offenses existed at the time and so may have difficulty drafting indictments. Judges may be unfamiliar with the relevant sentencing provisions and procedures. Defense lawyers may be uncertain about parole eligibility and "good time" credits and so may have difficulty advising their clients accurately.

This bulletin provides a resource for judges and lawyers involved in sexual assault cases based on conduct before 2001. (We assume that statutes and materials relevant to cases based on conduct after that time are widely available.) One important part of the bulletin is a chart, listing the most commonly charged offenses in sexual assault cases and showing how those charges evolved over the years between 1950 and 2000. The chart, which is Appendix A to this bulletin, shows when each offense was created and when each offense was amended, and provides basic information about the changes made by each amendment. The full text of each statute, at creation and after each amendment, is provided in Appendix B. The bulletin also describes the major sentencing regimes (Fair Sentencing and pre–Fair Sentencing) that existed before Structured Sentencing, as older offenses will often be sentenced under these regimes. Finally, the bulletin addresses the issue of sex offender registration and monitoring as it concerns older cases.

Neither the chart nor this bulletin purports to be all-inclusive. The chart does not include a number of crimes that are antiquated (such as the now-repealed charge of obtaining carnal knowledge of virtuous girls between twelve and sixteen years old) or rarely charged (such as the various incest offenses). It also does not include a number of crimes that cover conduct that is typically less serious, such as indecent exposure, as those offenses are rarely prosecuted years after the fact. Nor does it include crimes that are not specific to sexual activity, such as various assault offenses. Finally, while

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the discussion of legal principles and sentencing regimes is accurate, it is not exhaustive. Judges or lawyers with questions about prior law are invited to contact the authors for further assistance.[1]

Legal Principles

As a general rule, conduct is measured against the law that was in effect at the time the conduct took place. So, for example, a defendant who fondled a minor in 1970 may be charged with a sex crime only if the defendant's conduct fell within the scope of the indecent liberties statute in effect at that time, and if it did, the defendant may only be charged with a misdemeanor offense, because indecent liberties was then a misdemeanor, as shown in the chart provided in Appendix A. (As a consequence, the defendant would likely be able to raise the statute of limitations as a defense.)[2] The fact that taking indecent liberties is a felony today is immaterial, for two reasons. First, most of the subsequent amendments to the indecent liberties statute, like most amendments to criminal statutes generally, contain language stating that the amendments are effective prospectively, i.e., that the amendments apply only to offenses committed on or after the date of the amendments.[3] Second, even absent such language, the Ex Post Facto Clause would prohibit retroactive increases in the punishment associated with an offense. Thus, the punishment provisions in effect at the time of the crime form a ceiling.

Although a defendant may never be punished more harshly than the law allowed at the time of the crime, there are certain circumstances under which a defendant may be entitled to benefit from changes in the law that reduce or eliminate the punishment associated with the defendant's conduct. For example, if a defendant commits a crime, but the crime is repealed before the defendant's conviction becomes final, the defendant's conviction cannot stand unless the legislature, in repealing the crime, clearly expressed its intent that the crime remain in effect for offenses committed prior to the date of repeal.[4]

When a crime has not been repealed altogether, but has been reduced in severity, it is necessary to look closely at the legislation that downgraded the offense. For example, before 1965, crime against nature was a felony punishable by up to 60 years in prison. However, the statute was amended in 1965, making it a felony punishable by no more than 10 years in prison.[5] The legislature provided that the amendment "shall be in full force and effect from and after its

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2. North Carolina has no statute of limitations for felony offenses. However, it has long had a two-year statute of limitations for misdemeanors. G.S. 15-1. In the sex crimes context, this is significant principally in cases involving indecent liberties, because that offense was a misdemeanor (for a first offense) until 1975.

3. 1979 N.C. Sess. Laws 866, 871 [ch. 760, ss. 5–6] (making indecent liberties a Class H felony and providing that the amendment "shall apply only to offenses committed on or after" the effective date of the amendment).

4. State v. Burton, 114 N.C. App. 610, 614, 442 S.E.2d 384, 387 (1994) (upholding a conviction obtained under a repealed rape statute, based in part on the legislature's inclusion of the following language in the bill repealing the earlier statute: "Nothing herein shall be construed to render lawful acts committed prior to the effective date of this act and unlawful at the time the said acts occurred."); State v. Currie, 19 N.C. App. 241, 244, 198 S.E.2d 491, 493 (1973) ("An act or conduct which is made criminal at the time of its commission but which is not criminal by repeal or amendment of the statute at the time of appeal upon conviction, is an act or conduct which will not support an appellate court's affirmance of the lower court conviction.").

5. 1965 N.C. Sess. Laws 676, 676–77 [ch. 621, ss. 4, 8] (amending the offense to "a felony," without further specification of punishment); G.S. 14-2 (1965) (making 10 years the maximum punishment for felonies absent specific authorization to the contrary).

ratification." Because the legislature did not expressly preserve the prior version of the statute for offenses committed before the amendment, a defendant prosecuted after the 1965 amendment for a crime committed prior to the amendment would have a good argument that he or she could be sentenced to no more than 10 years in prison. Conversely, the most recent amendment to the crime against nature statute, which renders it a Class I felony punishable by a maximum of 12 to 15 months in prison, *does* expressly preserve the prior version of the statute for offenses committed before the amendment.[6] Thus, a court likely would find this amendment inapplicable to a defendant who committed the crime prior to the date the amendment took effect.

For offenses committed a long time ago and close to the date of an amendment to a criminal statute or a change in sentencing regime, it sometimes will be unclear whether the offenses took place before or after the change in law. Under such circumstances, the more lenient law should be applied unless the State can prove that the offense took place during the period in which the more punitive law was in effect.[7]

Sentencing

Convictions for older crimes should be sentenced under the sentencing regime in existence at the time of the offense.[8] Unfortunately, it is not always easy to find the superseded statutes to determine exactly what those laws said. They are not available freely online and are only searchable on Westlaw back to 1986 and on LEXIS-NEXIS to 1991. The sections that follow aim to provide enough detail to guide judges and lawyers through the sentencing of a typical older case. Additional research may be necessary in some cases.

A Very Brief History of North Carolina Sentencing Law

North Carolina has had three primary sentencing regimes over the past half-century. Prior to 1981, the state had an indeterminate sentencing law in which judges had wide discretion to determine sentence length and the Parole Commission could, for the most part, release inmates at any point after they served one-fourth of their sentences.[9] In response to criticism that such a system led to sentencing disparities for similarly situated defendants and caused prison overcrowding, the General Assembly passed the Fair Sentencing Act (FSA), which became effective in 1981. The FSA was North Carolina's first attempt to adopt a determinate sentencing system, with presumptive prison terms for enumerated classes of felonies and a decreased role for the Parole Commission. In spite of the FSA, however, the prison population grew rapidly during the 1980s, and a series of lawsuits nearly resulted in a federal takeover of the state prison system. The legislature responded with a range of sentence reduction credits and emergency parole measures that resulted in some inmates serving as little as one-eighth of their sentences. Judges, in turn, began to impose longer

6. 1993 N.C. Sess. Laws 2786, 2823–24 [ch. 539, ss. 1191, 1359] (reducing it to a Class I felony and providing that the amendment "applies to offenses committed on or after" the effective date of the amendment, while "[p]rosecutions for offenses committed before the effective date . . . are not abated or affected by [the amendment], and those statutes that would be applicable but for this act remain applicable to those prosecutions").

7. State v. Poston, 162 N.C. App. 642, 651, 591 S.E.2d 898, 904 (2004) (holding that "the State has failed to meet its burden of demonstrating that the more severe sentencing statute is applicable" and so remanding for resentencing under the more lenient sentencing regime).

8. *Burton*, 114 N.C. App. at 615, 442 S.E.2d at 387.

9. G.S. 148-58 (1964).

Table 1. Sentencing Regime Effective Dates

Pre–Fair Sentencing	Offenses committed prior to July 1, 1981
Fair Sentencing Act	Offenses committed on or after July 1, 1981, and prior to October 1, 1994
Structured Sentencing	Offenses committed on or after October 1, 1994

sentences. The General Assembly eventually ended this negative feedback loop with the enactment of Structured Sentencing in 1994. Because readers are likely familiar with Structured Sentencing, the main features of which have changed little since 1994, the discussion below focuses on the two earlier sentencing regimes. The effective dates for each sentencing regime are summarized in table 1.

Pre–Fair Sentencing Law

Generally speaking, for offenses committed prior to July 1, 1981, there were no separate "sentencing" statutes. Instead, the acceptable punishment for a criminal offense was set out in the same statutory section as the substantive offense itself—if it was set out at all. In some cases the guidance in a particular statute was specific (for example, the pre-1965 crime against nature statute allowed punishment of "not less than five nor more than sixty years.")[10] At other times, there was virtually no sentencing guidance in the statute (for example, the post-1965 crime against nature statute allowed a fine or imprisonment "in the discretion of the court.")[11]

Though the terms "minimum" and "maximum" sentence were part of the pre-FSA lexicon, those terms did not mean the same thing then that they mean today under Structured Sentencing. A judge was free to set a sentence length without specifying a minimum, but, as discussed in greater detail below, doing so would render the defendant eligible for parole immediately.

