

## **2012 Update to Arrest Warrant and Indictment Forms**

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This update contains eleven forms. Three are entirely new. They concern G.S. 14-7.26 (habitual breaking and entering); G.S. 14-23.2 (murder of an unborn child); and G.S. 14-408.1(b)–(c) (concerning unlawful firearm purchases). The revised table of contents includes these new forms.

The remaining forms are revisions of existing forms and should replace the corresponding forms currently in the manual. The bulk of the revisions are in response to actions taken by the General Assembly during the 2011 legislative session, though in at least one instance, a revision responds to a development in the case law.

As always, I welcome comments, questions, and concerns regarding these forms. I may be reached at [welty@sog.unc.edu](mailto:welty@sog.unc.edu), or at (919) 843-8474.



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## **Chapter 75A (Boating and Water Safety) ..... General Statute**

|                              |                 |
|------------------------------|-----------------|
| Boating while impaired ..... | G.S. 75A-10(b1) |
|------------------------------|-----------------|

## **Chapter 90 (Controlled Substances Act) ..... General Statute**

|                                                                                               |                    |
|-----------------------------------------------------------------------------------------------|--------------------|
| Rescheduling of substance by commission .....                                                 | G.S. 90-88         |
| Manufacture of a controlled substance .....                                                   | G.S. 90-95(a)(1)   |
| Sale or delivery of a controlled substance .....                                              | G.S. 90-95(a)(1)   |
| Possession of controlled substance with intent to manufacture, sell, or deliver .....         | G.S. 90-95(a)(1)   |
| Sale or delivery of counterfeit controlled substance .....                                    | G.S. 90-95(a)(2)   |
| Simple possession of schedule I controlled substance.....                                     | G.S. 90-95(a)(3)   |
| Simple possession of schedule II–IV controlled substance.....                                 | G.S. 90-95(a)(3)   |
| Simple possession of schedule V controlled substance.....                                     | G.S. 90-95(a)(3)   |
| Simple possession of schedule VI controlled substance .....                                   | G.S. 90-95(a)(3)   |
| Possession of immediate precursor chemical .....                                              | G.S. 90-95(d1)     |
| Prior drug convictions .....                                                                  | G.S. 90-95(e)      |
| Selling or delivering a controlled substance to a person under 16 or to a pregnant woman..... | G.S. 90-95(e)(5)   |
| Selling, delivering, etc., controlled substance near school .....                             | G.S. 90-95(e)(8)   |
| Selling, delivering, etc., controlled substance near child care center .....                  | G.S. 90-95(e)(8)   |
| Possessing controlled substance in prison or jail.....                                        | G.S. 90-95(e)(9)   |
| Selling, delivering, etc., controlled substance near public park.....                         | G.S. 90-95(e)(10)  |
| Drug trafficking .....                                                                        | G.S. 90-95(h), (i) |
| Continuing criminal enterprise .....                                                          | G.S. 90-95.1       |



|                                                                                |                        |
|--------------------------------------------------------------------------------|------------------------|
| Employing minor to commit drug offense.....                                    | G.S. 90-95.4           |
| Promoting drug sales by minor.....                                             | G.S. 90-95.6           |
| Participating in drug violation by minor.....                                  | G.S. 90-95.7           |
| Practitioner and others unlawfully dispensing a controlled substance .....     | G.S. 90-108(a)(2)      |
| Maintaining a place for using, keeping, or selling controlled substances ..... | G.S. 90-108(a)(7)      |
| Obtaining controlled substance by fraud or forgery.....                        | G.S. 90-108(a)(10)     |
| Possession of drug paraphernalia.....                                          | G.S. 90-113.22         |
| Manufacture or delivery of drug paraphernalia.....                             | G.S. 90-113.23         |
| Delivery of drug paraphernalia to a minor.....                                 | G.S. 90-113.23         |
| Advertisement of drug paraphernalia.....                                       | G.S. 90-113.24         |
| Pseudoephedrine transaction limits .....                                       | G.S. 90-113.53         |
| <b>Chapter 108A (Social Services) .....</b>                                    | <b>General Statute</b> |
| Welfare fraud .....                                                            | G.S. 108A-39           |
| Food and nutrition benefit fraud .....                                         | G.S. 108A-53           |
| Illegal possession or use of food and nutrition benefit .....                  | G.S. 108A-53.1         |
| Medicaid fraud by provider .....                                               | G.S. 108A-63           |
| Medicaid fraud by recipient .....                                              | G.S. 108A-64           |
| <b>Chapter 115C (Elementary and Secondary Education).....</b>                  | <b>General Statute</b> |
| Violation of school compulsory attendance law .....                            | G.S. 115C-378(a)       |
| <b>Chapter 148 (State Prison System).....</b>                                  | <b>General Statute</b> |
| Escape from state prison system.....                                           | G.S. 148-45            |
| <b>Chapters 153A and 160A (County and City Government) .....</b>               | <b>General Statute</b> |
| City or county ordinance violation .....                                       | G.S. 153A-50, 160A-79  |



**Introductory Comment:**

This form is to be used in preparing an indictment that alleges that the defendant is a violent habitual felon. Do not use this form to charge a defendant with habitual felon status under G.S. 14-7.1. There is another indictment form available to charge that status.

**Charging Language:**

The jurors for the State upon their oath present that (*name defendant*) is a violent habitual felon in that on or about (*give date the defendant committed felony*) (*name defendant*) did commit the violent felony of (*name felony and give statutory citation*) and that on or about (*give date the defendant was convicted of felony*) (*name defendant*) was convicted of the violent felony of (*name felony for which defendant was convicted and the court and state in which the defendant was convicted*); and that on or about (*give date the defendant committed felony*) (*name defendant*) did commit the violent felony of (*name felony and give statutory citation*) and that on or about (*give date the defendant was convicted of felony*) (*name defendant*) was convicted of the violent felony of (*name felony for which defendant was convicted and the court and state in which the defendant was convicted*).

