

## 2013 Update to Arrest Warrant and Indictment Forms

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This update contains 24 forms. Of these, 7 are entirely new; they concern G.S. 14-7.35 (armed habitual felon); G.S. 14-34.10 (discharging a firearm within an enclosure); G.S. 14-72(b)(6) (habitual misdemeanor larceny); G.S. 14-151 (interfering with utility meters); G.S. 14-205.1 (solicitation of prostitution); G.S. 14-205.2 (patronizing a prostitute); and G.S. 14-205.3 (promoting prostitution). 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 2013 legislative session, though some respond to developments in the case law or correct shortcomings in previous forms.

The General Assembly repealed at least two offenses during the 2013 legislative session: interfering with electric, gas, or water meters, previously set forth in G.S. 14-151.1, effective December 1, 2013; and loitering for prostitution, previously set forth in G.S. 14-204.1, effective October 1, 2013. Both offenses have been removed from the updated table of contents, and their respective forms should be removed from the manual.

Drafts of these forms were reviewed by several members of the AOC legal staff as well as my colleagues here at the School of Government, and I am grateful for their help. Of course, any remaining errors are my responsibility. I welcome comments, questions, and concerns regarding these forms. I can be reached at [welty@sog.unc.edu](mailto:welty@sog.unc.edu) or at (919) 843-8474.



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**Introductory Comment:**

This offense may be charged only by the “district attorney, in the district attorney’s discretion.” G.S. 14-7.38. Therefore, it should not be charged by a magistrate or other judicial official. A detailed discussion of the armed habitual felon law can be found at Jeff Welty, *Armed Habitual Felon*, North Carolina Criminal Law Blog (Feb. 25, 2014).

**Charging Language:**

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

**Notes about Charging Language:**

- A firearm-related felony is defined to mean a felony “in which the [defendant] used or displayed a firearm while committing the felony.” G.S. 14-7.35(2). At least as to the defendant’s previous conviction, the statute requires that evidence of the defendant’s use or display of the gun “was needed to prove an element of the felony or was needed to establish the requirement of an aggravated sentence.”
- Because this statute is patterned on the habitual felon statute, it is likely that the principles that apply to charging habitual felon will be held to apply to armed habitual felon as well. For example, a separate armed habitual felon indictment likely is not required for each principal armed felony. *Cf. State v. Patton*, 342 N.C. 633 (1996). An armed habitual felon indictment likely need not allege the predicate felony being tried. *Cf. State v. Cheek*, 339 N.C. 725 (1995). And, while the State may allege more than one previous armed felony, it is likely that none of the armed felonies alleged in the indictment may be used to calculate the defendant’s prior record level in the event of a conviction. *Cf. State v. Lee*, 150 N.C. App. 701 (2003). For a longer discussion of charging issues in connection with habitual felon status, see Jeffrey B. Welty, “North Carolina’s Habitual Felon, Violent Habitual Felon, and Habitual Breaking and Entering Laws,” *Administration of Justice Bulletin* 2013/07 (Aug. 2013).
- “The indictment charging the defendant [as an armed habitual felon] shall be separate from the indictment charging the person with the principal firearm-related felony.” G.S. 14-7.38(a).

**Sample Charge:**

The jurors for the State upon their oath present that James Garman is an armed habitual felon in that on or about March 11, 2014, James Garman did commit the firearm-related felony of armed robbery, G.S. 14-87, and that on or about Feb. 8, 2008, James Garman did commit assault with a deadly weapon with intent to kill inflicting serious injury, G.S. 14-32(b), against the State of North Carolina, and that on or about June 21, 2008, in Alleghany County Superior Court, James Garman was convicted of the firearm-related felony of assault with a deadly weapon with intent to kill inflicting serious injury.

**AOC Forms for This Offense:**

None.

**Punishment:**

If the defendant is convicted of a firearm-related felony, and is then determined to be an armed habitual felon, the principal felony is punished as a Class C felony with a minimum active sentence of 120 months. G.S. 14-7.41.

**Introductory Comment:**

G.S. 14-32.1 sets out two types of assault offenses against handicapped persons: “simple” assaults and “aggravated” assaults. Both types of offenses are covered by this entry in this manual.

**Charging Language:****I. Simple assault and battery** **G.S. 14-32.1(f)**

. . . unlawfully and willfully did assault and strike (*name victim*), a handicapped person, by (*describe the assault or the assault and battery*).

**II. Aggravated assault** **G.S. 14-32.1(e)**

. . . unlawfully, willfully, and feloniously did assault and strike (*name victim*), a handicapped person, by (*describe the assault or the assault and battery*). In the course of the assault the defendant (*choose one or more*):

- (1) used a deadly weapon, a (*describe deadly weapon*);
- (2) inflicted serious injury on (*name victim*);
- (3) intended to kill (*name victim*).

**Notes about Charging Language:**

- It is probably unnecessary to describe the assault. *Cf. State v. Thorne*, 238 N.C. 392 (1953) (upholding a simple assault charge that did not describe the manner in which the assault was committed); *State v. Brooks*, 2008 WL 2097525 (N.C. Ct. App. May 20, 2008) (unpublished) (holding that allegations regarding the specific manner in which the defendant committed an assault by strangulation were surplusage). However, this form requests that information for clarity.
- The phrase “handicapped person” means a person who has a physical or mental disability or infirmity that substantially impairs the person’s ability to defend himself or herself. G.S. 14-32.1(a). However, the specific nature of the victim’s handicap need not be described in the charging document. *State v. Collins*, \_\_\_ N.C. App. \_\_\_, 727 S.E.2d 922 (2012).
- The state must prove that the defendant knew that the victim was handicapped in order to convict the defendant under G.S. 14-32.1. *State v. Singletary*, 163 N.C. App. 449 (2004). However, the defendant’s knowledge is implicit in the term “willfully” and need not be separately alleged. *State v. Collins*, \_\_\_ N.C. App. \_\_\_, 727 S.E.2d 922 (2012).
- The phrase “serious injury” means physical or bodily injury of real consequence; physical injury that causes great pain and suffering. It also may include severe mental injury. *State v. Everhardt*, 326 N.C. 777 (1990). The nature of the serious injury need not be alleged in the charging document. *State v. Gregory*, 223 N.C. 415 (1943).

**Sample Charges:****I. Simple assault and battery** **G.S. 14-32.1(f)**

. . . unlawfully and willfully did assault and strike Douglas Herndon, a handicapped person, by kicking him in the stomach with his foot.

**II. Aggravated assault**

G.S. 14-32.1(e)

. . . unlawfully, willfully, and feloniously did assault Samantha Farrell, a handicapped person, by shooting a gun at Farrell, though not hitting her. In the course of the assault, the defendant did use a deadly weapon, a .22 caliber pistol.

**AOC Forms for This Offense:**

None.

**Punishment:**

Simple assault and battery on a handicapped person is a Class A1 misdemeanor. Aggravated assault on a handicapped person is a Class F felony.

**Introductory Comment:**

None.

**Charging Language:**

. . . unlawfully, willfully, and feloniously did wantonly (*choose one*: discharge; attempt to discharge) a (*describe the firearm*), a firearm, within an occupied (*choose one and describe*: building; structure; motor vehicle; conveyance; erection; enclosure), with the intent to incite fear in another, (*name victim*).