The pre-FSA punishment ranges for the sexual assaults covered in this bulletin can be found in Appendix A. For offenses not covered in the chart, one should look to the substantive statute in existence at the time of the offense. If a substantive statute was silent as to the punishment for a specific offense, the general rule in G.S. 14-2 for punishment of felonies applied. For offenses committed before July 1, 1967, that section required a fine or imprisonment not exceeding two years for felonies and a fine or imprisonment of not less than four months nor more than ten years for "infamous" felonies.[12] For offenses committed on or after July 1, 1967, G.S. 14-2 required a fine or imprisonment for a term not exceeding ten years, or both, in the discretion of the court.[13]

A judge had broad discretion to suspend a sentence under the pre–Fair Sentencing law. Under G.S. 15-197, effective until its repeal on July 1, 1978, a judge could suspend a sentence and place a defendant on probation for any offense except one punishable by death or life imprisonment. For offenses committed on or after July 1, 1978, probation was governed by G.S. 15A-1341, which

10. G.S. 14-177 (1961).

11. G.S. 14-177 (1971).

12. An offense is infamous if it is an act of depravity, involves moral turpitude, and reveals a heart devoid of social duty and a mind fatally bent on mischief. *See* State v. Glidden, 317 N.C. 557, 559–60, 346 S.E.2d 470, 471–72 (1986) (listing crimes deemed infamous in prior cases); *see also* Charles E. Knox, Note, *Criminal Law—Infamous Offenses—Attempted Burglary Punishable as a Felony*, 28 N.C. L. Rev. 103 (1949).

13. 1967 N.C. Sess. Laws 1890 [ch. 1251, s. 2].

authorized probation for defendants convicted of any noncapital criminal offense not punishable by a minimum term of life imprisonment. Under that rule, probation would be authorized for all the sex crimes covered in the chart except first-degree rape and first-degree sex offense. Back as far as 1937, either by judge-made rule or statute, the maximum period of probation was five years, just as it is today.[14]

Special probation (a split sentence) was first statutorily authorized by the enactment of G.S. 15-197.1, effective for offenses committed on or after July 1, 1975.[15] For offenses carrying a maximum prison sentence of not more than 10 years, G.S. 15-197.1 allowed a split sentence of the lesser of 30 days or one-fourth the minimum active suspended sentence for defendants who had not served an active sentence within the previous five years. That section was repealed in 1977 but replaced by G.S. 15A-1351, effective July 1, 1978. Like G.S. 15-197.1, G.S. 15A-1351 allowed a split sentence for offenses with a maximum penalty not exceeding 10 years, under guidelines essentially the same as those in effect for special probation today.

Absent a substantive criminal statute to the contrary, a judge had inherent discretion to run sentences concurrent with or consecutive to one another under the pre-FSA law.[16] This discretion was memorialized in the General Statutes in 1977 with the enactment of G.S. 15A-1354, which also codified the rule that a judgment silent on the issue should run concurrently with any sentence imposed at the same time or already being served.

As a practical matter, a judge sentencing a defendant today for a pre–Fair Sentencing offense could use form AOC-CR-301 for an active sentence and AOC-CR-302 for a probationary sentence, with the caveat that some blanks on the form will be inapplicable in a pre-FSA case (for example, there will be no "Presumptive" term for a pre-FSA offense), and some options listed on the form might not be available in a particular case (for example, special probation was not statutorily authorized until the enactment of G.S. 15-197.1, as discussed above).

Fair Sentencing

The Fair Sentencing Act was first introduced in the General Assembly in 1977, but due to a series of revisions and postponing amendments,[17] it was ultimately made effective for offenses committed on or after July 1, 1981. It continues to apply to offenses that occurred after that date but before the law's repeal on October 1, 1994.

As finally enacted, the FSA established presumptive and maximum prison terms for most felonies, which were categorized into offense classes (A through J) based on seriousness. Table 2 shows the presumptive and maximum terms for felonies under the FSA.

Under the FSA, a judge sentenced an offender to a single, discrete term; no minimum term was imposed. No written findings were required if the judge imposed the presumptive sentence, and no findings were required in support of a judge's decision to suspend a sentence, impose consecutive terms for multiple offenses, or sentence the defendant as a "Committed Youthful Offender" (discussed below).

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14. G.S. 15-200 (1975); State v. Wilson, 216 N.C. 130, 4 S.E.2d 440 (1939).

15. 1975 N.C. Sess. Laws 336, 337 [ch. 360, s. 3].

16. *See, e.g.*, State v. Whaley, 263 N.C. 824, 824, 140 S.E.2d 305, 305 (1965) ("The Court had discretionary power to make the sentences run consecutively or concurrently.").

17. The act was originally enacted as Chapter 760 of the 1979 Session Laws, amended by Chapter 1316 of the 1979 Session Laws, Second Session, and further amended by Chapters 63, 179, and 662 of the 1981 Session Laws.

Table 2. Presumptive and Maximum Terms for Felonies under the FSA

Class	Presumptive (G.S. 15A-1340.4(f))	Maximum (G.S. 14-1.1)
A	First-degree murder only; punishable by death or life imprisonment as provided in Chapter 15A, Article 100 (Capital Punishment)	
B	First-degree rape and first-degree sexual offense only; mandatory life imprisonment	
C	15 years	50 years or life, or a fine, or both
D	12 years	40 years, or a fine, or both
E	9 years	30 years, or a fine, or both
F	6 years	20 years, or a fine, or both
G	4 ½ years	15 years, or a fine, or both
H	3 years	10 years, or a fine, or both
I	2 years	5 years, or a fine, or both
J	1 year	3 years, or a fine, or both

A judge could deviate from the presumptive ranges set out below, either up to the statutory maximum or down to as little as zero, if he or she made a written finding that aggravating factors outweighed mitigating factors, or vice versa. The law *required* the judge to consider a list of statutory aggravating and mitigating factors set out in G.S. 15A-1340.4(a)(1) and (2).[18] It *allowed* the judge to consider any additional factor (whether or not set out in the statute) reasonably related to the purposes of sentencing, defined by G.S. 15A-1340.3 as (1) imposing a punishment commensurate with the injury caused by the offense, (2) protecting the public, (3) rehabilitating offenders, and (4) generally deterring crime. As under Structured Sentencing, evidence necessary to prove an element of the conviction offense could not be used to prove a factor in aggravation under the FSA, and the same evidence could not be used to prove more than one factor in aggravation.[19]

As written, the FSA required these aggravating and mitigating factors to be proved to the judge by the preponderance of the evidence. For a case sentenced today, however, the Sixth Amendment rule set out by the United States Supreme Court in *Blakely v. Washington*[20] would apply: other than a prior conviction, any fact increasing the penalty beyond the prescribed presumptive range must be admitted by the defendant or proved to a jury beyond a reasonable doubt.[21] Procedurally, aggravating factors in FSA cases can be handled similarly to so-called *Blakely* gap cases; that is, Structured Sentencing cases sentenced after the Court decided *Blakely* in 2004 but based on offenses committed before June 30, 2005, when the General Assembly's "*Blakely* Bill" became effective.[22] Aggravating factors in those cases need not be alleged in the indictment,[23] but they must be submitted to the jury.[24]

18. G.S. 15A-1340.4(a)(1) and (2) are reproduced in Appendix B.
19. G.S. 15A-1340.4(a)(1) (1983).
20. 542 U.S. 296 (2004).
21. *See also* State v. Allen, 359 N.C. 425, 615 S.E.2d 256 (2005).
22. 2005 N.C. Sess. Laws 253, 260 [ch. 145, s. 5].
23. State v. Caudle, 182 N.C. App. 171, 641 S.E.2d 351 (2007).
24. State v. Blackwell, 361 N.C. 41, 638 S.E.2d 452 (2006).

The FSA had two exceptions (one straightforward, the other more convoluted) to the requirement for judicial findings in support of a departure from the presumptive range. First, the judge could impose a term of imprisonment longer or shorter than the presumptive term if the sentence was pursuant to a plea agreement.[25] Second, for felonies committed on or after October 1, 1983, when two or more convictions were consolidated for judgment, a judge did not need to make findings regarding aggravating or mitigating factors if the prison term (1) did not exceed the total of the presumptive terms for each felony, (2) did not exceed the maximum term for the most serious felony, and (3) was not shorter than the presumptive term for the most serious felony.[26]

A defendant's record of prior convictions was not systematically built into a sentencing grid under the FSA as it is under Structured Sentencing. Rather, it was a statutory aggravating factor to have a prior conviction for a criminal offense punishable by more than 60 days' confinement but not including any offenses joinable with the crime or crimes for which the sentence was being imposed.[27] By definition, a person had a "prior conviction" under the FSA when he or she had "been adjudged guilty of or ha[d] entered a plea of guilty or no contest to a criminal charge, and judgment ha[d] been entered thereon, and the time for appeal ha[d] expired, or the conviction ha[d] been finally upheld on direct appeal."[28] That definition's requirement of *entry of judgment* would, unlike Structured Sentencing, exclude from a person's prior record a conviction for which prayer for judgment was continued.[29] Additionally, the aggravating factor describing prior convictions was limited to convictions in other states or jurisdictions that would have been a crime if committed in North Carolina—again, a subtle difference from Structured Sentencing, under which crimes from other states count for prior record points regardless of whether they are crimes in North Carolina.