**Notes about Charging Language:**

- A separate habitual felon indictment is not required for each substantive felony indictment. One habitual felon indictment is sufficient. *See State v. Patton*, 342 N.C. 633 (1996).
- A habitual felon indictment need not allege the predicate felony being tried. *See State v. Cheek*, 339 N.C. 725 (1995).
- The State may allege more than two previous felonies. However, none of the felonies alleged in the indictment may be used to calculate the defendant's prior record level in the event of a conviction. *See State v. Lee*, 150 N.C. App. 701 (2003).
- For a longer discussion of charging issues in connection with habitual felon status, *see* Jeff Welty, *North Carolina's Habitual Felon and Violent Habitual Felon Laws*, Administration of Justice Bulletin 2008/04.

**Sample Charge:**

The jurors for the State upon their oath present that David Louis Smith is a violent habitual felon in that on or about July 5, 1982, David Louis Smith did commit the violent felony of armed robbery in violation of G.S. 14-87 and that on or about January 12, 1983, David Louis Smith was convicted of the violent felony of armed robbery in the Superior Court of Wilson County, North Carolina; and that on or about April 30, 1990, David Louis Smith did commit the violent felony of second-degree rape in violation of G.S. 14-27.3 and that on or about November 10, 1992, David Louis Smith was convicted of second-degree rape in the Superior Court of Cumberland County, North Carolina.

**AOC Forms for This Offense:**

None.

**Punishment:**

If the defendant is convicted of a violent felony, and is then determined to be a violent habitual felon, the substantive felony is punished by imprisonment for life without parole. If there is more than one substantive felony conviction, each conviction is punished by imprisonment for life without parole. *Cf. State v. Thomas*, 82 N.C. App. 682 (1986).



**Introductory Comment:**

None.

**Charging Language:**

... is a habitual breaking and entering status offender under Article 2D of Chapter 14 of the North Carolina General Statutes in that, prior to committing (*choose one*: his; her) current felony offense of breaking and entering, (*choose one*: he; she) was previously convicted of the felony breaking and entering offense of (*name offense*). On or about (*enter date*), the defendant did commit the felony of (*name offense*) in violation of the laws of (*name state or other jurisdiction*), and, on or about (*enter date*), the defendant (*choose one*: did plead guilty to; was convicted of) the felony of (*name offense*) in (*name the court of conviction*), in case number (*insert file number*).

**Notes about Charging Language:**

- The principal breaking and entering felony must be committed after the defendant's 18th birthday.
- Under Article 2D, "breaking and entering" means any of the following felony offenses: first-degree burglary (G.S. 14-51); second-degree burglary (G.S. 14-51); breaking out of dwelling house burglary (G.S. 14-53); breaking or entering buildings generally (G.S. 14-54(a)); breaking or entering a building of religious worship (G.S. 14-54.1); any repealed or superseded offense substantially equivalent to one of these listed offenses; any offense committed in another jurisdiction substantially similar to one of these listed offenses.

**Sample Charge:**

... is a habitual breaking and entering status offender under Article 2D of Chapter 14 of the North Carolina General Statutes in that, prior to committing his current felony offense of breaking and entering, he was previously convicted of the felony breaking and entering offense of second-degree burglary. On or about April 26, 2011, the defendant did commit the felony of second-degree burglary in violation of the laws of North Carolina, and, on or about November 10, 2011, the defendant did plead guilty to second-degree burglary in the Superior Court of Forsyth County, in case number 11 CRS 18401.

**AOC Forms for This Offense:**

None.

**Punishment:**

Upon conviction, the defendant's principal felony will be sentenced as a Class E felony.



**Introductory Comment:**

This statute does not create criminal liability for lawful abortions under G.S. 14-51.1. Nor may it be used to prosecute a pregnant woman who causes the miscarriage or stillbirth of her own unborn child. G.S. 14-32.3 through 14-32.6 create additional homicide and assault crimes related to unborn children.

**Charging Language:****I. Murder of an unborn child with malice aforethought**

... unlawfully, willfully, and feloniously did cause the death of (*name or describe child*), an unborn child, by willfully and maliciously committing an act, (*describe act committed*), with the intent to cause the death of the unborn child.

**II. Murder of an unborn child in perpetration or attempted perpetration of a felony**

... unlawfully, willfully, and feloniously did cause the death of (*name or describe child*), an unborn child, in the (*choose one or both*: perpetration; attempted perpetration) of [*choose one or more*: arson; rape; a sex offense; robbery; kidnapping; burglary; (*name felony*)], a felony committed or attempted with a deadly weapon, (*describe weapon*)], by (*describe act committed*).

**III. Murder of an unborn child while committing an inherently dangerous act**

... unlawfully, willfully, and feloniously did cause the death of (*name or describe child*), an unborn child, by (*describe act*), an act that was inherently dangerous to human life and that was done so recklessly and wantonly that it reflected a disregard of life.

**Notes about Charging Language:**

- Offenses II and III do not require proof that (1) the offender knew or should have known that the victim was pregnant; or (2) the offender intended to cause the death of, or bodily injury to, the unborn child.
- The statute defines “unborn child” as a human at any stage of development who is carried in the womb.

**Sample Charges:****I. Murder of an unborn child with malice aforethought**

... unlawfully, willfully, and feloniously did cause the death of a female child carried by Michelle Seegar, an unborn child, by willfully and maliciously committing an act, shooting Michelle Seegar in the abdomen, with the intent to cause the death of the unborn child.