**Notes about Charging Language:**

- It is probably not legally necessary to describe the firearm. *State v. Pickens*, 346 N.C. 628 (1997) (holding that language in an indictment for discharging a firearm into an occupied dwelling that specified the type of firearm was unnecessary “surplusage”). *Cf. State v. Lee*, \_\_\_ N.C. App. \_\_\_, 720 S.E.2d 884 (2012) (stating that an indictment for assault with a deadly weapon with intent to kill inflicting serious injury would have been sufficient if it had simply alleged that the defendant used a “gun,” as that “would have been sufficient to give notice to defendant of the allegation that he used some type of gun to commit the assault”). However, this form requests that information for clarity.
- In some instances, the defendant may have intended to incite fear in a class of persons, such as all the patrons of a business within which the defendant discharged a firearm, rather than in a specific individual. In such a case, it may be appropriate to describe the victim or victims rather than to name them.

**Sample Charge:**

. . . unlawfully, willfully, and feloniously did wantonly discharge a Glock 9mm pistol, a firearm, within an occupied building, a house located at 224 Katie Lane, Farmville, N.C., with the intent to incite fear in another, Fatima Achour.

**AOC Forms for This Offense:**

None.

**Punishment:**

Class F felony.



**Introductory Comment:**

None.

**Charging Language:****I. Felony Breaking or Entering****G.S. 14-54(a)**

. . . unlawfully, willfully, and feloniously did break and enter a building, located at (*give address*), with the intent to commit a felony therein. The building was (*choose one: owned by; occupied by*) (*name owner or occupant*) (*if the building was in use, also state: and was used as [state use]*).

**II. Breaking or Entering to Terrorize****G.S. 14-54(a1)**

. . . unlawfully, willfully, and feloniously did break and enter a building, located at (*give address*), with the intent to (*choose one or both: terrorize; injure*) an occupant of the building, (*name occupant*).

**Notes about Charging Language:**

- The statute makes it an offense to either break or enter; if there was only a breaking and no entry, you may strike the words “and enter.” If there was an entry but no breaking, you may strike the words “break and.”
- For Offense I, as long as the building is accurately identified by its address, it is not legally necessary to allege the ownership, occupancy, or use of the building. *State v. Norman*, 149 N.C. App. 588 (2002) (ruling that “[a]s to the building itself, it was not necessary that the [breaking or entering] indictment allege ownership of the building,” so long as the building was identified with reasonable particularity). However, this form requests that information for clarity and in case the address is unavailable or incorrect. *State v. Shanklin*, 16 N.C. App. 712 (1972) (upholding breaking or entering indictment that did not provide the address of the building but did identify the occupant of the building).
- In *State v. Worsely*, 336 N.C. 268 (1994), the court ruled that an indictment need only allege that the defendant intended to commit a felony in the building, without naming the felony. If the state elects to name a specific felony, it may be bound by that allegation. *State v. Silas*, 360 N.C. 377 (2006).
- The elements of felonious breaking or entering require that the defendant have the intent to commit a felony “or larceny.” G.S. 14-54(a). However, larceny committed pursuant to a breaking or entering is a felony under G.S. 14-72(b)(2). Therefore, “or larceny” is redundant, and this form omits it. It is not improper to include it if desired.
- For Offense II, in some instances, the defendant may have intended to injure or terrorize a class of persons, such as all the residents of a house, rather than a specific individual. In such a case, it may be appropriate to describe the victim or victims rather than to name them.

**Sample Charges:****I. Felony Breaking or Entering****G.S. 14-54(a)**

. . . unlawfully, willfully, and feloniously did break and enter a building, located at 5678 Maryville Drive, Commerce, N.C., with the intent to commit a felony therein. The building was occupied by Thomas Montgomery and was used as a residence.

**II. Breaking or Entering to Terrorize**

G.S. 14-54(a1)

. . . unlawfully, willfully, and feloniously did break and enter a building, located at 3507 Harkness Circle, Fuquay-Varina, N.C., with the intent to terrorize an occupant of the building, Celine Harvin.

**AOC Forms for This Offense:**

AOC-CR-134 (Indictment)

AOC-J-313 (Juvenile Petition, for Offense I only)

**Punishment:**

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

**Introductory Comment:**

None.

**Charging Language:**

. . . unlawfully and willfully did wrongfully break and enter a building located at (*give address*). The building was (*choose one: owned by; occupied by*) (*name owner or occupant*) (*if the building was in use, also state: and was used as [state use]*).

**Notes about Charging Language:**

- The statute makes it an offense to either break or enter; if there was only a breaking and no entry, you may strike the words “and enter.” If there was an entry but no breaking, you may strike the words “break and.”
- As long as the building is accurately identified by its address, it is not legally necessary to allege the ownership, occupancy, or use of the building. *State v. Norman*, 149 N.C. App. 588 (2002) (ruling that “[a]s to the building itself, it was not necessary that the [breaking or entering] indictment allege ownership of the building,” so long as the building was identified with reasonable particularity). However, this form requests that information for clarity and in case the address is unavailable or incorrect. *State v. Shanklin*, 16 N.C. App. 712 (1972) (upholding breaking or entering indictment that did not provide the address of the building but did identify the occupant of the building).

**Sample Charge:**

. . . unlawfully and willfully did wrongfully enter a building located at 1875 S. Williams Street, Beamville, N.C. The building was occupied by Granny’s Clothing Attic, Inc., a corporation, and was used as a retail store.

**AOC Forms for This Offense:**

None.

**Punishment:**

Class 1 misdemeanor.



**Introductory Comment:**

An indictment or an information for this offense must comply with G.S. 15A-928, which requires that the defendant's prior convictions be alleged either in (1) a count of the indictment or information separate from the substantive offense or (2) a separate indictment or information. This requirement does not apply to arrest warrants or magistrates' orders, which explains why two sets of charging language appear below.

G.S. 15A-928 also requires that an "improvised name or title" be used so that the title of the indictment or information does not refer to the defendant's prior convictions. Therefore, an indictment or information charging habitual misdemeanor larceny should be captioned "larceny pursuant to G.S. 14-72(b)(6)" or something similar.

**Charging Language:****I. Charging language for an arrest warrant or magistrate's order**

. . . unlawfully, willfully, and feloniously did steal, take, and carry away (*describe the property taken*), the personal property of (*name the possessor*). This offense was committed after the defendant had been convicted of at least four previous larceny offenses. The defendant was convicted of the offense of (*name offense*) on (*give date of conviction*) in (*name court and, if desired, give case number*). The defendant was convicted of the offense of (*name offense*) on (*give date of conviction*) in (*name court and, if desired, give case number*). The defendant was convicted of the offense of (*name offense*) on (*give date of conviction*) in (*name court and, if desired, give case number*). The defendant was convicted of the offense of (*name offense*) on (*give date of conviction*) in (*name court and, if desired, give case number*).

**II. Charging language for an indictment or information*****First count of the indictment or information***

. . . unlawfully, willfully, and feloniously did steal, take, and carry away (*describe the property taken*), the personal property of (*name the possessor*).

***Second count of the indictment or information***

The offense in count I, above, was committed after the defendant had been convicted of at least four previous larceny offenses. The defendant was convicted of the offense of (*name offense*) on (*give date of conviction*) in (*name court and, if desired, give case number*). The defendant was convicted of the offense of (*name offense*) on (*give date of conviction*) in (*name court and, if desired, give case number*). The defendant was convicted of the offense of (*name offense*) on (*give date of conviction*) in (*name court and, if desired, give case number*). The defendant was convicted of the offense of (*name offense*) on (*give date of conviction*) in (*name court and, if desired, give case number*).

**Notes about Charging Language:**

- More than four previous larceny convictions may be alleged if desired. However, previous convictions alleged in the charging document likely cannot be used when calculating the defendant's prior record level. *Cf. State v. Cooper*, 154 N.C. App. 521 (2002) (unpublished) (so

holding, in the context of habitual misdemeanor assault); *State v. Gentry*, 135 N.C. App. 107 (1999) (so holding, in the context of habitual DWI).