Under the probation law that existed during the FSA period, a judge could suspend a sentence for any offense not punishable by a minimum term of life imprisonment or a "minimum term without benefit of probation."[30] The former provision would exclude probation for first-degree rape or first-degree sexual offense. The latter provision would not have affected any of the sex crimes covered in this bulletin; it excluded probation for a crime like armed robbery under G.S. 14-87, which at that time included a statutory provision requiring active prison service of at least the first seven years of a sentence.

The rule on consecutive and concurrent sentences under G.S. 15A-1354 (that the court had unfettered discretion to run sentences consecutively or concurrently) continued virtually undisturbed throughout the FSA period. An amendment in 1985 (effective for offenses committed on or after March 21, 1985) clarified that sentences for offenses *required* by law to run consecutively would do so, even if the judgment was silent on the issue. Prior to that clarification, the G.S. 15A-1354(a) provision that "[i]f not specified, sentences shall run concurrently" arguably overrode requirements for mandatory consecutive sentences in other statutes, such as armed robbery or sentences imposed under the habitual felon law, though most people did not interpret the law in that way at the time.[31] As with pre–Fair Sentencing cases, a judge could use form AOC-CR-301 or AOC-CR-302 for a FSA judgment.

25. G.S. 15A-1340.4(a) (1983).
26. *Id.*; 1983 N.C. Sess. Laws 382 [ch. 453, s. 1].
27. G.S. 15A-1340.4(a)(1)(o) (1983).
28. G.S. 15A-1340.2(4) (1983).
29. State v. Southern, 314 N.C. 110, 331 S.E.2d 688 (1985).
30. G.S. 15A-1341(a) (1983).
31. G.S. 14-97 (1985); G.S. 14-7.6 (1985).

Committed Youthful Offenders

Committed youthful offender (CYO) status was a sentencing option available to judges in various forms from the late 1940s until its repeal in 1994.[32] For the defendant, the chief benefits of CYO status were a maximum sentence cap of 20 years and eligibility for parole immediately upon entering prison.

A defendant who was less than 21 years of age at the time of his or her conviction for any offense, except one for which life imprisonment was mandatory,[33] could be designated as a CYO. If the judge decided not to confer CYO status on an eligible defendant, he or she was required to make a finding on the record that the offender would not benefit from CYO treatment—a so-called no benefit finding. Defendants who were at least 21 years of age but under 25 at the time of conviction of a nonviolent H, I, or J felony could also be sentenced as CYOs, though the judge did not have to make a no benefit finding if CYO status was not granted for offenders in that age category.[34]

CYO status is theoretically a sentencing option for offenses committed before October 1, 1994, but sentenced today. However, because age at the time of *conviction*, not at the time of *offense*, is the determinative factor for eligibility,[35] the chances of a defendant being eligible for CYO status for a crime being tried for the first time now (in 2009) are remote. To be under 25 now, when convicted for a crime that occurred before October 1, 1994, the defendant would have to have been about 10 years old at the time of the offense.

The more likely scenario in which CYO status might apply today is the resentencing of an older case after a post-conviction proceeding. If a defendant committed his or her offense before October 1, 1994, and was under 25 when convicted of an H, I, or J felony, or if the defendant was under 21 when convicted of an offense not requiring life imprisonment, CYO status should be considered upon resentencing. If a defendant is granted CYO status, his or her sentence should not exceed the maximum prescribed by law for the offense or 20 years, whichever is less, though the CYO statute did not prohibit the imposition of separate consecutive sentences that did not individually exceed 20 years.[36] If an otherwise eligible defendant who was under age 21 at the time of conviction is denied CYO status, the resentencing judge must support his or her decision with the requisite no benefit finding.

Administration of Sentences

Judges, lawyers, and defendants dealing with older cases should be aware that pre–Structured Sentencing sentences are served under a different set of rules for sentence reduction credits for good behavior, credits for prison labor, parole eligibility, and the definition of a life sentence. The sections below explain what a sentence under older law will mean for the defendant in terms of parole eligibility and actual time served.

32. G.S. 148-49.1 through -49.9 (1964); G.S. 148-49.10 through -49.16 (1991).
33. *See* State v. Niccum, 293 N.C. 276, 285–86, 238 S.E.2d 141, 148 (1977).
34. G.S. 148-49.14 (1991).
35. State v. McRae, 70 N.C. App. 779, 320 S.E.2d 914 (1984).
36. State v. Ware, 173 N.C. App. 434, 618 S.E.2d 830 (2005).

Sentence Reduction Credits

The Department of Correction (DOC) establishes rules for computing sentence reduction credits. Today, inmates sentenced under Structured Sentencing may be awarded *earned time* for participation in work or program activities while incarcerated, according to a schedule set out in DOC Policies and Procedures.[37] The maximum reduction a felon can get under current law is six days per month, and the award of earned time credit reduces only the maximum sentence imposed under Structured Sentencing; an offender will never serve less than the minimum sentence.

By contrast, the credits available for defendants sentenced under pre–Structured Sentencing law allow for far more extensive sentence reductions. *Good time* is sentence reduction credit awarded at the rate of one day deducted for each day spent in custody without a violation of inmate conduct rules.[38] Thus, a pre–Structured Sentencing inmate who serves a sentence without infraction will have his or her sentence cut in half by good time credit. By administrative regulation, good time credit applies to inmates sentenced for crimes committed prior to October 1, 1994, with the exception of FSA inmates sentenced for Class A and B felonies and those serving a life sentence for a Class C felony.[39] Good time credit applies toward an inmate's outright release date as well as toward his or her parole eligibility period and is subject to forfeiture when inmates are found guilty of violating inmate conduct rules.[40]

Pre–Structured Sentencing inmates also may have their terms reduced by *gain time*, a sentence reduction credit for participation in work or other prison activities.[41] Gain time is awarded to eligible inmates who committed crimes prior to October 1, 1994, based on the nature of the inmate's job or activity and the number of hours worked (see table 3).

As with good time, FSA inmates sentenced for Class A and B felonies and inmates serving a life sentence for a Class C felony are not eligible for gain time. Unlike good time, gain time is not subject to forfeiture.[42]

Those sentenced for offenses occurring prior to October 1, 1994, also may be awarded *meritorious time* by a correctional facility head for exemplary acts that go "well above or beyond the normal expectations and for acts of heroism."[43] Meritorious time can also be awarded for working under emergency conditions, for working overtime, for working in inclement weather, and for achievements in apprenticeship training, education, or other programs. Meritorious time is capped at 30 days per month for awards based on work or program participation and 30 days per month for each act of exemplary conduct. Awards that exceed 30 days, either through a single award or a combination of awards, must be approved by the Director of the Division of Prisons or his or her designee.

37. N.C. Dep't of Correction, Div. of Prisons, Policy & Procedures, Ch. B.0113 (Oct. 5, 2007) [hereinafter DOP policies].

38. DOP policies, Ch. B.0111.

39. *Id*.

40. *Id.*

41. DOP policies, Ch. B.0112.

42. *Id.*

43. DOP policies, Ch. B.0114.

Table 3. Gain Time Sentence Reduction Credit

	Type of Work/Program	Hours/Day	Credit Awarded
Gain Time I	Unskilled work or low level activity	4 to 6 hours	2 days/month
Gain Time II	Semi-skilled work or moderate level activity	4 to 8 hours	4 days/month
Gain Time III	Skilled work or high level activity	6 to 8 hours	6 days/month

Parole Eligibility and Life Terms

Though North Carolina has all but abolished parole for offenses committed today, parole is still an option for offenders whose crimes occurred when parole was a vital part of the state's sentencing regime. To deny an inmate the benefit of parole eligibility rules that existed at the time of his or her offense would, depending on the nature and extent of the rule change, run afoul of the constitutional prohibition against ex post facto punishment.[44] Because parole is granted in the discretion of the Post-Release Supervision and Parole Commission, the date of outright release based on sentence reduction credits may be more important than the parole eligibility date for many inmates.