**II. Murder of an unborn child in perpetration or attempted perpetration of a felony**

... unlawfully, willfully, and feloniously did cause the death of a male child carried by Ellen Lewis, an unborn child, in the perpetration of a rape, by striking Ellen Lewis with a baseball bat to force her to submit to sexual intercourse.

**III. Murder of an unborn child while committing an inherently dangerous act**

... unlawfully, willfully, and feloniously did cause the death of a one-month old (gestational age) child carried by Daisey Kelly, an unborn child, by setting fire to Daisey Kelley's home, causing her to jump out a window and miscarry her unborn child, an act that was inherently dangerous to human life and that was done so recklessly and wantonly that it reflected a disregard of life.

**AOC Forms for This Offense**

None.

**Punishment:**

Offenses I and II are Class A felonies, punishable only by life in prison without parole. Offense III is "subject to the same sentence as if the person had been convicted of second degree murder pursuant to G.S. 14-17" and so is a Class B2 felony.



**Introductory Comment:**

None.

**Charging Language:****I. Assault causing physical injury**

... unlawfully, willfully, and feloniously did assault (*name person assaulted*), a(n) (*choose one*: emergency medical technician; emergency health care provider; medical responder; emergency department nurse; emergency department physician; emergency department physician assistant; emergency department licensed nurse practitioner; firefighter) of (*name employer*), by (*describe assault*), and caused physical injury on the victim, (*describe injury*). At the time of this offense, the victim of the assault was (*choose one*: discharging; attempting to discharge) official duties (*describe duties*).

**II. Assault inflicting serious bodily injury or using deadly weapon other than a firearm**

... unlawfully, willfully, and feloniously did assault (*name person assaulted*), a(n) (*choose one*: emergency medical technician; emergency health care provider; medical responder; emergency department nurse; emergency department physician; emergency department physician assistant; emergency department licensed nurse practitioner; firefighter) of (*name employer*), by (*describe assault*). At the time of this offense, the victim of the assault was (*choose one*: discharging; attempting to discharge) official duties (*describe duties*). The assault [(*choose one or more*: inflicted serious bodily injury on the victim (*describe injury*); caused physical injury on the victim, (*describe injury*); was committed with a deadly weapon other than a firearm (*describe weapon*))].

**III. Assault with a firearm**

... unlawfully, willfully, and feloniously did assault (*name person assaulted*), a(n) (*choose one*: emergency medical technician; emergency health care provider; medical responder; emergency department nurse; emergency department physician; emergency department physician assistant; emergency department licensed nurse practitioner; firefighter) of (*name employer*), by (*describe assault*), and caused physical injury on the victim, (*describe injury*). At the time of this offense, the victim of the assault was (*choose one*: discharging; attempting to discharge) official duties (*describe duties*). The assault was committed with a firearm (*describe firearm*).

**Notes about Charging Language:**

- The statute does not define “physical injury.” However, G.S. 14-34.7 defines the term as cuts, scrapes, bruises, or other physical injury that is not a serious injury.

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

... unlawfully, willfully, and feloniously did assault Helen Smith, an emergency department physician of Duke Hospital, by hitting her on her arm, and caused physical injury, a bruise on her right hand. At the time of this offense, the victim of the assault was discharging official duties in treating Howard Patton for a gunshot wound.

**II. Assault inflicting serious bodily injury or using deadly weapon other than a firearm**

... unlawfully, willfully, and feloniously did assault Helen Smith, an emergency department physician of Duke Hospital, by hitting her on her arm five times. At the time of this offense, the victim of the assault was discharging official duties in treating Howard Patton for a gunshot wound. The assault inflicted serious bodily injury on the victim in that Helen Smith suffered a broken arm.

**III. Assault with a firearm**

... unlawfully, willfully, and feloniously did assault Peter Collins, an emergency medical technician of West Orange Rescue Squad, by shooting twice at Peter Collins with a shotgun, and caused physical injury on the victim when a projectile grazed and cut his shoulder. At the time of this offense, the victim of the assault was attempting to discharge official duties, treating Jonathan Trent for a knife wound. The assault was committed with a firearm, a shotgun.

**AOC Forms for This Offense:**

None.

**Punishment:**

Class I felony for assault causing physical injury. Class H felony for assault inflicting serious bodily injury or assault causing physical injury with a deadly weapon other than a firearm. Class F felony for assault with a firearm causing physical injury.

**Introductory Comment:**

Although the text of G.S. 14-34.7(a)–(b) includes the term “serious bodily injury,” not merely “serious injury,” the Court of Appeals ruled in *State v. Crawford*, 167 N.C. App. 777 (2005), that the legislature intended G.S. 14-34.7(a)–(b) to apply to assaults on covered persons resulting in “serious injury.” The title above and the charging language below reflect that holding.

**Charging Language:**

**I. Assault inflicting serious injury on law enforcement officer, probation officer, or parole officer**

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

**II. Assault inflicting serious injury on employee of state or local detention facility**

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

**III. Assault inflicting physical injury on law enforcement officer, probation officer, or parole officer**

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

**IV. Assault inflicting physical injury on employee of state or local detention facility**

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

**Notes about Charging Language:**

- Although a description of the specific duty is not required, *State v. Waller*, 37 N.C. App. 133 (1978), this form requests that information.
- For offenses III and IV, “physical injury” is defined as cuts, scrapes, bruises, or other physical injury that is not a serious injury.