**Sample Charges:****I. Charging language for an arrest warrant or magistrate's order**

... unlawfully, willfully, and feloniously did steal, take, and carry away a Razor scooter, the personal property of Oliver Abrams. This offense was committed after the defendant had been convicted of at least four previous larceny offenses. The defendant was convicted of the offense of larceny on January 7, 2008, in Currituck County District Court. The defendant was convicted of the offense of larceny of a firearm on September 9, 2010, in Onslow County Superior Court. The defendant was convicted of the offense of larceny on July 17, 2011, in Horry County (South Carolina) Circuit Court. The defendant was convicted of the offense of larceny on August 3, 2013, in Onslow County District Court.

**II. Charging language for an indictment or information*****First count of the indictment or information***

... unlawfully, willfully, and feloniously did steal, take, and carry away a Razor scooter, the personal property of Oliver Abrams.

***Second count of the indictment or information***

The offense in count I, above, was committed after the defendant had been convicted of at least four previous larceny offenses. The defendant was convicted of the offense of larceny on January 7, 2008, in Currituck County District Court. The defendant was convicted of the offense of larceny of a firearm on September 9, 2010, in Onslow County Superior Court. The defendant was convicted of the offense of larceny on July 17, 2011, in Horry County (South Carolina) Circuit Court. The defendant was convicted of the offense of larceny on August 3, 2013, in Onslow County District Court.

**AOC Forms for This Offense:**

None.

**Punishment:**

Class H felony.

**Introductory Comment:**

Most, if not all, of the conduct covered by this statute is also covered by G.S. 14-107, which (1) arguably carries a lower burden of proof and (2) is subject to the special prima facie evidence provisions of G.S. 14-107.1. Thus, it is usually preferable to charge under G.S. 14-107.

**Charging Language:**

. . . unlawfully and willfully did with intent to cheat and defraud (*name person or corporation*), obtain (*briefly describe property or other thing of value*) by means of a (*indicate one of the following: check, draft, order*) for (*give amount*) drawn by the defendant on (*name bank, person, or corporation*) payable to (*name payee*) and dated (*give date*). At the time in question, (*name bank, person, or corporation on which instrument was drawn*) was not indebted to the defendant, nor had the defendant made provision for payment or acceptance of the instrument. The instrument was not paid upon presentation.

**Notes about Charging Language:**

None.

**Sample Charge:**

. . . unlawfully and willfully did with intent to cheat and defraud Franklin Jewelry Store, Inc., obtain one sterling silver knife, made by Reed and Barton, pattern Louis XIV, by means of a check for \$155.75 drawn by the defendant on Republic State Bank payable to Franklin Jewelry Store and dated November 12, 2004. At the time in question, Republic State Bank was not indebted to the defendant, nor had the defendant made provision for payment or acceptance of the instrument. The instrument was not paid upon presentation.

**AOC Forms for This Offense:**

None.

**Punishment:**

Class 3 misdemeanor.



**Introductory Comment:**

This statute defines several offenses related to the writing of worthless checks. The offenses vary based on the value of the check, whether the account on which the check was drawn was closed or non-existent, and the defendant's history of writing worthless checks.

**Charging Language:****I. Felony worthless check (check in amount over \$2,000): principal offender**

... unlawfully, willfully, and feloniously did draw, make, utter and issue and deliver to (*name person who received the check*) a check drawn upon (*name bank*) of (*name city*), (*name state*), for the payment of (*give amount*) in money. The check was payable to (*name payee*) and was dated (*give date*). The defendant knew at the time that the defendant (*choose one*: did not have sufficient funds on deposit in or credit with the bank with which to pay the check upon presentation; had previously presented the check for the payment of money or its equivalent).

**II. Felony worthless check (check in amount over \$2,000): aider and abettor**

... unlawfully, willfully, and feloniously did aid and abet (*name maker of check*) to draw, make, utter and issue and deliver to (*name person who received the check*) a check drawn upon (*name bank*) of (*name city and state*) for the payment of (*give amount*) in money. The check was payable to (*name payee*) and dated (*give date*), the date on which it was drawn. The defendant had reasonable grounds to believe at the time that (*name maker of the check*) (*choose one*: did not have sufficient funds on deposit in or credit with the bank with which to pay the check upon presentation; had previously presented the check for the payment of money or its equivalent).

**III. Simple misdemeanor worthless check (check in amount of \$2,000 or less): principal offender**

... unlawfully and willfully did draw, make, utter and issue and deliver to (*name person who received the check*) a check drawn upon (*name bank*) of (*name city*), (*name state*), for the payment of (*give amount*) in money. The check was payable to (*name payee*) and was dated (*give date*). The defendant knew at the time that the defendant (*choose one*: did not have sufficient funds on deposit in or credit with the bank with which to pay the check upon presentation; had previously presented the check for the payment of money or its equivalent).

**IV. Simple misdemeanor worthless check (check in amount of \$2,000 or less): aider and abettor**

... unlawfully and willfully did aid and abet (*name maker of check*) to draw, make, utter and issue and deliver to (*name person who received the check*) a check drawn upon (*name bank*) of (*name city and state*) for the payment of (*give amount*) in money. The check was payable to (*name payee*) and dated (*give date*), the date on which it was drawn. The defendant had reasonable grounds to believe at the time that (*name maker of the check*) (*choose one*: did not have sufficient funds on deposit in or credit

with the bank with which to pay the check upon presentation; had previously presented the check for the payment of money or its equivalent).

**V. Check written on nonexistent account: principal offender**

. . . unlawfully and willfully did draw, make, utter and issue and deliver to (*name person who received the check*) a check drawn upon (*name bank*) of (*name city and state*) for the payment of (*give amount*) in money. The check was payable to (*name payee*) and was dated (*give date*). The check was drawn upon a nonexistent account and the defendant knew at the time that the defendant (*choose one*: did not have sufficient funds on deposit in or credit with the bank with which to pay the check upon presentation; had previously presented the check for the payment of money or its equivalent).

**VI. Check written on nonexistent account: aider and abettor**

. . . unlawfully and willfully did aid and abet (*name maker of check*) to draw, make, utter and issue and deliver to (*name person who received the check*) a check for the payment of (*give amount*) in money, drawn upon (*name bank*) of (*name city and state*) and drawn upon a nonexistent account. The check was payable to (*name payee*) and dated (*give date*), the date on which it was drawn. The defendant had reasonable grounds to believe at the time that (*name maker of the check*) (*choose one*: did not have sufficient funds on deposit in or credit with the bank with which to pay the check upon presentation; had previously presented the check for the payment of money or its equivalent).

**VII. Check written on closed account: principal offender**

. . . unlawfully and willfully did draw, make, utter and issue and deliver to (*name person who received the check*) a check drawn upon (*name bank*) of (*name city*), (*name state*), for the payment of (*give amount*) in money. The check was payable to (*name payee*) and was dated (*give date*). The defendant knew at the time that the defendant (*choose one*: did not have sufficient funds on deposit in or credit with the bank with which to pay the check upon presentation; had previously presented the check for the payment of money or its equivalent). [*Choose one*: (1) The check was drawn upon an account that had been closed by the defendant before the time the check was drawn. (2) The check was drawn upon an account that the defendant knew to have been closed by the bank before the time the check was drawn.]

**VIII. Check written on closed account: aider and abettor**

. . . unlawfully and willfully did aid and abet (*name maker of check*) to draw, make, utter and issue and deliver to (*name person who received the check*) a check for the payment of (*give amount*) in money, drawn upon (*name bank*) of (*name city and state*) and [*choose one*: drawn upon an account that had been closed by (*name maker of check*) before the time the check was drawn; drawn upon an account

that the (*name maker of check*) knew to have been closed by the bank before the time the check was drawn.] The check was payable to (*name payee*) and dated (*give date*), the date on which it was drawn. The defendant had reasonable grounds to believe at the time that (*name maker of the check*) (*choose one*: did not have sufficient funds on deposit in or credit with the bank with which to pay the check upon presentation; had previously presented the check for the payment of money or its equivalent).