Pre-FSA parole eligibility

For a pre-FSA offense (committed before July 1, 1981) sentenced today, parole eligibility is determined as follows:

- If the judge's sentence does not specify a minimum term, the person is eligible for parole immediately.[45] The Post-Release Supervision and Parole Commission applies this rule to pre-FSA life sentences—other than those for first-degree murder—in which no minimum is specified, although the likelihood of a life-sentenced inmate being paroled immediately is slim.
- If the sentence includes a minimum term, the prisoner is eligible for parole upon completion of *the lesser of* that minimum *or* one-fifth the maximum penalty allowed by law for the offense, minus any sentence reduction credits. If the maximum allowable sentence is life in prison, one-fifth the maximum is calculated as 20 years.[46] For life sentences that specified a minimum term, the inmate therefore becomes parole eligible after he or she serves the minimum or 20 years, whichever is less.

FSA parole eligibility

When initially passed, the FSA drastically reduced the role of the Parole Commission in North Carolina's sentencing regime. Through the 1980s, however, parole returned to prominence as the

44. *See, e.g.*, State v. Wright, 302 N.C. 122, 273 S.E.2d 699 (1981) (applying changes to the parole eligibility law that would push an inmate's parole eligibility date back by 10 years would amount to ex post facto punishment—had the laws in fact changed to the defendant's detriment). *But see* Garner v. Jones, 529 U.S. 244 (2000) (retroactive application of a new parole rule mandating parole eligibility review once every three years instead of annually did not violate the Ex Post Facto Clause).

45. G.S. 15A-1371(a) (1979).

46. G.S. 15A-1371(a) (1979).

state coped with prison overcrowding through a variety of emergency measures. For the purposes of a defendant sentenced under the FSA today, parole eligibility is determined as follows:

- Non–life sentenced, non-CYO felons sentenced to a term of 18 months or more will presumptively be released on Reentry Parole 90 days before the end of their term, less any sentence reduction credits earned.[47] Under legislation still in effect today, when the Secretary of Correction determines that the prison population has become unmanageable, FSA inmates become parole eligible 270 days before the end of their term.[48] The Secretary of Correction does not currently deem the prison population unmanageable.
- Defendants sentenced to life under the FSA for a Class A or B felony were eligible for parole after 20 years, with no credit allowed against the parole-eligibility period for good time or gain time. Class C life sentences also had a 20-year parole-eligibility period, reducible by good time but not by gain time.[49]

A note on certain pre-FSA "life" sentences

At the time of this writing, the status of life sentences for offenses committed after April 8, 1974, but before July 1, 1978, is unclear. Under G.S. 14-2 as it existed during that time, a "sentence of life imprisonment shall be considered as a sentence of imprisonment for a term of 80 years in the State's prison." The General Assembly arguably enacted this provision as a corollary to the rule that life sentences became parole eligible after 20 years. Defendants sentenced prior to 1978 generally became parole eligible after serving one-fourth of their maximum prison term, and 20 is one-fourth of 80. Nevertheless, the North Carolina Court of Appeals held in *State v. Bowden*[50] that under the plain language of G.S. 14-2 as it existed during that time frame, a life sentence must be considered as an 80-year sentence for *all purposes*, including calculation of outright release date, not just parole eligibility. Thus, a life sentence could be reduced from 80 to 40 years under day-for-day good time credit and perhaps even further reduced by gain time, depending on the inmate's work in prison. A defendant sentenced to "life" in 1975 who served his or her time without infraction and accrued gain time as quickly as possible could theoretically reach his or her date of *unconditional release* before 2010. The North Carolina Supreme Court granted the State's petition to review the case on April 30, 2009.

Community Service Parole

As the name implies, community service parole allowed an earlier release for inmates who agreed to perform community service in a specified manner.[51] The statute went through a number of revisions between 1984 and its repeal in 1994, but in its final form it authorized community service parole for inmates who

1. were serving an active sentence of longer than six months;
2. were deemed by the Parole Commission unlikely to engage in further criminal conduct;

47. G.S. 15A-1380.2 (1988).

48. G.S. 148-4.1 (2007).

49. G.S. 15A-1371(a1) (1988); G.S. 15A-1355(c) (1988); G.S. 148-13(b) (1983); *see also* Teasley v. Beck, 155 N.C. App. 282, 574 S.E.2d 137 (2002) (concluding that good time, but not gain time, reduction of the parole-eligibility period for a Class C life sentence under the FSA was mandatory under G.S. 15A-1355(c)).

50. ___ N.C. App. ___, 668 S.E.2d 107 (2008).

51. G.S. 15A-1380.2(g) (1988).

3. agreed to complete community service in a specified manner (generally, 32 hours of service for every 30 days remaining on the inmate's active sentence); and
4. had served one-half of their minimum term if the sentence was not subject to the FSA, or one-fourth of their FSA sentence.

After February 1, 1989, community service parole was proscribed for defendants convicted of a sex crime under Article 7A of Chapter 14 (first- and second-degree rape and sexual offense at that time), and so it would not be an option for some of the offenses included in Appendix A.[52]

Sex Offender Registration and Monitoring

After navigating the minefield of superseded sentencing laws, one obstacle remains for those dealing with older sex cases. Though North Carolina's sex offender registry did not exist until 1996, some defendants convicted for crimes that occurred long before that date still may be subject to the state's registration and satellite-based monitoring regime. Thus far, our courts have determined sex offender registration and monitoring to be a "civil regulatory scheme to protect the public," exempt from the ex post facto prohibitions applicable to criminal punishment.[53] This section provides a thumbnail sketch of the registration and monitoring consequences a conviction for an older sex crime might trigger.

Whether a particular conviction for a sex crime is a "reportable conviction" under G.S. 14-208.6(4) depends on two things. First, the conviction offense must be listed among the sexually violent offenses of G.S. 14-208.6(5), the offenses against a minor set out in G.S. 14-208.6(1i), or the peeping crimes in G.S. 14-208.6(4)(d). Second, the offense must fall within the effective date provision the General Assembly applied to that offense. Some effective dates are based on the date the offender is convicted or released from a penal institution, some are based on offense date, and some are unclear. None of the dates appear in the General Statutes; they are instead found in the Session Laws.

With respect to the crimes covered in Appendix A, crime against nature is not a reportable offense. Statutory rape or sexual offense of a 13- to 15-year-old when the defendant is at least six years older than the victim is a reportable conviction for offenses committed on or after December 1, 2006.[54] All of the other crimes listed in the chart require registration for offenders convicted or released from a penal institution on or after January 1, 1996.[55] The effective date coverage of these statutes is subject to change if North Carolina amends its laws to comply with federal guidelines for sex offender registration, which would require registration for all reportable crimes regardless of offense date.[56]

Defendants required to register also may be subject to lifetime satellite-based monitoring under G.S. 14-208.40A or -208.40B, if the court finds that the defendant is a *sexually violent predator*

52. 1989 N.C. Sess. Laws 1, 3–5 [ch.1, ss. 3–4].
53. State v. White, 162 N.C. App. 183, 590 S.E.2d 448 (2004).
54. 2006 N.C. Sess. Laws 1065, 1066 [ch. 247, s. 1].
55. 1995 N.C. Sess. Laws 2046, 2050 [ch. 545, s. 3].
56. A thorough discussion of these issues can be found in John Rubin, *2008 Legislation Affecting Criminal Law and Procedure*, Administration of Justice Bulletin No. 2008/06 at 2–12 (Nov. 2008), available at www.sog.unc.edu/pubs/electronicversions/pdfs/aojb0806.pdf.

under G.S. 14-208.6(6) and -208.20. The lifetime monitoring provisions for *aggravated offenses* and *recidivists* would in most cases not apply to crimes sentenced under older law, as the legislation defining those terms applies only to offenses committed on or after October 1, 2001.[57] A defendant convicted of an older sex crime may be subject to satellite-based monitoring for a term of years determined by the court if the crime is reportable; it involved the physical, mental, or sexual abuse of a minor (an undefined term with no effective date limitations); and, based on a Department of Correction assessment, the defendant requires the highest possible level of supervision and monitoring.[58]

Conclusion

Sexual assault cases based on events that took place years ago can be very difficult cases for all involved. Hopefully, this bulletin will make such cases slightly easier by providing a reference for basic information about the relevant law.

57. 2001 N.C. Sess. Laws 1200, 1206 [ch. 373, s.12]. It is possible that a defendant's conviction today for an older sex crime might not be his or her first conviction for a reportable offense. Suppose, for example, the defendant has already been convicted for a 2005 rape when evidence of a 1972 rape finally comes to light. Provided at least one reportable crime took place after October 1, 2001, the defendant could possibly be deemed a recidivist upon conviction of the older crime and therefore subject to lifetime monitoring. State v. Wooten, ___ N.C. App. ___, 669 S.E.2d 749 (2008). There is an argument, however, that the offender ought to have known he or she had a prior conviction when committing the second crime for the recidivist rule to apply.

58. A number of issues regarding satellite-based monitoring, many of them discussed in Rubin, *supra* note 56, remain undecided at the time of this writing but are working their way through the appellate courts.