**Sample Charges:**

**I. Assault inflicting serious injury on law enforcement officer, probation officer, or parole officer**

... unlawfully, willfully, and feloniously did assault Susan Thomas, a law enforcement officer of the Smithville Police Department, and inflict serious injury, the permanent loss of the function of her right kidney. At the time of this offense the officer was discharging a duty of her office: arresting the defendant for driving while impaired.

**II. Assault inflicting serious injury on employee of state or local detention facility**

... unlawfully, willfully, and feloniously did assault Bill Smith, who was employed at a detention facility, the Wake County Jail, operated under the jurisdiction of Wake County, and inflict serious bodily injury, a concussion that caused prolonged hospitalization. At the time of this offense the employee was performing a duty of his employment: transferring the defendant from a courtroom to the jail.

**III. Assault inflicting physical injury on law enforcement officer, probation officer, or parole officer**

... unlawfully, willfully, and feloniously did assault Mark Gordon, a probation officer, and inflict physical injury, a cut on his right leg. At the time of this offense, the probation officer was discharging a duty of his office: investigating the probationer's whereabouts.

**IV. Assault inflicting physical injury on employee of state or local detention facility**

... unlawfully, willfully, and feloniously did assault Sarah Martin, who was employed at a detention facility, the Greensboro Detention Center, operated under the jurisdiction of Guilford County, and inflict physical injury, bruises on her arms. At the time of this offense, the employee was performing a duty of her employment: escorting the inmate to a different unit.

**AOC Forms for This Offense:**

None.

**Punishment:**

Offenses I and II, involving serious injury, are Class F felonies. Offenses III and IV, involving physical injury, are Class I felonies.

**Introductory Comment:**

There are several related offenses that should be considered when a witness has been asked or instructed to behave inappropriately, including this offense, subornation of perjury, G.S. 14-210, and common law obstruction of justice.

**Charging Language:****I. Intimidating a witness**

... unlawfully, willfully, and feloniously did by threats (*choose one or more*: intimidate; attempt to intimidate) (*name witness*), who was (*choose one or more*: summoned; acting) as a witness in (*name court and case in question*). The intimidation consisted of (*describe threats*).

**II. Deterring appearance by a witness**

... unlawfully, willfully, and feloniously did by threats (*choose one or more*: deter; attempt to deter; prevent; attempt to prevent) (*name witness*) from attending court by (*describe threats and manner of preventing or deterring attendance*). (*Repeat name of witness*) was (*choose one or more*: summoned; acting) as a witness in (*name court and case in question*).

**Notes about Charging Language:**

- The statute prohibits intimidation by use of “threats, menaces or in any other manner.” Substitute other language for “threats” if appropriate.
- The statute does not define what it means to be “acting” as a witness, but in some cases, a witness who is not under subpoena may nonetheless fall within the scope of the statute. *See Jessica Smith, North Carolina Crimes* 453 (6th ed. 2007).
- The statute appears to encompass situations in which a witness is intimidated with respect to out-of-court behavior, as when a defendant pressures a witness to ask a prosecutor to dismiss a charge.
- The statute applies only to witnesses in proceedings in state court, not federal court.

**Sample Charges:****I. Intimidating a witness**

... unlawfully, willfully, and feloniously did by threats intimidate Susan Smith, who was summoned as a witness in the case of *State v. John Smith*, 09 CR 1235, Assault on a Female, in Randolph County District Court. The intimidation consisted of threatening to assault Susan Smith if she failed to ask the prosecutor to dismiss the charge against the defendant.

**II. Deterring appearance by a witness**

... unlawfully, willfully, and feloniously did by threats deter and prevent Susan Smith from attending court by threatening to assault Susan Smith if she appeared in court to testify against the defendant. Susan Smith was summoned as a witness in the case of *State v. John Smith*, 09 CR 1235, Assault on a Female, in Randolph County District Court.

**AOC Forms for This Offense:**

None.

**Punishment:**

Class G felony.



**G.S. 14-408.1(b)–(c)      UNLAWFUL SOLICITATION OF, OR PROVIDING FALSE INFORMATION TO,  
FIREARMS DEALER OR SELLER**

**Introductory Comment:**

None.

**Charging Language:**

**I. Unlawful solicitation of firearms dealer or seller**

... unlawfully, willfully, and feloniously did knowingly (*choose one or more*: solicit; persuade; encourage; entice) (*name dealer or seller*), a (*choose one*: licensed dealer; private seller) of (*choose one or more*: firearms; ammunition), to transfer (*choose one or more and describe*: a firearm; firearms; ammunition) under circumstances that the defendant knew would violate the laws of (*choose one or both*: North Carolina; the United States), (*describe circumstances of transfer*).

**II. Providing false information to firearms dealer or seller**

... unlawfully, willfully, and feloniously did provide to (*name dealer or seller*), a (*choose one*: licensed dealer; private seller) of (*choose one or more*: firearms; ammunition), information that the defendant knew to be materially false, (*describe information*), with the intent to deceive the (*choose one*: dealer; seller) about the legality of a transfer of (*choose one or more and describe*: a firearm; firearms; ammunition).

**Notes about Charging Language:**

- A person who willfully procures another to engage in either offense is a principal.

**Sample Charges:**

**I. Unlawful solicitation of firearms dealer or seller**

... unlawfully, willfully, and feloniously did encourage Dan Barrett, a licensed dealer of firearms and ammunition, to transfer a firearm, a Glock 9mm pistol, under circumstances that the defendant knew would violate the laws of North Carolina and the United States, in that the defendant encouraged Mr. Barrett to transfer the firearm to Joe Smithers, a convicted felon.

**II. Providing false information to firearms dealer or seller**

... unlawfully, willfully, and feloniously did provide to Eric Robbins, a private seller of firearms, information that the defendant knew to be materially false, that the defendant was not subject to a domestic violence protective order when in fact he was, with the intent to deceive the seller about the legality of a transfer of a firearm, a Bushmaster .223 caliber rifle.