**IX. Simple misdemeanor worthless check: fourth or subsequent offense**

. . . unlawfully and willfully did draw, make, utter and issue and deliver to (*name person who received the check*) a check drawn upon (*name bank*) of (*name city*), (*name state*), for the payment of (*give amount*) in money. The check was payable to (*name payee*) and was dated (*give date*). The defendant knew at the time that the defendant (*choose one*: did not have sufficient funds on deposit in or credit with the bank with which to pay the check upon presentation; had previously presented the check for the payment of money or its equivalent). The defendant was convicted three times previously of the crime of writing a worthless check, on the \_\_\_ day of \_\_\_\_\_, \_\_\_\_, in the \_\_\_\_\_ Court, \_\_\_\_\_ County; on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_, in the \_\_\_\_\_ Court, \_\_\_\_\_ County; and on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_, in the \_\_\_\_\_ Court, \_\_\_\_\_ County.

**Notes about Charging Language:**

- The statute applies to drafts also. If the instrument is a draft, substitute the word “draft” for the word “check” throughout.
- The date on the check should be the same as the date on which the check was drawn. There is no crime under this statute if the check was postdated. *State v. Crawford*, 198 N.C. 522 (1930).
- The aiding and abetting provisions of the statute apply to soliciting also. If appropriate, substitute the word “solicit” for the words “aid and abet.”
- Under *State v. Edwards*, 190 N.C. 322 (1924), a charge under this section that refers only to the lack of “funds on deposit” and fails also to mention the lack of “credit with the bank” is fatally defective.

**Sample Charges:**

**I. Felony worthless check (check in amount over \$2,000): principal offender**

. . . unlawfully, willfully, and feloniously did draw, make, utter and issue and deliver to Peter Piper a check drawn upon Central Carolina Bank of Durham, N.C., for the payment of \$2,112.95 in money. The check was payable to Peter Piper and was dated October 30, 2005. The defendant knew at the time that the defendant did not have sufficient funds on deposit in or credit with the bank with which to pay the check upon presentation.

**II. Felony worthless check (check in amount over \$2,000): aider and abettor**

. . . unlawfully, willfully, and feloniously did aid and abet John Rankin to draw, make, utter and issue and deliver to Fixit Hardware Store a check drawn upon Planters Bank of Raleigh, N.C., for the payment of \$2,135.89 in money. The check was payable to Fixit Hardware Store and dated September 28,

2005, the date on which it was drawn. The defendant had reasonable grounds to believe at the time that John Rankin did not have sufficient funds on deposit in or credit with the bank with which to pay the check upon presentation.

**III. Simple misdemeanor worthless check (check in amount of \$2,000 or less): principal offender**  
... unlawfully and willfully did draw, make, utter and issue and deliver to K Mart Stores, Inc., a check drawn upon Central Carolina Bank of Durham, N.C., for the payment of \$12.95 in money. The check was payable to K Mart Stores, Inc., and was dated October 12, 2004. The defendant knew at the time that the defendant did not have sufficient funds on deposit in or credit with the bank with which to pay the check upon presentation.

**IV. Simple misdemeanor worthless check (check in amount of \$2,000 or less): aider and abettor**  
... unlawfully and willfully did aid and abet John Smith to draw, make, utter and issue and deliver to Home Mortgage Co. a check drawn upon Planters Bank of Raleigh, N.C., for the payment of \$1,335.89 in money. The check was payable to Home Mortgage Co. and dated September 10, 2004, the date on which it was drawn. The defendant had reasonable grounds to believe at the time that John Smith did not have sufficient funds on deposit in or credit with the bank with which to pay the check upon presentation.

**V. Check written on nonexistent account: principal offender**  
... unlawfully and willfully did draw, make, utter and issue and deliver to Lloyd's U-Make Furniture, Inc., a check drawn upon First Union National Bank of Charlotte, N.C., for the payment of \$35.47 in money. The check was payable to Lloyd's U-Make Furniture and was dated August 11, 2004. The check was drawn upon a nonexistent account and the defendant knew at the time that the defendant did not have sufficient funds on deposit in or credit with the bank with which to pay the check upon presentation.

**VI. Check written on nonexistent account: aider and abettor**  
... unlawfully and willfully did aid and abet Sue Anne Delbet to draw, make, utter and issue and deliver to Terry's One-stop Shop, Inc., a check for the payment of \$11.19 in money, drawn upon Wachovia Bank of Winston-Salem, N.C., and drawn upon a nonexistent account. The check was payable to Terry's One-stop Shop and dated August 4, 2004, the date on which it was drawn. The defendant had reasonable grounds to believe at the time that Sue Anne Delbet did not have sufficient funds on deposit in or credit with the bank with which to pay the check upon presentation.

**VII. Check written on closed account: principal offender**  
... unlawfully and willfully did draw, make, utter and issue and deliver to Peter Graves a check drawn upon Wachovia National Bank of Raleigh, N.C., for the payment of \$60.00 in money. The check was payable to Peter Graves and was dated November 1, 2004. The defendant knew at the time that the defendant did not have sufficient funds on deposit in or credit with the bank with which to pay upon presentation. The check was drawn upon an account that had been closed by the defendant before the time the check was drawn. [G.S. 14-107(4)]

**VIII. Check written on closed account: aider and abettor**

... unlawfully and willfully did aid and abet Susan James to draw, make, utter and issue and deliver to Kroger's Grocery a check for the payment of \$83.24 in money, drawn upon Wachovia Bank of Charlotte, N.C., and drawn upon an account that had been closed by Susan James before the time the check was drawn. The check was payable to Kroger's Grocery and dated October 23, 2004, the date on which it was drawn. The defendant had reasonable grounds to believe at the time that Susan James did not have sufficient funds on deposit in or credit with the bank with which to pay the check upon presentation.

**IX. Simple misdemeanor worthless check: fourth or subsequent offense**

... unlawfully and willfully did draw, make, utter and issue and deliver to Sam's Towel Shop, Inc., a check drawn upon Wachovia National Bank of Durham, N.C., for the payment of \$150.75 in money. The check was payable to Sam's Towel Shop and was dated May 15, 2004. The defendant knew at the time that the defendant did not have sufficient funds on deposit in or credit with the bank with which to pay the check upon presentation. The defendant was convicted three times previously of the crime of writing a worthless check, on the 15th day of June, 2003, in the District Court, Durham County; on the 18th day of August, 2003, in the District Court, Durham County; and on the 25th day of May, 2003, in the District Court, Durham County.

**AOC Forms for This Offense:**

AOC-CR-107 (Arrest Warrant, for offenses III and IX only)

AOC-CR-115 (Criminal Summons, for offenses III and IX only)

**Punishment:**

Offenses I and II are Class I felonies. Offenses III and IV are Class 3 misdemeanors. Offenses V, VI, VII, and VIII are Class 1 misdemeanors. Offense IX is a Class 1 misdemeanor, for which the defendant must be ordered, as a condition of probation, to refrain from maintaining a checking account or making or uttering a check for three years.



**Introductory Comment:**

None.