Appendix A. Sex Crimes 1950–2000

Year	First-Degree Rape	Second-Degree Rape	First-Degree Sexual Offense	Second-Degree Sexual Offense	Statutory Rape or Sexual Offense of 13 to 15 Year Old	Sexual Offense by Custodian	Crime against Nature	Indecent Liberties
1950	Punishable by death unless jury recommends life (unchanged since amendment effective March 11, 1949)[a]	n/a	n/a	n/a	n/a	n/a	Punishable by 5 to 60 years (unchanged since amendment effective April 10, 1869)[b]	n/a
1951		n/a	n/a	n/a	n/a	n/a		n/a
1952		n/a	n/a	n/a	n/a	n/a		n/a
1953		n/a	n/a	n/a	n/a	n/a		n/a
1954		n/a	n/a	n/a	n/a	n/a		n/a
1955		n/a	n/a	n/a	n/a	n/a		Enacted: misdemeanor for first offense (effective April 19, 1955)[c]
1956		n/a	n/a	n/a	n/a	n/a		
1957		n/a	n/a	n/a	n/a	n/a		
1958		n/a	n/a	n/a	n/a	n/a		
1959		n/a	n/a	n/a	n/a	n/a		
1960		n/a	n/a	n/a	n/a	n/a		
1961		n/a	n/a	n/a	n/a	n/a		
1962		n/a	n/a	n/a	n/a	n/a		
1963		n/a	n/a	n/a	n/a	n/a		
1964		n/a	n/a	n/a	n/a	n/a		

(*continued*)

Appendix A. Sex Crimes 1950–2000 *(continued)*

Year	First-Degree Rape	Second-Degree Rape	First-Degree Sexual Offense	Second-Degree Sexual Offense	Statutory Rape or Sexual Offense of 13 to 15 Year Old	Sexual Offense by Custodian	Crime against Nature	Indecent Liberties
1965		n/a	n/a	n/a	n/a	n/a	Amended: felony, without further specification of punishment (effective May 19, 1965)[d]	
1966		n/a	n/a	n/a	n/a	n/a		
1967		n/a	n/a	n/a	n/a	n/a		
1968		n/a	n/a	n/a	n/a	n/a		
1969		n/a	n/a	n/a	n/a	n/a		
1970		n/a	n/a	n/a	n/a	n/a		
1971		n/a	n/a	n/a	n/a	n/a		
1972		n/a	n/a	n/a	n/a	n/a		
1973		n/a	n/a	n/a	n/a	n/a		
1974	Amended: created degrees of rape, with first degree [aggravated] rape punishable by death; or by life if death is ruled unconstitutional (effective April 8, 1974)[e]	Enacted: punishable by life or a term of years (effective April 8, 1974)[f]	n/a	n/a	n/a	n/a		
1975			n/a	n/a	n/a	n/a		Amended: extensive revision including felony status (effective October 1, 1975)[g]

(continued)

Appendix A. Sex Crimes 1950–2000 *(continued)*

Year	First-Degree Rape	Second-Degree Rape	First-Degree Sexual Offense	Second-Degree Sexual Offense	Statutory Rape or Sexual Offense of 13 to 15 Year Old	Sexual Offense by Custodian	Crime against Nature	Indecent Liberties
1976			n/a	n/a	n/a	n/a		
1977			n/a	n/a	n/a	n/a		
1978			n/a	n/a	n/a	n/a		
1979			n/a	n/a	n/a	n/a		
1980	Superseded: differences are extensive; punishable by life (effective January 1, 1980)[h]	Superseded: differences are extensive; punishable by not more than 40 years (effective January 1, 1980)[i]	Enacted: punishable by life (effective January 1, 1980)[j]	Enacted: punishable by not more than 40 years (effective January 1, 1980)[k]	n/a	Enacted: punishable by 2 to 15 years (effective January 1, 1980)[l]		
1981	Amended: minor changes (effective March 19, 1981)[m] Amended: classified as B felony (effective July 1, 1981)[n]	Amended: classified as D felony (effective July 1, 1981)[o]	Amended: minor changes (effective March 19, 1981)[p] Amended: classified as B felony (effective July 1, 1981)[q]	Amended: classified as D felony (effective July 1, 1981)[r]	n/a	Amended: classified as G felony (effective July 1, 1981)[s]	Amended: classified as H felony (effective July 1, 1981)[t]	Amended: classified as H felony (effective July 1, 1981)[u]
1982					n/a			
1982					n/a			
1983	Amended: minor changes (effective October 1, 1983)[v]		Amended: minor changes (effective October 1, 1983)[w]		n/a			
1984					n/a			
1985					n/a			
1986					n/a			

(continued)

Appendix A. Sex Crimes 1950–2000 (*continued*)

Year	First-Degree Rape	Second-Degree Rape	First-Degree Sexual Offense	Second-Degree Sexual Offense	Statutory Rape or Sexual Offense of 13 to 15 Year Old	Sexual Offense by Custodian	Crime against Nature	Indecent Liberties
1987					n/a			
1988					n/a			
1989					n/a			
1990					n/a			
1991					n/a			
1992					n/a			
1993					n/a			
1994	Amended: Class B1 felony (effective October 1, 1994) [x]	Amended: Class C felony (effective October 1, 1994) [y]	Amended: Class B1 felony (effective October 1, 1994) [z]	Amended: Class C felony (effective October 1, 1994) [aa]	n/a	Amended: Class E felony (effective October 1, 1994) [bb]	Amended: Class I felony (effective October 1, 1994) [cc]	Amended: Class F felony (effective October 1, 1994) [dd]
1995					Enacted: Class B1 or C felony (effective December 1, 1995) [ee]			
1996								
1997								
1998								
1999						Amended: added school-related provisions (effective December 1. 1999) [ff]		
2000								

(*continued*)

a. 1949 N.C. Sess. Laws 263 [ch. 299, ss. 4–5] (penalty formerly was death in all cases; amendment applies to all trials conducted after effective date, regardless of date of offense). Note that case law prohibits the imposition of the death penalty as a punishment for rape. Coker v. Georgia, 433 U.S. 584 (1977).

b. 1868–69 N.C. Sess. Laws 407, 409 [ch. 167, ss. 6, 12] (reducing penalty from death). Some very minor variation in the statutory text (for example, the substitution of the term "penitentiary" for the term "prison," and vice versa) appear between 1869 and 1965, apparently due to the stylistic preferences of different publishers of the General Statutes rather than to any legislative action.

c. 1955 N.C. Sess. Laws 708 [ch. 764, ss. 1, 3].

d. 1965 N.C. Sess. Laws 676–77 [ch. 621, ss. 4, 8].

e. 1973 (2d Sess. 1974) N.C. Sess. Laws 323–24 [ch. 1201, ss. 2, 7–8] (penalty for first-degree rape is death unless that penalty is declared unconstitutional, in which case the penalty is life). Note that case law prohibits the imposition of the death penalty as a punishment for rape. Coker v. Georgia, 433 U.S. 584 (1977).

f. 1973 (2d Sess. 1974) N.C. Sess. Laws 323–24 [ch. 1201, ss. 2, 8].

g. 1975 N.C. Sess. Laws 1105 [ch. 779, s. 1].

h. 1979 N.C. Sess. Laws 725–29 [ch. 682, ss. 1, 13–14] (creating new statute and repealing old one effective January 1, 1980; new statute applies to offenses committed on or after that date).

i. 1979 N.C. Sess. Laws 725–29 [ch. 682, ss. 1, 13–14] (creating new statute effective January 1, 1980; new statute applies to offenses committed on or after that date).

j. 1979 N.C. Sess. Laws 726, 729 [ch. 682, ss. 1, 14].

k. 1979 N.C. Sess. Laws 726, 729 [ch. 682, ss. 1, 14].

l. 1979 N.C. Sess. Laws 726, 729 [ch. 682, ss. 1, 14].

m. 1981 N.C. Sess. Laws 69–70 [ch. 106, ss. 1–2, 5].

n. 1979 (2d Sess. 1980) N.C. Sess. Laws 248, 252 [ch. 1316, ss. 4, 48] (amendment and original effective date of March 1, 1981, for offenses committed on or after that date); 1981 N.C. Sess. Laws 48–49 [ch. 63, ss. 1(d), 2] (delaying effective date until April 15, 1981); 1981 N.C. Sess. Laws 153 [ch. 179, s. 14] (delaying effective date until July 1, 1981).

o. 1970 (2d Sess. 1980) N.C. Sess. Laws 248, 252 [ch. 1316, ss. 5, 48] (amendment and original effective date of March 1, 1981, for offenses committed on or after that date); 1981 N.C. Sess. Laws 48–49 [ch. 63, ss. 1(d), 2] (delaying effective date until April 15, 1981); 1981 N.C. Sess. Laws 153 [ch. 179, s. 14] (delaying effective date until July 1, 1981).

p. 1981 N.C. Sess. Laws 69–70 [ch. 106, ss. 3–5].

q. 1979 (2d Sess. 1980) N.C. Sess. Laws 248, 252 [ch. 1316, ss. 6, 48] (amendment and original effective date of March 1, 1981); 1981 N.C. Sess. Laws 48–49 [ch. 63, ss. 1(d), 2] (delaying effective date until April 15, 1981); 1981 N.C. Sess. Laws 153 [ch. 179, s. 14] (delaying effective date until July 1, 1981).