**AOC Forms for This Offense:**

None.

**Punishment:**

Class F felony.





**Introductory Comment:**

Before charging this offense, you may wish to consider whether the defendant may be charged under G.S. 90-95(e)(5) (sale or delivery to a person under 16 or to a pregnant person), or under G.S. 90-95(e)(8), (10) (drug offenses within 1,000 feet of a child care center, park, and similar locations).

Note that a sale and delivery arising from a single transaction constitute one offense; therefore do not charge sale and delivery as separate offenses. *State v. Moore*, 327 N.C. 378 (1990).

**Charging Language:**

... unlawfully, willfully, and feloniously did (*choose one or both: sell; deliver*) to (*identify buyer or recipient of substance, if known, or state an unknown person*), a controlled substance, (*identify substance*), which is included in Schedule (*give schedule number*) of the North Carolina Controlled Substances Act.

**Notes about Charging Language:**

- G.S. 90-87(7) defines “deliver” as “the actual, constructive, or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship.” Delivering would include all instances of selling; but if there is an exchange of money, use the word “sell” in addition to or instead of “deliver.” As noted below, the punishment for sale is greater than the punishment for delivery.
- Under G.S. 90-95(b)(2), the transfer of less than 5 grams of marijuana, or of less than 2.5 grams of synthetic cannabinoid or a mixture containing synthetic cannabinoid, for no remuneration does not constitute a delivery in violation of G.S. 90-95(a)(1). If charging delivery of marijuana or synthetic cannabinoid because there was no sale, the better practice is to allege the amount of marijuana or synthetic cannabinoid delivered if greater than the threshold quantity. See the sample charge, below.
- The case law requires the charging document to identify the buyer or recipient of the substance, if known. When a law enforcement officer uses an intermediary so the defendant sells or delivers the controlled substance to the intermediary without knowing that the officer was buying or taking delivery of the controlled substance, the name of the intermediary, not the name of the law enforcement officer, normally must be alleged. *State v. Wall*, 96 N.C. App. 45 (1989).
- When identifying the controlled substance, do so “by its chemical name as it appears in [the controlled substance schedules].” *State v. Turshizi*, 175 N.C. App. 783 (2006).

**Sample Charges:**

... unlawfully, willfully, and feloniously did sell to Leslie Jones a controlled substance, heroin, which is included in Schedule I of the North Carolina Controlled Substances Act.

... unlawfully, willfully, and feloniously did deliver to James Monroe a controlled substance, 12 grams of marijuana, which is included in Schedule VI of the North Carolina Controlled Substances Act.

**AOC Forms for This Offense:**

AOC-CR-151 (Indictment)

AOC-CR-111 (Arrest Warrant)

AOC-J-327 (Juvenile Petition)

**Punishment:**

If the controlled substance is in Schedule I or II, sale is a Class G felony and delivery is a Class H felony.

If the controlled substance is in Schedule III through VI, sale is a Class H felony and delivery is a Class I felony.

**Introductory Comment:**

Schedule VI consists exclusively of marijuana and related substances. The seriousness of this offense depends on the exact type of the substance and the quantity of the substance that the defendant possessed. Be sure to use the appropriate charge for the type and quantity in your case.

**Charging Language:****I. Simple misdemeanor possession (one-half of an ounce of marijuana, seven grams of synthetic cannabinoid, or one-twentieth of an ounce of hashish, or less)**

... unlawfully and willfully did possess [*choose one*: marijuana; (*name synthetic cannabinoid*), a synthetic cannabinoid; the extracted resin of marijuana, commonly known as hashish], a controlled substance that is included in Schedule VI of the North Carolina Controlled Substances Act.

**II. Aggravated misdemeanor possession (over one-half of an ounce of marijuana but not more than one and one-half ounces, over seven grams of synthetic cannabinoid but not more than twenty-one grams, or over one-twentieth of an ounce of hashish but not more than three-twentieths of an ounce)**

... unlawfully and willfully did possess [*choose one*: more than one-half of an ounce of marijuana but not more than one and one-half ounces of marijuana; more than seven grams but not more than twenty-one grams of (*name synthetic cannabinoid*), a synthetic cannabinoid; more than one-twentieth of an ounce of the extracted resin of marijuana, commonly known as hashish, but not more than three-twentieths of an ounce of hashish], a controlled substance that is included in Schedule VI of the North Carolina Controlled Substances Act.

**III. Felonious simple possession (over one and one-half ounces of marijuana, twenty-one grams of synthetic cannabinoid, three-twentieths of an ounce of hashish, or any quantity of tetrahydrocannabinols)**

... unlawfully, willfully, and feloniously did possess [*choose one*: more than one and one-half ounces of marijuana; more than twenty-one grams of (*name synthetic cannabinoid*), a synthetic cannabinoid; more than three-twentieths of an ounce of the extracted resin of marijuana, commonly known as hashish; synthetic tetrahydrocannabinols; tetrahydrocannabinols isolated from the resin of marijuana], a controlled substance that is included in Schedule VI of the North Carolina Controlled Substances Act.

**Notes about Charging Language:**

- The statute also applies to “any mixture containing” synthetic cannabinoids. In any case involving a mixture, modify the charging language appropriately.
- Although it is not yet clear whether it is legally required, in a case involving synthetic cannabinoids, a cautious magistrate or prosecutor will include the chemical name of the specific synthetic cannabinoid at issue. Accordingly, this form calls for that information.