**Charging Language:****I. Abuse of position of trust**

G.S. 14-112.2(b)

. . . unlawfully, willfully, and feloniously did knowingly, while (*choose one or both*: standing in a position of trust and confidence with; having a business relationship with) (*name older or disabled adult*), (*choose one*: an older adult; a disabled adult) within the meaning of G.S. 14-112.2(a), by (*choose one or both*: deception; intimidation), (*choose one or both*: obtain; use) the funds, assets, and property of (*name older or disabled adult*) with the intent to (*choose one or both*: deprive [*name older or disabled adult*] of the use, benefit, and possession of the funds, assets, and property; benefit someone other than [*name older or disabled adult*]). (*If the value of the funds, assets, and property was \$20,000 or more, state*: The value of the funds, assets, and property was [*give value*]).

**II. Exploitation of older or disabled adult**

G.S. 14-112.2(c)

. . . unlawfully, willfully, and feloniously did knowingly, by (*choose one or both*: deception; intimidation), (*choose one or both*: obtain; use) the funds, assets, and property of (*name older or disabled adult*), (*choose one*: an older adult; a disabled adult) within the meaning of G.S. 14-112.2(a), with the intent to (*choose one or both*: deprive [*name older or disabled adult*] of the use, benefit, and possession of the funds, assets, and property; benefit someone other than [*name older or disabled adult*]). (*If the value of the funds, assets, and property was \$20,000 or more, state*: The value of the funds, assets, and property was [*give value*]).

**Notes about Charging Language:**

- Both offenses apply to the improper obtaining of funds, assets, or property. If any of those terms is inappropriate, you may delete it.
- Both offenses also apply to a defendant who “endeavor[s] to obtain or use” the victim’s property. If the defendant tried to obtain the victim’s property but failed, insert this language.
- Offense II also applies to a defendant who “conspire[s] with another” to obtain or use the victim’s property. In an appropriate case, insert this language, naming the person with whom the defendant conspired if possible or stating that the identity of the coconspirator is unknown.
- Offense II does not apply to “a person acting within the scope of that person’s lawful authority as the agent for the older adult or disabled adult.” G.S. 14-112.2(c).
- “Disabled adult” and “older adult” are defined in G.S. 14-112.2(a).

**Sample Charge:****I. Abuse of position of trust**

G.S. 14-112.2(b)

. . . unlawfully, willfully, and feloniously did knowingly, while standing in a position of trust and confidence with Jean McCannon, an older adult within the meaning of G.S. 14-112.2(a), by deception obtain and use the assets of Jean McCannon with the intent to deprive Jean McCannon of the use, benefit, and possession of the assets. The value of the assets was \$57,515.

**II. Exploitation of older or disabled adult**

G.S. 14-112.2(c)

. . . unlawfully, willfully, and feloniously did knowingly, by intimidation, obtain and use the funds, assets, and property of Veronica Silverman, a disabled adult within the meaning of G.S. 14-112.2(a), with the intent to deprive Veronica Silverman of the use, benefit, and possession of the funds, assets, and property.

**AOC Forms for This Offense:**

None.

**Punishment:**

Offense I is a Class F felony if the funds, assets, or property are valued at \$100,000 or more; a Class G felony if \$20,000 or more but less than \$100,000; a Class H felony if less than \$20,000.

Offense II is a Class G felony if the funds, assets, or property are valued at \$100,000 or more; a Class H felony if \$20,000 or more but less than \$100,000; a Class I felony if less than \$20,000.

**Introductory Comment:**

None.

**Charging Language:**

. . . unlawfully and willfully did, with intent to (*choose one or both*: injure; defraud), (*choose one or more*: obstruct, alter, bypass, tamper with, injure; prevent the action of) a (*choose one*: meter; instrument) used to measure the quantity of (*choose one*: illuminating fuel; natural gas; water; electricity) passing through such meter. At the time of the offense, the defendant was not an employee of the company (*choose one or both*: owning; supplying) the (*choose one*: gas; water; electric) meter.

**Notes about Charging Language:**

- Previously, some utility theft cases were charged under G.S. 14-151.1. However, in 2013 the General Assembly repealed that section and expanded this one.
- The charging language above is for a violation of subdivision (a)(2) of G.S. 14-151. The subdivision is confusingly drafted, and other interpretations are possible.
- There are several other subdivisions in the statute, dealing with different means of utility theft, such as re-connecting a utility that was lawfully shut off, subdivision (a)(9).
- This offense is a felony for repeat offenders. In such a case, insert “unlawfully, willfully, and feloniously” in place of “unlawfully and willfully” and add an allegation regarding the defendant’s previous conviction, complying with G.S. 15A-928.
- This offense is a felony if the crime results in significant property damage or public endangerment. In such a case, insert “unlawfully, willfully, and feloniously” in place of “unlawfully and willfully” and add an allegation regarding the damage or endangerment.
- This offense is a felony if the crime results in death. In such a case, insert “unlawfully, willfully, and feloniously” in place of “unlawfully and willfully” and add an allegation regarding the death.

**Sample Charge:**

. . . unlawfully and willfully did, with intent to defraud, tamper with a meter used to measure the quantity of natural gas passing through such meter. At the time of the offense, the defendant was not an employee of Blue Ridge Energy, the company owning and supplying the gas meter.

**AOC Forms for This Offense:**

None.

**Punishment:**

Class 1 misdemeanor. This offense is a Class H felony for a second or subsequent offense, a Class F felony if it results in significant property damage or public endangerment, and a Class D felony if it results in death.



**Introductory Comment:**

This offense should not be charged when the property is the subject of a *written* rent-to-own contract. In that case, charge the offense defined in G.S. 14-168.4. When there is intent to defraud involved in failing to return a rental motor vehicle, particularly one below the \$4,000 threshold for felony status under this offense, consider charging G.S. 20-106.1 (rental vehicle fraud), which is a felony violation.

**Charging Language:****I. Misdemeanor failure to return**

. . . unlawfully and willfully did fail to return property, (*describe property*), to the possession of (*name person, firm, corporation, or owner*), from whom the defendant rented it, at the expiration of the time for which it was rented.

**II. Felony failure to return**

. . . unlawfully, willfully, and feloniously did fail to return a (*choose one*: truck; automobile; motor vehicle) (*describe vehicle*), to the possession of (*name person, firm, corporation, or owner*), from whom the defendant rented it, at the expiration of the time for which it was rented. The (*choose one*: truck; automobile; motor vehicle) was worth more than \$4,000 at the time of the rental.

**Notes about Charging Language:**

None.

**Sample Charges:****I. Misdemeanor failure to return**

. . . unlawfully and willfully did fail to return property, a Honda portable gas-powered electrical generator, serial number 895386540, to the possession of Gilbert's Rent-All Co., Apex, N.C., from whom the defendant rented it, at the expiration of the time for which it was rented.

**II. Felony failure to return**

. . . unlawfully, willfully, and feloniously did fail to return a motor vehicle, a 2013 Honda Civic sedan, VIN number 317KADKJ37AWKFSJ8, to the possession of Rent-a-Wreck of Smithfield, Inc., from whom the defendant rented it, at the expiration of the time for which it was rented. The motor vehicle was worth more than \$4,000 at the time of the rental.

**AOC Forms for This Offense:**

None.

**Punishment:**

Class 3 misdemeanor, unless the property is a motor vehicle worth more than \$4,000, in which case it is a Class H felony.



**Introductory Comment:**

This offense is a felony if the property converted is worth more than \$400.

**Charging Language:**

. . . unlawfully, willfully, and feloniously did, being entrusted with property, (*describe property*), owned by (*name owner*), as a (*choose one or more*: bailee, lessee, tenant; lodger; person with a power of attorney to sell or transfer the property), fraudulently

(*choose one or more*)

- (1) convert the property to the defendant's own use,
- (2) convert the proceeds of the property to the defendant's own use,
- (3) secrete the property with the fraudulent intent to convert it to the defendant's own use.