r. 1979 (2d Sess. 1980) N.C. Sess. Laws 248, 252 [ch. 1316, ss. 7, 48] (amendment and original effective date of March 1, 1981); 1981 N.C. Sess. Laws 48–49 [ch. 63, ss. 1(d), 2] (delaying effective date until April 15, 1981); 1981 N.C. Sess. Laws 153 [ch. 179, s. 14] (delaying effective date until July 1, 1981).

s. 1979 (2d Sess. 1980) N.C. Sess. Laws 248, 252 [ch. 1316, ss. 9, 48] (amendment and original effective date of March 1, 1981); 1981 N.C. Sess. Laws 48–49 [ch. 63, ss. 1(d), 2] (delaying effective date until April 15, 1981); 1981 N.C. Sess. Laws 153 [ch. 179, s. 14] (delaying effective date until July 1, 1981).

t. 1979 N.C. Sess. Laws 866, 871 [ch. 760, ss. 5–6]; 1979 (2d Sess. 1980) N.C. Sess. Laws 252 [ch. 1316, s. 47]; 1981 N.C. Sess. Laws 48–49 [ch. 63, ss. 1(c), 2].

u. 1979 N.C. Sess. Laws 866, 871 [ch. 760, ss. 5–6]; 1979 (2d Sess. 1980) N.C. Sess. Laws 252 [ch. 1316, s. 47]; 1981 N.C. Sess. Laws 48–49 [ch. 63, ss. 1(c), 2].

v. 1983 N.C. Sess. Laws 123–24 [ch. 175, ss. 4, 10] (amendment and original effective date of April 18, 1983); 1983 N.C. Sess. Laws 752 [ch. 720, s. 4] (delaying effective date until October 1, 1983).

w. 1983 N.C. Sess. Laws 123–24 [ch. 175, ss. 5, 10]; 1983 N.C. Sess. Laws 752 [ch. 720, s. 4].

x. 1994 (Ex. Sess.) N.C. Sess. Laws 62, 68 [ch. 22, ss. 2, 14] (amendment and effective date provision tying effective date to effective date of Structured Sentencing, i.e., October 1, 1994).

y. 1993 N.C. Sess. Laws 2769, 2823 [ch. 539, ss. 1130, 1359] (amendment and original effective date of January 1, 1995, for offenses committed on or after that date); 1994 (Ex. Sess.) N.C. Sess. Laws 96 [ch. 24, s. 14(c)] (advancing effective date to October 1, 1994).

(continued)

z. 1994 (Ex. Sess.) N.C. Sess. Laws 62, 68 [ch. 22, ss. 3, 14] (amendment and effective date provision tying effective date to effective date of Structured Sentencing, i.e., October 1, 1994).

aa. 1993 N.C. Sess. Laws 2769, 2823 [ch. 539, ss. 1131, 1359] (amendment and original effective date of January 1, 1995, for offenses committed on or after that date); 1994 (Ex. Sess.) N.C. Sess. Laws 96 [ch. 24, s. 14(c)] (advancing effective date to October 1, 1994).

bb. 1993 N.C. Sess. Laws 2769, 2823–24 [ch. 539, ss. 1132, 1359] (amendment and original effective date of January 1, 1995, for offenses committed on or after that date); 1994 (Ex. Sess.) N.C. Sess. Laws 96 [ch. 24, s. 14(c)] (advancing effective date to October 1, 1994).

cc. 1993 N.C. Sess. Laws 2786, 2823–24 [ch. 539, ss. 1191, 1359] (amendment and original effective date of January 1, 1995, for offenses committed on or after that date); 1994 (Ex. Sess.) N.C. Sess. Laws 96 [ch. 24, s. 14(c)] (advancing effective date to October 1, 1994).

dd. 1993 N.C. Sess. Laws 2788, 2823–24 [ch. 539, ss. 1201, 1359] (amendment and original effective date of January 1, 1995, for offenses committed on or after that date); 1994 (Ex. Sess.) N.C. Sess. Laws 96 [ch. 24, s. 14(c)] (advancing effective date to October 1, 1994).

ee. 1995 N.C. Sess. Laws 565–66 [ch. 281, s. 1].

ff. 1999 N.C. Sess. Laws 1072–73 [ch. 1999-301, ss. 2–3].

Appendix B. Text of Relevant Statutes

Text of First-Degree Rape Statutes

Amendment effective March 11, 1949

14-21. Punishment for rape.

Every person who is convicted of ravishing and carnally knowing any female of the age of twelve years or more by force and against her will, or who is convicted of unlawfully and carnally knowing and abusing any female child under the age of twelve years, shall suffer death: Provided, if the jury shall so recommend at the time of rendering its verdict in open court, the punishment shall be imprisonment for life in the State's prison, and the court shall so instruct the jury.

Amendment effective April 8, 1974

14-21. Rape; punishment in the first and second degree.

Every person who ravishes and carnally knows any female of the age of 12 years or more by force and against her will, or who unlawfully and carnally knows and abuses any female child under the age of 12 years, shall be guilty of rape, and upon conviction, shall be punished as follows:

(a) First-Degree Rape –

(1) If the person guilty of rape is more than 16 years of age, and the rape victim is a virtuous female child under the age of 12 years, the punishment shall be death; or

(2) If the person guilty of rape is more than 16 years of age, and the rape victim had her resistance overcome or her submission procured by the use of a deadly weapon, or by the infliction of serious bodily injury to her, the punishment shall be death.

(b) Second-Degree Rape – Any other offense of rape defined in this section shall be a lesser-included offense of rape in the first degree and shall be punished by imprisonment in the State's prison for life, or for a term of years, in the discretion of the court.

Superseding statute enacted effective January 1, 1980

14-27.2. First-degree rape.

(a) A person is guilty of rape in the first degree if the person engages in vaginal intercourse:

(1) With another person by force and against the will of the other person, and:

a. Employs or displays a dangerous or deadly weapon or an article which the other person reasonably believes to be a dangerous or deadly weapon; or

b. Inflicts serious personal injury upon the victim or another person; or

c. The person commits the offense aided and abetted by one or more other persons.

(2) With a victim who is a child of the age of 12 years or less and the defendant is four or more years older than the victim.

(b) Any person who commits the offense defined in this section is guilty of a felony and upon conviction shall be imprisoned in the State's prison for life.

Amendment effective March 19, 1981

14-27.2. First-degree rape.

(a) A person is guilty of rape in the first degree if the person engages in vaginal intercourse:

(1) With a victim who is a child of the age of 12 years or less and the defendant is of the age of 12 years or more and is four or more years older than the victim; or

(2) With another person by force and against the will of the other person, and:

a. Employs or displays a dangerous or deadly weapon or an article which the other person reasonably believes to be a dangerous or deadly weapon; or

b. Inflicts serious personal injury upon the victim or another person; or

c. The person commits the offense aided and abetted by one or more other persons.

(b) Any person who commits an offense defined in this section is guilty of a felony and upon conviction shall be imprisoned in the State's prison for life.

Amendment effective July 1, 1981

14-27.2. First-degree rape.

(a) A person is guilty of rape in the first degree if the person engages in vaginal intercourse:

(1) With a victim who is a child of the age of 12 years or less and the defendant is of the age of 12 years or more and is four or more years older than the victim; or

(2) With another person by force and against the will of the other person, and:

a. Employs or displays a dangerous or deadly weapon or an article which the other person reasonably believes to be a dangerous or deadly weapon; or

b. Inflicts serious personal injury upon the victim or another person; or

c. The person commits the offense aided and abetted by one or more other persons.

(b) Any person who commits an offense defined in this section is guilty of a Class B felony.

Amendment effective October 1, 1983

14-27.2. First-degree rape.

(a) A person is guilty of rape in the first degree if the person engages in vaginal intercourse:

(1) With a victim who is a child under the age of 13 years and the defendant is at least 12 years old and is at least four years older than the victim; or

(2) With another person by force and against the will of the other person, and:

a. Employs or displays a dangerous or deadly weapon or an article which the other person reasonably believes to be a dangerous or deadly weapon; or

b. Inflicts serious personal injury upon the victim or another person; or

c. The person commits the offense aided and abetted by one or more other persons.

(b) Any person who commits an offense defined in this section is guilty of a Class B felony.

Amendment effective October 1, 1994

14-27.2. First-degree rape.

(a) A person is guilty of rape in the first degree if the person engages in vaginal intercourse:

(1) With a victim who is a child under the age of 13 years and the defendant is at least 12 years old and is at least four years older than the victim; or

(2) With another person by force and against the will of the other person, and:

a. Employs or displays a dangerous or deadly weapon or an article which the other person reasonably believes to be a dangerous or deadly weapon; or

b. Inflicts serious personal injury upon the victim or another person; or

c. The person commits the offense aided and abetted by one or more other persons.