**Sample Charges:**

**I. Simple misdemeanor possession (one-half of an ounce of marijuana, seven grams of synthetic cannabinoid, or one-twentieth of an ounce of hashish, or less)**

... unlawfully and willfully did possess marijuana, a controlled substance that is included in Schedule VI of the North Carolina Controlled Substances Act.

**II. Aggravated misdemeanor possession (over one-half of an ounce of marijuana but not more than one and one-half ounces, over seven grams of synthetic cannabinoid but not more than twenty-one grams, or over one-twentieth of an ounce of hashish but not more than three-twentieths of an ounce)**

... unlawfully and willfully did possess more than one-twentieth of an ounce of the extracted resin of marijuana, commonly known as hashish, but not more than three-twentieths of an ounce of hashish, a controlled substance that is included in Schedule VI of the North Carolina Controlled Substances Act.

**III. Felonious simple possession (over one and one-half ounces of marijuana, twenty-one grams of synthetic cannabinoid, three-twentieths of an ounce of hashish, or any quantity of tetrahydrocannabinols)**

... unlawfully, willfully, and feloniously did possess more than one and one-half ounces of marijuana, a controlled substance that is included in Schedule VI of the North Carolina Controlled Substances Act.

**AOC Forms for This Offense:**

AOC-J-331 (Juvenile Petition)

**Punishment:**

Offense I is a Class 3 misdemeanor with special sentencing provisions set forth in the statute. Offense II is a Class 1 misdemeanor. Offense III is a Class I felony.

**Introductory Comment:**

None.

**Charging Language:****I. Trafficking in drugs****G.S. 90-95(h)**

... unlawfully, willfully, and feloniously did [*choose only one*: sell to (*name purchaser of controlled substance*); deliver to (*name person to whom controlled substance was delivered*); manufacture; transport; possess] (*insert appropriate statutory minimum and maximum amount, listed under "Punishment," below*) of [*choose one*: marijuana; synthetic cannabinoids; methaqualone; cocaine; methamphetamine; amphetamine; 3,4-Methylenedioxypyrovalerone (MDPV); 4-methylmethcathinone (mephedrone); heroin; lysergic acid diethylamide; 3,4-methylenedioxymphetamine (MDA); 3,4- methylenedioxy-methamphetamine (MDMA)].

**II. Conspiracy to traffic in drugs****G.S. 90-95(i)**

... unlawfully, willfully, and feloniously did conspire with (*name persons with whom conspired and/or write persons unknown*) to commit the felony of trafficking by [*choose one or more*: sale (*if known, insert to whom defendants conspired to sell*); delivery (*if known, insert to whom defendants conspired to deliver*); manufacture; transportation; possession] of (*insert appropriate statutory minimum and maximum amount, listed under "Punishment, below*) of [*choose one*: marijuana; synthetic cannabinoids; methaqualone; cocaine; methamphetamine; amphetamine; 3,4-Methylenedioxypyrovalerone (MDPV); 4-methylmethcathinone (mephedrone); heroin; lysergic acid diethylamide; 3,4-methylene-dioxymphetamine (MDA); 3,4-methylenedioxymphetamine (MDMA)].

**Notes about Charging Language:**

- For offense I, each act (sell, manufacture, deliver, transport, possess) is a separate offense, *State v. Perry*, 316 N.C. 87 (1986), and must be charged separately, *State v. Diaz*, 317 N.C. 545 (1986).
- G.S. 90-95(h)(1a) refers to "dosage units of a synthetic cannabinoid or any mixture containing such substance." In a case involving a mixture, although probably not legally required, insert the words "a mixture containing synthetic cannabinoid" in the pleading. A dosage unit is 3 grams of synthetic cannabinoid or any mixture containing synthetic cannabinoid.
- G.S. 90-95(h)(2) refers to methaqualone contained in "tablets, capsules, or other dosage units, or the equivalent quantity . . . or any mixture containing such substance." In a case involving a mixture, although probably not legally required, insert the words "a mixture containing methaqualone" in the pleading.
- G.S. 90-95(h)(3) also applies to the weight of any mixture containing cocaine, or any salt, isomer, etc., thereof. In such a case, although probably not legally required, insert the words "a mixture containing cocaine" in the pleading.
- G.S. 90-95(h)(3b) also applies to the weight of any mixture containing methamphetamine. In such a case, although probably not legally required, insert "a mixture containing methamphetamine" in the pleading.

- G.S. 90-95(h)(3c) also applies to the weight of any mixture containing amphetamine. In such a case, although probably not legally required, insert “a mixture containing amphetamine” in the pleading.
- G.S. 90-95(h)(3d) also applies to the weight of any mixture containing MDPV. In such a case, although probably not legally required, insert “a mixture containing MDPV” in the pleading.
- G.S. 90-95(h)(3e) also applies to the weight of any mixture containing mephedrone. In such a case, although probably not legally required, insert “a mixture containing mephedrone” in the pleading.
- G.S. 90-95(h)(4) also applies to the weight of any mixture containing heroin. In such a case, although probably not legally required, insert “a mixture containing heroin” in the pleading. Opium and other derivatives are also included in this statute.
- G.S. 90-95(h)(4a) refers to lysergic acid diethylamide contained in “tablets, capsules, or other dosage units, or the equivalent quantity . . . or any mixture containing such substance.” In a case involving a mixture, although probably not legally required, insert the words “a mixture containing lysergic acid diethylamide” in the pleading.
- G.S. 90-95(h)(4b) refers to the substance in a quantity of “tablets, capsules, or other dosage units” or by weight in grams, or any mixture containing the substance. In a case involving a mixture, although probably not legally required, insert “a mixture containing (*name the substance*)” in the pleading.
- For offense II, when only one agreement encompasses a conspiracy to sell, deliver, manufacture, transport, and possess, only one trafficking conspiracy charge can be brought and all the intended acts (sale, manufacture, etc.) of the conspiracy should be alleged in one conspiracy charge. *State v. Worthington*, 84 N.C. App. 150 (1987). However, if, for example, there is an agreement to transport drugs, and a later separate agreement is made to sell the drugs, two separate conspiracy charges could be brought.