(*Add if appropriate*): The value of the property was in excess of \$400.00.

**Notes about Charging Language:**

- If a misdemeanor is charged, strike the words "and feloniously."

**Sample Charge:**

. . . unlawfully, willfully, and feloniously did, being entrusted with property, a 2005 Buick LeSabre car, N.C. License HME 856, owned by Smithville Buick Motors, Inc., as a bailee, fraudulently convert the property to the defendant's own use. The value of the property was in excess of \$400.00.

**AOC Forms for This Offense:**

None.

**Punishment:**

Class 3 misdemeanor, unless the property converted is worth more than \$400, in which case it is a Class H felony.



**Introductory Comment:**

This offense should be charged only when the property is the subject of a *written* rent-to-own contract. Otherwise, failure to return rental property should be charged under G.S. 14-167.

**Charging Language:**

. . . unlawfully and willfully did fail to return property, (*describe rental property*), that was rented pursuant to a written agreement in which there was an option to purchase the property, when an event, (*describe event*), occurred that terminated the agreement, with the intent to defeat the rights of the owner, (*name owner*).

**Notes about Charging Language:**

- The event that terminated the rental agreement can be the passage of the termination date of the rental contract, or an event that prematurely terminates the contract, such as the defendant's failure to pay rent according to the agreement's terms.

**Sample Charge:**

. . . unlawfully and willfully did fail to return property, a 42-inch Sony LCD television set, that was rented pursuant to a written agreement in which there was an option to purchase the property, when an event, the defendant's failure to pay rent on time, occurred that terminated the agreement, with the intent to defeat the rights of the owner, Easy-To-Rent Company, Apex, N.C.

**AOC Forms for This Offense:**

None.

**Punishment:**

Class 3 misdemeanor.



**Introductory Comment:**

Minors are immune from prosecution under G.S. 14-204(c) and should instead be “taken into temporary protective custody as . . . undisciplined juvenile(s).”

**Charging Language:**

. . . unlawfully and willfully did (*choose one or more*: perform; offer to perform; agree to perform) (*choose one or more*: vaginal intercourse; [*describe sexual act*], a sexual act as defined in G.S. 14-27.1; [*describe sexual contact*], sexual contact as defined in G.S. 14-27.1) for the purpose of sexual arousal and gratification and for (*choose one or more*: money; consideration [*describe consideration*]).

**Notes about Charging Language:**

None.

**Sample Charge:**

. . . unlawfully and willfully did offer to perform and agree to perform fellatio, a sexual act as defined in G.S. 14-27.1, for the purpose of sexual arousal and gratification and for money.

**AOC Forms for This Offense:**

None.

**Punishment:**

Class 1 misdemeanor. First offenders may be eligible for conditional discharge after probation, as described in G.S. 14-204(b).



**Introductory Comment:**

None.

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

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

**II. Solicitation of minor for prostitution**

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

**III. Solicitation of mentally disabled person for prostitution**

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

**Notes about Charging Language:**

- Offense I is a felony if it is the defendant's second or subsequent offense. In such a case, substitute "unlawfully, willfully, and feloniously" for "unlawfully and willfully" and allege the defendant's prior conviction in conformity with G.S. 15A-928.
- For Offense III, it is probably not necessary to describe the nature of the mental disability. *Cf. State v. Collins*, \_\_\_ N.C. App. \_\_\_, 727 S.E.2d 922 (2012) (holding, in the context of assault on a handicapped person, that it is not necessary to describe the nature of the handicap in the charging document). It is also probably not improper to include that information if desired.

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

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

**II. Solicitation of minor for prostitution**

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

**III. Solicitation of mentally disabled person for prostitution**

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

**AOC Forms for This Offense:**

None.

**Punishment:**

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



**Introductory Comment:**

None.

**Charging Language:****I. Sexual act with a prostitute**

G.S. 14-205.2(a)(1)

. . . unlawfully and willfully did engage in (*choose one or more*: vaginal intercourse; [*describe sexual act*], a sexual act as defined in G.S. 14-27.1; [*describe sexual contact*], sexual contact as defined in G.S. 14-27.1) for the purpose of sexual arousal and gratification with (*name prostitute, if known*), a prostitute who was not the defendant's spouse.

**II. Entering or remaining in a place of prostitution**

G.S. 14-205.2(a)(2)

. . . unlawfully and willfully did (*choose one or both*: enter; remain in) (*describe place*), a place of prostitution, with intent to engage in (*choose one or more*: vaginal intercourse; [*describe sexual act*], a sexual act as defined in G.S. 14-27.1; [*describe sexual contact*], sexual contact as defined in G.S. 14-27.1) for the purpose of sexual arousal and gratification with (*name person, if known*), a person who was not the defendant's spouse.

**Notes about Charging Language:**

- Offenses I and II are felonies if they are the defendant's second or subsequent violation of G.S. 14-205. In such a case, substitute "unlawfully, willfully, and feloniously" for "unlawfully and willfully" and allege the defendant's prior conviction in conformity with G.S. 15A-928.
- Offenses I and II are felonies if the defendant is 18 years of age or older and the prostitute is a minor. In such a case, substitute "unlawfully, willfully, and feloniously" for "unlawfully and willfully" and add allegations that the defendant was 18 years of age or older and that the prostitute (or person, for Offense II) was a minor at the time of the offense.
- Offenses I and II are felonies if the prostitute is severely or profoundly mentally disabled. In such a case, substitute "unlawfully, willfully, and feloniously" for "unlawfully and willfully" and add an allegation that the prostitute (or person, for Offense II) was either severely mentally disabled or profoundly mentally disabled. It is probably not necessary to describe the nature of the mental disability. *Cf. State v. Collins*, \_\_\_ N.C. App. \_\_\_, 727 S.E.2d 922 (2012) (holding, in the context of assault on a handicapped person, that it is not necessary to describe the nature of the handicap in the charging document). It is also probably not improper to include that information if desired.

**Sample Charges:****I. Sexual act with a prostitute**

G.S. 14-205.2(a)(1)

. . . unlawfully and willfully did engage in vaginal intercourse for the purpose of sexual arousal and gratification with Trina Abrams, a prostitute who was not the defendant's spouse.

**II. Entering or remaining in a place of prostitution**

G.S. 14-205.2(a)(2)

. . . unlawfully and willfully did enter and remain in the Blue Light Massage Parlor, located at 581 Dog Days Drive, Summerville, N.C., a place of prostitution, with intent to engage in vaginal intercourse for the purpose of sexual arousal and gratification with Lily Loveland, a person who was not the defendant's spouse.

**AOC Forms for This Offense:**

None.

**Punishment:**

Offenses I and II are Class A1 misdemeanors for a first offense and Class G felonies for a second or subsequent offense. When the defendant is an adult and the prostitute is a minor, the offenses are Class F felonies. When the prostitute is severely or profoundly mentally disabled, the offenses are Class D felonies.

**Introductory Comment:**

None.

**Charging Language:****I. Advancing prostitution** **G.S. 14-205.3(a)(1)**

. . . unlawfully, willfully, and feloniously did advance prostitution, as defined in G.S. 14-203, by *(describe conduct that constitutes advancing prostitution)*.

**II. Profiting from prostitution** **G.S. 14-205.3(a)(2)**

. . . unlawfully, willfully, and feloniously did profit from prostitution by *(choose one or more: compelling [name person] to become a prostitute; receiving a portion of the earnings from [name person], a prostitute, for [choose one or both: arranging; offering to arrange] a situation in which [name person] may practice prostitution; [describe other means by which the defendant profited])*.