(b) Any person who commits an offense defined in this section is guilty of a Class B1 felony.

Text of Second-Degree Rape Statutes

Enactment effective April 8, 1974

14-21. Rape; punishment in the first and second degree.

Every person who ravishes and carnally knows any female of the age of 12 years or more by force and against her will, or who unlawfully and carnally knows and abuses any female child under the age of 12 years, shall be guilty of rape, and upon conviction, shall be punished as follows:

(a) First-Degree Rape –
(1) If the person guilty of rape is more than 16 years of age, and the rape victim is a virtuous female child under the age of 12 years, the punishment shall be death; or
(2) If the person guilty of rape is more than 16 years of age, and the rape victim had her resistance overcome or her submission procured by the use of a deadly weapon, or by the infliction of serious bodily injury to her, the punishment shall be death.
(b) Second-Degree Rape – Any other offense of rape defined in this section shall be a lesser-included offense of rape in the first degree and shall be punished by imprisonment in the State's prison for life, or for a term of years, in the discretion of the court.

Superseding statute enacted effective January 1, 1980
14-27.3 Second-degree rape.
(a) A person is guilty of rape in the second degree if the person engages in vaginal intercourse with another person:
(1) By force and against the will of the other person; or
(2) Who is mentally defective, mentally incapacitated, or physically helpless, and the person performing the act knows or should reasonably know the other person is mentally defective, mentally incapacitated, or physically helpless.
(b) Any person who commits the offense defined in this section is guilty of a felony and upon conviction shall be punished by imprisonment in the State's prison for a term of not more than 40 years.

Amendment effective July 1, 1981
14-27.3. Second-degree rape.
(a) A person is guilty of rape in the second degree if the person engages in vaginal intercourse with another person:
(1) By force and against the will of the other person; or
(2) Who is mentally defective, mentally incapacitated, or physically helpless, and the person performing the act knows or should reasonably know the other person is mentally defective, mentally incapacitated, or physically helpless.
(b) Any person who commits the offense defined in this section is guilty of a Class D felony.

Amendment effective October 1, 1994
14-27.3. Second-degree rape.
(a) A person is guilty of rape in the second degree if the person engages in vaginal intercourse with another person:
(1) By force and against the will of the other person; or
(2) Who is mentally defective, mentally incapacitated, or physically helpless, and the person performing the act knows or should reasonably know the other person is mentally defective, mentally incapacitated, or physically helpless.
(b) Any person who commits the offense defined in this section is guilty of a Class C felony.

Text of First-Degree Sexual Offense Statutes

Enactment effective January 1, 1980
14-27.4. First-degree sexual offense.
(a) A person is guilty of a sexual offense in the first degree if the person engages in a sexual act:

(1) With another person by force and against the will of the other person, and:
a. Employs or displays a dangerous or deadly weapon or an article which the other person reasonably believes to be a dangerous or deadly weapon; or
b. Inflicts serious personal injury upon the victim or another person; or
c. The person commits the offense aided and abetted by one or more other persons.
(2) The victim is a child of the age of 12 years or less and the defendant is four or more years older than the victim.

(b) Any person who commits the offense defined in this section is guilty of a felony and upon conviction shall be imprisoned in the State's prison for life.

Amendment effective March 19, 1981

14-27.4. First-degree sexual offense.

(a) A person is guilty of a sexual offense in the first degree if the person engages in a sexual act:
(1) With a victim who is a child of the age of 12 years or less and the defendant is of the age of 12 years or more and is four or more years older than the victim; or
(2) With another person by force and against the will of the other person, and:
a. Employs or displays a dangerous or deadly weapon or an article which the other person reasonably believes to be a dangerous or deadly weapon; or
b. Inflicts serious personal injury upon the victim or another person; or
c. The person commits the offense aided and abetted by one or more other persons.

(b) Any person who commits an offense defined in this section is guilty of a felony and upon conviction shall be imprisoned in the State's prison for life.

Amendment effective July 1, 1981

14-27.4. First-degree sexual offense.

(a) A person is guilty of a sexual offense in the first degree if the person engages in a sexual act:
(1) With a victim who is a child of the age of 12 years or less and the defendant is of the age of 12 years or more and is four or more years older than the victim; or
(2) With another person by force and against the will of the other person, and:
a. Employs or displays a dangerous or deadly weapon or an article which the other person reasonably believes to be a dangerous or deadly weapon; or
b. Inflicts serious personal injury upon the victim or another person; or
c. The person commits the offense aided and abetted by one or more other persons.

(b) Any person who commits an offense defined in this section is guilty of a Class B felony.

Amendment effective October 1, 1983

14-27.4. First-degree sexual offense.

(a) A person is guilty of a sexual offense in the first degree if the person engages in a sexual act:
(1) With a victim who is a child under the age of 13 years and the defendant is at least 12 years old and is at least four years older than the victim; or
(2) With another person by force and against the will of the other person, and:
a. Employs or displays a dangerous or deadly weapon or an article which the other person reasonably believes to be a dangerous or deadly weapon; or
b. Inflicts serious personal injury upon the victim or another person; or
c. The person commits the offense aided and abetted by one or more other persons.
(2) The victim is a child of the age of 12 years or less and the defendant is four or more years older than the victim.

(b) Any person who commits an offense defined in this section is guilty of a Class B felony.

Amendment effective October 1, 1994

14-27.4. First-degree sexual offense.

(a) A person is guilty of a sexual offense in the first degree if the person engages in a sexual act:

(1) With a victim who is a child under the age of 13 years and the defendant is at least 12 years old and is at least four years older than the victim; or

(2) With another person by force and against the will of the other person, and:

a. Employs or displays a dangerous or deadly weapon or an article which the other person reasonably believes to be a dangerous or deadly weapon; or

b. Inflicts serious personal injury upon the victim or another person; or

c. The person commits the offense aided and abetted by one or more other persons.

(b) Any person who commits an offense defined in this section is guilty of a Class B1 felony.

Text of Second-Degree Sexual Offense Statutes

Enactment effective January 1, 1980

14-27.5. Second-degree sexual offense.

(a) A person is guilty of a sexual offense in the second degree if the person engages in a sexual act with another person:

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

(2) who is mentally defective, mentally incapacitated, or physically helpless, and the person performing the act knows or should reasonably know that the other person is mentally defective, mentally incapacitated, or physically helpless.

(b) Any person who commits the offense defined in this section is guilty of a felony and upon conviction shall be punished by imprisonment in the State's prison for a term of not more than 40 years.

Amendment effective July 1, 1981

14-27.5. Second-degree sexual offense.

(a) A person is guilty of a sexual offense in the second degree if the person engages in a sexual act with another person:

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

(2) who is mentally defective, mentally incapacitated, or physically helpless, and the person performing the act knows or should reasonably know that the other person is mentally defective, mentally incapacitated, or physically helpless.

(b) Any person who commits the offense defined in this section is guilty of a Class D felony.

Amendment effective October 1, 1994

14-27.5. Second-degree sexual offense.

(a) A person is guilty of a sexual offense in the second degree if the person engages in a sexual act with another person:

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

(2) who is mentally defective, mentally incapacitated, or physically helpless, and the person performing the act knows or should reasonably know that the other person is mentally defective, mentally incapacitated, or physically helpless.

(b) Any person who commits the offense defined in this section is guilty of a Class C felony.

Text of Statutory Rape or Sexual Offense of 13- to 15-Year-Old Statutes

Enactment effective December 1, 1995

14-27.7A. Statutory rape or sexual offense of person who is 13, 14, or 15 years old.

(a) A defendant is guilty of a Class B1 felony if the defendant engages in vaginal intercourse or a sexual act with another person who is 13, 14, or 15 years old and the defendant is at least six years older than the person, except when the defendant is lawfully married to the person.

(b) A defendant is guilty of a Class C felony if the defendant engages in vaginal intercourse or a sexual act with another person who is 13, 14, or 15 years old and the defendant is at least four years older than the person, except when the defendant is lawfully married to the person.

Text of Sexual Offense by Custodian Statutes

Enactment effective January 1, 1980

14-27.7. Intercourse and sexual offenses with certain victims; consent no defense.

If a defendant who has assumed the position of a parent in the home of a minor victim engages in vaginal intercourse or a sexual act with a victim who is a minor residing in the home, or if a person having custody of a victim of any age or a person who is an agent or employee of any person, or institution, whether such institution is private, charitable, or governmental, having custody of a victim of any age engages in vaginal intercourse or a sexual act with such victim, the defendant is guilty of a felony and shall be punished by imprisonment in the State's prison for not less than two nor more than 15 years. Consent is not a defense to a charge under this section.

Amendment effective July 1, 1981

14-27.7. Intercourse and sexual offenses with certain victims; consent no defense.