**Sample Charges:****I. Trafficking in drugs**

G.S. 90-95(h)

. . . unlawfully, willfully, and feloniously did sell to Alice B. Toklas more than 10 pounds but less than 50 pounds of marijuana.

. . . unlawfully, willfully, and feloniously did sell to Harold Jones 14 grams or more but less than 28 grams of a mixture containing heroin.

. . . unlawfully, willfully, and feloniously did sell to Marsha Tolson 500 or more but less than 1,000 dosage units of lysergic acid diethylamide.

**II. Conspiracy to traffic in drugs**

G.S. 90-95(i)

. . . unlawfully, willfully, and feloniously did conspire with Samuel Smith, Jennifer Robin, and others unknown to commit the felony of trafficking by possession and transportation of 5,000 or more but less than 10,000 dosage units of methaqualone.

. . . unlawfully, willfully, and feloniously did conspire with Peter Jones, Albert Hall, and John Miller to commit the felony of trafficking by sale to Arthur Baltos of 10,000 pounds or more of marijuana.

**AOC Forms for This Offense:**

None.

**Punishment:**

The following sentences are mandatory, regardless of a defendant's prior record level. A judge may not suspend a sentence or place the defendant on probation except if the defendant has provided substantial assistance as described in G.S. 90-95(h)(5). The sentence must run consecutively with any sentences being served by the defendant.

**Marijuana:**

- *More than 10 pounds but less than 50 pounds:* Class H felony punishable by imprisonment for a minimum term of 25 months and a maximum term of 30 months and a fine of not less than \$5,000.
- *50 pounds or more but less than 2,000 pounds:* Class G felony punishable by imprisonment for a minimum term of 35 months and a maximum term of 42 months and a fine of not less than \$25,000.
- *2,000 pounds or more but less than 10,000 pounds:* Class F felony punishable by imprisonment for a minimum term of 70 months and a maximum term of 84 months and a fine of not less than \$50,000.
- *10,000 pounds or more:* Class D felony punishable by imprisonment for a minimum term of 175 months and a maximum term of 219 months and a fine of not less than \$200,000.

**Synthetic Cannabinoids:**

- *More than 50 but less than 250 dosage units:* Class H felony punishable by imprisonment for a minimum term of 25 months and a maximum term of 30 months and a fine of not less than \$5,000.
- *250 or more but less than 1,250 dosage units:* Class G felony punishable by imprisonment for a minimum term of 35 months and a maximum term of 42 months and a fine of not less than \$25,000.
- *1,250 or more but less than 3,750 dosage units:* Class F felony punishable by imprisonment for a minimum term of 70 months and a maximum term of 84 months and a fine of not less than \$50,000.
- *3,750 or more dosage units:* Class D felony punishable by imprisonment for a minimum term of 175 months and a maximum term of 219 months and a fine of not less than \$200,000.

**Methaqualone:**

- *1,000 or more but less than 5,000 dosage units:* Class G felony punishable by imprisonment for a minimum term of 35 months and a maximum term of 42 months and a fine of not less than \$25,000.
- *5,000 or more but less than 10,000 dosage units:* Class F felony punishable by imprisonment for a minimum term of 70 months and a maximum term of 84 months and a fine of not less than \$50,000.
- *10,000 or more dosage units:* Class D felony punishable by imprisonment for a minimum term of 175 months and a maximum term of 219 months and a fine of not less than \$200,000.



**Cocaine:**

- *28 grams or more but less than 200 grams:* Class G felony punishable by imprisonment for a minimum term of 35 months and a maximum term of 42 months and a fine of not less than \$50,000.
- *200 grams or more but less than 400 grams:* Class F felony punishable by imprisonment for a minimum term of 70 months and a maximum term of 84 months and a fine of not less than \$100,000.
- *400 grams or more:* Class D felony punishable by imprisonment for a minimum term of 175 months and a maximum term of 219 months and a fine of not less than \$250,000.

**Methamphetamine:**

- *28 grams or more but less than 200 grams:* Class F felony punishable by imprisonment for a minimum term of 70 months and a maximum term of 84 months and a fine of not less than \$50,000.
- *200 grams or more but less than 400 grams:* Class E felony punishable by imprisonment for a minimum term of 90 months and a maximum term of 117 months and a fine of not less than \$100,000.
- *400 grams or more:* Class C felony punishable by imprisonment for a minimum term of 225 months and a maximum term of 279 months and a fine of not less than \$250,000.

**Amphetamine:**

- *28 grams or more but less than 200 grams:* Class H felony punishable by imprisonment for a minimum term of 25 months and a maximum term of 30 months and a fine of not less than \$5,000.
- *200 grams or more but less than 400 grams:* Class G felony punishable by imprisonment for a minimum term of 35 months and a maximum term of 42 months and a fine of not less than \$25,000.
- *400 grams or more:* Class E felony punishable by imprisonment for a minimum term of 90 months and a maximum term of 117 months and a fine of not less than \$100,000.