**III. Advancing prostitution of a minor or mentally disabled person** **G.S. 14-205.3(b)(1)**

. . . unlawfully, willfully, and feloniously did advance prostitution, as defined in G.S. 14-203, by *(describe conduct that constitutes advancing prostitution)*, where *(name person)*, a *(choose one or more: minor; severely mentally disabled person; profoundly mentally disabled person)* engaged in prostitution.

**IV. Profiting from prostitution of a minor or mentally disabled person** **G.S. 14-205.3(b)(2)**

. . . unlawfully, willfully, and feloniously did profit from the prostitution of *(name prostitute)* by *(describe means by which defendant profited)*. At the time of the offense, *(name prostitute)* was a *(choose one or more: minor; severely mentally disabled person; profoundly mentally disabled person)*.

**V. Confining a minor or mentally disabled person for prostitution** **G.S. 14-205.3(b)(3)**

. . . unlawfully, willfully, and feloniously did confine *(name person)*, a *(choose one or more: minor; severely mentally disabled person; profoundly mentally disabled person)*, against *(choose one: his; her)* will, by *(choose one or more: the infliction of great bodily harm; the infliction of permanent disability; the infliction of disfigurement; the threat of imminent infliction of great bodily harm; the threat of imminent infliction of permanent disability; the threat of imminent infliction of disfigurement; administering to [choose one: him; her], [choose one or more: without (choose one: his; her) consent; by threat; by deception], and for other than medical purposes, [choose one or both and describe if possible: an alcoholic intoxicant; a drug as defined in Article 5 of Chapter 90 of the General Statutes])* and did *(choose one or more: compel [name person] to engage in prostitution; arrange a situation in which [name person] was able to practice prostitution; profit from prostitution by [name person])*.

**Notes about Charging Language:**

- For Offense II, the catchall option of describing another means by which the defendant profited from prostitution should not be used if (1) the defendant is a minor engaged in prostitution or (2) “the practice of prostitution underlying the offense consists exclusively of the defendant’s own acts of prostitution.” G.S. 14-205.3(a)(2)(c).
- Offense III may be committed also by advancing prostitution where “any person engaged in prostitution in the place of prostitution is a minor or is severely or profoundly mentally disabled at the time of the offense.” In an appropriate case, modify the charging language accordingly.
- For offenses involving a mentally disabled person, it is probably not necessary to describe the nature of the mental disability. *Cf. State v. Collins*, \_\_\_ N.C. App. \_\_\_, 727 S.E.2d 922 (2012) (holding, in the context of assault on a handicapped person, that it is not necessary to describe the nature of the handicap in the charging document). It is also probably not improper to include that information if desired.
- Offenses I, II, III, and IV are punished more severely if the defendant has a qualifying prior conviction, as noted in the description of punishments below. In an appropriate case, allege the defendant’s prior conviction in conformity with G.S. 15A-928.

**Sample Charge:****III. Advancing prostitution of a minor or mentally disabled person** **G.S. 14-205.3(b)(1)**

... unlawfully, willfully, and feloniously did advance prostitution, as defined in G.S. 14-203, by directing another, Eric Stevenson, to a place, 8108 Treetop Ct., Zebulon, N.C., knowing the direction was for the purposes of prostitution, where Zoe Kipling, a severely mentally disabled person, engaged in prostitution.

**AOC Forms for This Offense:**

None.

**Punishment:**

Offenses I and II are Class F felonies for a first offense and Class E felonies if the defendant has a qualifying prostitution-related conviction as described in G.S. 14-205.3(c). Offenses III and IV are Class D felonies for a first offense and Class C felonies if the defendant has a qualifying prostitution-related conviction as described in G.S. 14-205.3(d). Offense V is a Class C felony.

**Introductory Comment:**

None.

**Charging Language:****I. False report to law enforcement officer**

. . . unlawfully and willfully did (*choose one or both*: make; cause to be made) to a (*choose one or more and describe*: law enforcement officer; law enforcement agency) a (*choose one or more and describe*: false report; deliberately misleading report; unfounded report) (*choose one or more*: for the purpose of interfering with the operation of the law enforcement agency; to hinder and obstruct the law enforcement officer in the performance of [*choose one*: his; her] duty [*describe duty*]).

**II. False report to law enforcement officer concerning a child victim**

. . . unlawfully, willfully, and feloniously did (*choose one or both*: make; cause to be made) to a (*choose one or more and describe*: law enforcement officer; law enforcement agency) a (*choose one or more and describe*: false report; deliberately misleading report; unfounded report) (*choose one or more*: for the purpose of interfering with the operation of the law enforcement agency; to hinder and obstruct the law enforcement officer in the performance of [*choose one*: his; her] duty [*describe duty*]). The defendant's (*choose one or more*: false report; deliberately misleading report; unfounded report) related to a law enforcement investigation involving (*choose one or both*: the disappearance of a child, [*name child*]; [*name child*], a child victim of a Class A, B1, B2, or C felony offense).

**Notes about Charging Language:**

None.

**Sample Charge:****I. False report to law enforcement officer**

. . . unlawfully and willfully did make to a law enforcement officer, Sally Smith of the Orangeville Police Department, Orangeville, N.C., a false report, stating that his brother, Dean Ellis, was at home with him on the night of February 8, 2009, when in fact Dean Ellis was not at home that night, to hinder and obstruct the law enforcement officer in the performance of her duty, investigating Dean Ellis's involvement in a series of burglaries.

**II. False report to law enforcement officer concerning a child victim**

. . . unlawfully, willfully, and feloniously did make to a law enforcement agency, the Cumberland County Sheriff's Office, a false report for the purpose of interfering with the operation of the law enforcement agency. The defendant's false report related to a law enforcement investigation involving the disappearance of a child, Sandra Sanderson.

**AOC Forms for This Offense:**

None.

**Punishment:**

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



**Introductory Comment:**

This offense applies when the defendant escapes from a county or municipal jail. Escape from the state prison system is covered by G.S. 148-45.

**Charging Language:**

. . . unlawfully, willfully, and feloniously did break and escape from (*choose one*: lawful confinement in [*name jail or lockup*], a jail maintained by [*name city or county*]; the lawful custody of [*name person from whose custody the prisoner escaped*], a [*choose one*: superintendent; guard; officer] of [*name jail or lockup*], a jail maintained by [*name city or county*]). (*If the basis for confinement was a pending felony charge or a felony conviction, add the following*: The defendant was [*choose one*: charged with; convicted of] a felony and had been committed to [*name jail or lockup*] [*choose one*: pending trial; pending transfer to the State prison system; to serve a sentence imposed upon conviction of a felony].)

**Notes about Charging Language:**

- Escape from a jail or an officer is a felony if the defendant is awaiting trial on a felony charge, is serving a sentence for a felony conviction, or has been convicted of a felony and is awaiting transfer to the state prison system. Otherwise, escape from a jail or an officer is a misdemeanor. If it is a misdemeanor, do not include the final sentence of the charging language above and omit “and feloniously” from the charging document.
- If desired, you may add information about the nature of the charge or conviction that resulted in the defendant’s incarceration.

**Sample Charge:**

. . . unlawfully, willfully, and feloniously did break and escape from lawful confinement in the Wake County Detention Center, a jail maintained by Wake County. The defendant was convicted of a felony and had been committed to the Wake County Detention Center to serve a sentence imposed upon conviction of a felony.

**AOC Forms for This Offense:**

None.

**Punishment:**

Misdemeanor escape is a Class 1 misdemeanor. Felony escape is a Class H felony.



**Introductory Comment:**

None.

**Charging Language:****I. Carrying gun into an assembly for which an admission fee is charged**

... unlawfully and willfully did carry a (*choose one and describe*: gun; rifle; pistol) into (*name the assembly into which the gun was carried*), an assembly for which an admission fee was charged.