If a defendant who has assumed the position of a parent in the home of a minor victim engages in vaginal intercourse or a sexual act with a victim who is a minor residing in the home, or if a person having custody of a victim of any age or a person who is an agent or employee of any person, or institution, whether such institution is private, charitable, or governmental, having custody of a victim of any age engages in vaginal intercourse or a sexual act with such victim, the defendant is guilty of a Class G felony. Consent is not a defense to a charge under this section.

Amendment effective October 1, 1994

14-27.7. Intercourse and sexual offenses with certain victims; consent no defense.

If a defendant who has assumed the position of a parent in the home of a minor victim engages in vaginal intercourse or a sexual act with a victim who is a minor residing in the home, or if a person having custody of a victim of any age or a person who is an agent or employee of any person, or institution, whether such institution is private, charitable, or governmental, having custody of a victim of any age engages in vaginal intercourse or a sexual act with such victim, the defendant is guilty of a Class E felony. Consent is not a defense to a charge under this section.

Amendment effective December 1, 1999

14-27.7. Intercourse and sexual offenses with certain victims; consent no defense.

(a) If a defendant who has assumed the position of a parent in the home of a minor victim engages in vaginal intercourse or a sexual act with a victim who is a minor residing in the home, or if a person having custody of a victim of any age or a person who is an agent or employee of any person, or institution, whether such institution is private, charitable, or governmental, having custody of a victim of any age engages in vaginal intercourse or a sexual act

with such victim, the defendant is guilty of a Class E felony. Consent is not a defense to a charge under this section.
(b) If a defendant, who is a teacher, school administrator, student teacher, or coach, at any age, or who is other school personnel, and who is at least four years older than the victim engages in vaginal intercourse or a sexual act with a victim who is a student, at any time during or after the time the defendant and victim were present together in the same school, but before the victim ceases to be a student, the defendant is guilty of a Class G felony, except when the defendant is lawfully married to the student. The term "same school" means a school at which the student is enrolled and the school personnel is employed or volunteers. A defendant who is school personnel, other than a teacher, school administrator, student teacher, or coach, and is less than four years older than the victim and engages in vaginal intercourse or a sexual act with a victim who is a student, is guilty of a Class A1 misdemeanor. This subsection shall apply unless the conduct is covered under some other provision of law providing for greater punishment. Consent is not a defense to a charge under this section. For purposes of this subsection, the terms "school", "school personnel", and "student" shall have the same meaning as in G.S. 14-202.4(d).

Text of Crime against Nature Statutes

Amendment effective April 10, 1869
14-177. Crime against nature.
If any person shall commit the abominable and detestable crime against nature, with mankind or beast, he shall be imprisoned in the State's prison not less than five nor more than sixty years.

Amendment effective May 19, 1965
14-177. Crime against nature.
If any person shall commit the crime against nature, with mankind or beast, he shall be guilty of a felony, and shall be fined or imprisoned in the discretion of the court.

Amendment effective July 1, 1981
14-177. Crime against nature.
If any person shall commit the crime against nature, with mankind or beast, he shall be punished as a Class H felon.

Amendment effective October 1, 1994
14-177. Crime against nature.
If any person shall commit the crime against nature, with mankind or beast, he shall be punished as a Class I felon.

Text of Indecent Liberties Statutes

Enactment effective April 29, 1955
14-202.1 Taking indecent liberties with children.
Any person over 16 years of age who, with intent to commit an unnatural sex act, shall take, or attempt to take, any immoral, improper, or indecent liberties with any child of either sex, under the age of 16 years, or who shall, with such intent, commit, or attempt to commit, any lewd or lascivious act upon or with the body, or any part or member thereof, of such child, shall, for the first offense, be guilty of a misdemeanor and for a second or subsequent offense shall be guilty of a felony, and shall be fined or imprisoned in the discretion of the court.

Amendment effective October 1, 1975

14-202.1 Taking indecent liberties with children.

(a) A person is guilty of taking indecent liberties with children if, being 16 years of age or more and at least five years older than the child in question, he either:

(1) Willfully takes or attempts to take any immoral, improper, or indecent liberties with any child of either sex under the age of 16 years for the purpose of arousing or gratifying sexual desire; or

(2) Willfully commits or attempts to commit any lewd or lascivious act upon or with the body or any part of member of the body of any child of either sex under the age of 16 years.

(b) Taking indecent liberties with children is a felony punishable by a fine, imprisonment for not more than 10 years, or both.

Amendment effective July 1, 1981

14-202.1 Taking indecent liberties with children.

(a) A person is guilty of taking indecent liberties with children if, being 16 years of age or more and at least five years older than the child in question, he either:

(1) Willfully takes or attempts to take any immoral, improper, or indecent liberties with any child of either sex under the age of 16 years for the purpose of arousing or gratifying sexual desire; or

(2) Willfully commits or attempts to commit any lewd or lascivious act upon or with the body or any part of member of the body of any child of either sex under the age of 16 years.

(b) Taking indecent liberties with children is a punishable as a Class H felony.

Amendment effective October 1, 1994

14-202.1 Taking indecent liberties with children.

(a) A person is guilty of taking indecent liberties with children if, being 16 years of age or more and at least five years older than the child in question, he either:

(1) Willfully takes or attempts to take any immoral, improper, or indecent liberties with any child of either sex under the age of 16 years for the purpose of arousing or gratifying sexual desire; or

(2) Willfully commits or attempts to commit any lewd or lascivious act upon or with the body or any part of member of the body of any child of either sex under the age of 16 years.

(b) Taking indecent liberties with children is a punishable as a Class F felony.

Text of Aggravating and Mitigating Factors under Fair Sentencing

15A-1340.4 Consideration of aggravating and mitigating factors.

(a)(1) Aggravating factors:

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

b. The offense was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody.

c. The defendant was hired or paid to commit the offense.

d. The offense was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws.

e. The offense was committed against a present or former: law enforcement officer, employee of the Department of Correction, jailer, fireman, emergency medical technician, ambulance attendant, justice or judge, clerk or assistant or deputy clerk of court, magistrate, prosecutor, juror, or witness against the defendant, while engaged in the performance of his official duties or because of the exercise of his official duties.
f. The offense was especially heinous, atrocious, or cruel.
g. The defendant knowingly created a great risk of death to more than one person by means of a weapon or device which would normally be hazardous to the lives of more than one person.
h. The defendant held public office at the time of the offense and the offense related to the conduct of the office.
i. The defendant was armed with or used a deadly weapon at the time of the crime.
j. The victim was very young, or very old, or mentally or physically infirm.
k. The defendant committed the offense while on pretrial release on another felony charge.
l. The defendant involved a person under the age of 16 in the commission of the crime.
m. The offense involved an attempted or actual taking of property of great monetary value or damage causing great monetary loss, or the offense involved an unusually large quantity of contraband.
n. The defendant took advantage of a position of trust or confidence to commit the offense.
o. The defendant has a prior conviction or convictions for criminal offenses punishable by more than 60 days' confinement. Such convictions include those occurring in North Carolina courts and courts of other states, the District of Columbia, and the United States, provided that any crime for which the defendant was convicted in a jurisdiction other than North Carolina would have been a crime if committed in this State. Such prior convictions do not include any crime that is joinable, under G.S. Chapter 15A, with the crime or crimes for which the defendant is currently being sentenced.
p. The offense involved the sale or delivery of a controlled substance to a minor.
q. The offense was committed because of the race, color, religion, nationality, or country of origin of another person.
r. The offense for which the defendant stands convicted was committed against a victim because of the victim's race, color, religion, nationality, or country of origin.

Evidence necessary to prove an element of the offense may not be used to prove any factor in aggravation, and the same item of evidence may not be used to prove more than one factor in aggravation.

The judge may not consider as an aggravating factor the fact that the defendant exercised his right to a jury trial.

(a)(2) Mitigating factors:

a. The defendant has no record of criminal convictions or a record consisting solely of misdemeanors punishable by not more than 60 days' imprisonment.
b. The defendant committed the offense under duress, coercion, threat, or compulsion which was insufficient to constitute a defense but significantly reduced his culpability.
c. The defendant was a passive participant or played a minor role in the commission of the offense.

d. The defendant was suffering from a mental or physical condition that was insufficient to constitute a defense but significantly reduced his culpability for the offense.
e. The defendant's immaturity or his limited mental capacity at the time of commission of the offense significantly reduced his culpability for the offense.
f. The defendant has made substantial or full restitution to the victim.
g. The victim was more than 16 years of age and was a voluntary participant in the defendant's conduct or consented to it.
h. The defendant aided in the apprehension of another felon or testified truthfully on behalf of the prosecution in another prosecution of a felony.
i. The defendant acted under strong provocation, or the relationship between the defendant and the victim was otherwise extenuating.
j. The defendant could not reasonably foresee that his conduct would cause or threaten serious bodily harm or fear, or the defendant exercised caution to avoid such consequences.
k. The defendant reasonably believed that his conduct was legal.
l. 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.
m. The defendant has been a person of good character or has had a good reputation in the community in which he lives.
n. The defendant is a minor and has reliable supervision available.
o. The defendant has been honorably discharged from the United States armed services.

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