**3,4-Methylenedioxypyrovalerone (MDPV) and 4-methylmethcathinone (mephedrone):**

- *28 grams or more but less than 200 grams:* Class F felony punishable by imprisonment for a minimum term of 70 months and a maximum term of 84 months and a fine of not less than \$50,000.
- *200 grams or more but less than 400 grams:* Class E felony punishable by imprisonment for a minimum term of 90 months and a maximum term of 117 months and a fine of not less than \$100,000.
- *400 grams or more:* Class C felony punishable by imprisonment for a minimum term of 225 months and a maximum term of 279 months and a fine of not less than \$250,000.

**Heroin or opium:**

- *4 grams or more but less than 14 grams:* Class F felony punishable by imprisonment for a minimum term of 70 months and a maximum term of 84 months and a fine of not less than \$50,000.



- *14 grams or more but less than 28 grams*: Class E felony punishable by imprisonment for a minimum term of 90 months and a maximum term of 117 months and a fine of not less than \$100,000.
- *28 grams or more*: Class C felony punishable by imprisonment for a minimum term of 225 months and a maximum term of 279 months and a fine of not less than \$500,000.

**Lysergic acid diethylamide:**

- *100 or more but less than 500 dosage units*: Class G felony punishable by imprisonment for a minimum term of 35 months and a maximum term of 42 months and a fine of not less than \$25,000.
- *500 or more but less than 1,000 dosage units*: Class F felony punishable by imprisonment for a minimum term of 70 months and a maximum term of 84 months and a fine of not less than \$50,000.
- *1,000 or more dosage units*: Class D felony punishable by imprisonment for a minimum term of 175 months and a maximum term of 219 months and a fine of not less than \$200,000.

**3,4-methylenedioxyamphetamine (MDA) and 3,4-methylenedioxymethamphetamine (MDMA)**

- *100 or more but less than 500 dosage units, or 28 grams or more but less than 200 grams*: Class G felony punishable by imprisonment for a minimum term of 35 months and a maximum term of 42 months and a fine of not less than \$25,000.
- *500 or more but less than 1,000 dosage units, or 200 grams or more but less than 400 grams*: Class F felony punishable by imprisonment for a minimum term of 70 months and a maximum term of 84 months and a fine of not less than \$50,000.
- *1,000 or more dosage units or 400 grams or more*: Class D felony punishable by imprisonment for a minimum term of 175 months and a maximum term of 219 months and a fine of not less than \$250,000.



**Introductory Comments:**

The charging language below concerns subsection (a) of G.S. 115C-378(a). Note, however, that any person who “encourage[s], entice[s] or counsel[s] any child of compulsory attendance age to be unlawfully absent from school” violates subsection (b) of the statute. Charging language for that subsection is not provided in this manual. It appears that an offense under that subsection could be charged immediately, without the preliminary measures described in subsections (e) and (f) and incorporated into the charging language below.

**Charging Language:**

... unlawfully and willfully did, as a (*choose one*: parent; guardian; custodian) having charge and control of (*name child*), a child between 7 and 16 years old, fail to cause that child to attend school continuously for a period equal to the time which the public school to which the child was assigned, (*name public school to which assigned*), must be in session. After (*name child*) had accumulated three unexcused absences during the (*specify year*) school year, (*name person*), the (*choose one*: principal of; designee of the principal of) (*name school*) notified the defendant of the child’s excessive absences. After (*name child*) had accumulated six unexcused absences during the (*specify year*) school year, (*name person*), the (*choose one*: principal of; designee of the principal of) (*name school*) notified the defendant by mail that the defendant may be in violation of the North Carolina compulsory school attendance law. After (*name child*) had accumulated ten unexcused absences during the (*specify year*) school year, (*name person*), the (*choose one*: principal of; designee of the principal of) (*name school*) conferred with the defendant and the child to determine whether the defendant had received the above-referenced notifications and whether the defendant had made a good-faith effort to comply with the law. The defendant did not make a good-faith effort to comply with the law.

**Notes about Charging Language:**

- For cases regarding the sufficiency of a criminal pleading that charges this offense, see *State v. Lewis*, 194 N.C. 620 (1927), and *State v. Johnson*, 188 N.C. 591 (1924). See also *State v. Frady*, 195 N.C. App. 766 (2009) (listing elements).
- Sending a child to a nonpublic school satisfies the statute if the school meets the standards set forth in G.S. 115C-378(d)—generally, the school must meet the curriculum and schedule standards that apply to the public schools.
- A parent, guardian, or custodian of a child under age 7 “who is enrolled in a public school in grades kindergarten through two” also violates the statute by failing to ensure attendance, “unless the child has withdrawn from school.” In such a case, make appropriate changes to the charging language.
- The statute states that the ten-day conference must take place “if possible.” If it was not possible for the conference to take place, modify the sentence of the charging language concerning the ten-day conference appropriately.

**Sample Charge:**

... unlawfully and willfully did, as a parent having charge and control of Sally Smith, a child between 7 and 16 years old, fail to cause that child to attend school continuously for a period equal to the time which the public school to which the child was assigned, Grant Elementary School, Grantville, N.C., must be in session. After Sally Smith had accumulated three unexcused absences during the 2011–12 school year, Delia Castor, the principal of Grant Elementary School, notified the defendant of the child's excessive absences. After Sally Smith had accumulated six unexcused absences during the 2011–12 school year, Delia Castor, the principal of Grant Elementary School, notified the defendant by mail that the defendant may be in violation of the North Carolina compulsory school attendance law. After Sally Smith had accumulated ten unexcused absences during the 2011–12 school year, Delia Castor, the principal of Grant Elementary School, conferred with the defendant and the child to determine whether the defendant had received the above-referenced notifications and whether the defendant had made a good-faith effort to comply with the law. The defendant did not make a good-faith effort to comply with the law.

**AOC Forms for This Offense:**

None.

**Punishment:**

Class 1 misdemeanor. G.S. 115C-380.