**II. Carrying gun into an establishment where alcoholic beverages are sold and consumed**

... unlawfully and willfully did carry a (*choose one and describe*: gun; rifle; pistol) into (*name the establishment into which the gun was carried*), an establishment in which alcoholic beverages are sold and consumed.

**Notes about Charging Language:**

- As an example of the scope of offense II, an establishment with a permit for the on-premises sale of beer or wine would be one where an alcoholic beverage is sold and consumed. An ABC store, however, would not be such an establishment, since liquor is sold but not consumed there.
- This offense does not apply to: (1) law enforcement officers and others exempted from the provisions of G.S. 14-269; (2) the owner or lessee of the premises; (3) certain persons who have the permission of the owner or lessee. G.S. 14-269.3(b).
- This offense also generally does not apply to a person who has a valid concealed handgun permit or who is exempt from obtaining such a permit. G.S. 14-269.3(b)(5). However, the statute provides that this exemption “shall not be construed to permit a person to carry a handgun on any premises where the person in legal possession or control of the premises has posted a conspicuous notice prohibiting the carrying of a concealed handgun on the premises in accordance with G.S. 14-415.11(c).” It is not completely clear which offense or offenses should be charged in such a circumstance: this offense, a violation of the concealed weapon statute, G.S. 14-269, or a violation of the permit statutes, G.S. 14-415.11 and G.S. 14-415.21. If this offense is to be charged, it may be appropriate to add language at the end of the charging language above, stating: “At the time of the offense, the defendant (*choose one*: had a valid concealed handgun permit; was exempt from obtaining a concealed handgun permit under G.S. 14-415.25), but the person in legal (*choose one or both*: possession; control) of the premises had posted a conspicuous notice prohibiting the carrying of a concealed handgun on the premises in accordance with G.S. 14-415.11(c).”

**Sample Charges:****I. Carrying gun into an assembly for which an admission fee is charged**

... unlawfully and willfully did carry a pistol, a Smith and Wesson .38 caliber revolver, into the Charlotte Motor Speedway during a stock car race, an assembly for which an admission fee was charged.

**II. Carrying gun into an establishment where alcoholic beverages are sold and consumed**

... unlawfully and willfully did carry a pistol, a Colt .357 Magnum, into the Friendly Tavern in Westgate Shopping Center, Greensboro, an establishment in which alcoholic beverages are sold and consumed.

**G.S. 14-269.3**

**CARRYING GUN INTO ASSEMBLY OR ALCOHOLIC  
BEVERAGE ESTABLISHMENT**

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**AOC Forms for This Offense:**

None.

**Punishment:**

Class 1 misdemeanor.

**Introductory Comment:**

None.

**Charging Language:****I. Inflicting serious physical injury** **G.S. 14-318.4(a)**

... unlawfully, willfully, and feloniously did (*choose one or both: intentionally inflict; intentionally commit an assault on [name child] that resulted in) serious physical injury, (describe injury), (choose proper word: on; to) (name child), who was (state child's age) years old and thus under 16 years of age.*

At the time the defendant inflicted the injury the defendant was

(*choose one*)

- (1) the child's parent.
- (2) providing care for the child as (*describe the defendant's relationship to the child*).
- (3) supervising the child as (*describe the defendant's relationship to the child*).

**II. Inflicting serious bodily injury** **G.S. 14-318.4(a3)**

... unlawfully, willfully, and feloniously did

(*choose one or more*)

- (1) intentionally inflict serious bodily injury, (*describe injury*), on (*name child*), who was (*state child's age*) years old and thus under 16 years of age.
- (2) intentionally commit an assault that resulted in serious bodily injury, (*describe injury*), on (*name child*), who was (*state child's age*) years old and thus under 16 years of age.
- (3) intentionally commit an assault that resulted in (*choose one or both: permanent; protracted*) (*choose one or both: loss; impairment*) of a (*choose one or both: mental; emotional*) function of (*name child*), (*describe injury and loss of function*). At the time of the assault, (*name child*) was (*state child's age*) years old and thus under 16 years of age.

At the time the defendant inflicted the injury the defendant was

(*choose one*)

- (1) the child's parent.
- (2) providing care for the child as (*describe the defendant's relationship to the child*).
- (3) supervising the child as (*describe the defendant's relationship to the child*).

**III. Prostitution of child** **G.S. 14-318.4(a1)**

... unlawfully, willfully, and feloniously did (*choose one or more: commit; permit; encourage*) an act of prostitution (*choose appropriate word: with; by*) (*name child*), who was (*state child's age*) and thus under 16 years of age. The act of prostitution (*describe what occurred and the parties involved, if*

*known*). At the time the defendant committed the offense, the defendant was

*(choose one)*

- (1) the child's parent.
- (2) providing care for the child as *(describe the defendant's relationship to the child)*.
- (3) supervising the child as *(describe the defendant's relationship to the child)*.

#### IV. Sexual act upon child

G.S. 14-318.4(a2)

. . . unlawfully, willfully, and feloniously did *(choose one: allow; commit)* a sexual act, *(describe act, such as sexual intercourse, fellatio, etc., and name any third parties involved, if known)*, upon *(name child)*, who was *(state child's age)* and thus under 16 years of age. At the time the defendant committed the offense, the defendant was the *(choose one: parent; guardian)* of the child.

#### V. Reckless disregard for life/serious bodily injury

G.S. 14-318.4(a4)

. . . unlawfully, willfully, and feloniously did show a reckless disregard for human life by

*(choose one or both)*

- (1) committing a willful act, *(describe act)*, in the care of *(name child)*, who was *(state child's age)* and thus under 16 years of age.
- (2) committing a grossly negligent omission, *(describe omission)*, in the care of *(name child)*, who was *(state child's age)* and thus under 16 years of age.

The defendant's *(choose one: act; omission)* resulted in serious bodily injury, *(describe injury)*, to the child. At the time the defendant committed the offense, the defendant was

*(choose one)*

- (1) the child's parent.
- (2) providing care for the child as *(describe the defendant's relationship to the child)*.
- (3) supervising the child as *(describe the defendant's relationship to the child)*.

#### VI. Reckless disregard for life/serious physical injury

G.S. 14-318.4(a5)

. . . unlawfully, willfully, and feloniously did show a reckless disregard for human life by

*(choose one or both)*

- (1) committing a willful act, *(describe act)*, in the care of *(name child)*, who was *(state child's age)* and thus under 16 years of age.
- (2) committing a grossly negligent omission, *(describe omission)*, in the care of *(name child)*, who was *(state child's age)* and thus under 16 years of age.

The defendant's (*choose one*: act; omission) resulted in serious physical injury, (*describe injury*), to the child. At the time the defendant committed the offense, the defendant was

(*choose one*)

- (1) the child's parent.
- (2) providing care for the child as (*describe the defendant's relationship to the child*).
- (3) supervising the child as (*describe the defendant's relationship to the child*).

**Notes about Charging Language:**

- This form calls for a description of the relationship between the child and the person, other than a parent, providing care and supervision of the child because of the suggestion in *State v. Carrilo*, 149 N.C. App. 543 (2002), that only "caretakers" or those who stand "in loco parentis" may be prosecuted under G.S. 14-318.4.
- Serious bodily injury is defined in G.S. 14-318.4(d)(1) as bodily injury that creates a substantial risk of death or that causes serious permanent disfigurement, coma, a permanent or protracted condition that causes extreme pain, or permanent or protracted loss or impairment of the function of any bodily member or organ, or that results in prolonged hospitalization.
- Serious physical injury is defined in G.S. 14-318.4(d)(2) as physical injury that causes great pain and suffering. The statute states that the "term includes serious mental injury."
- Sexual act is not defined but probably includes sexual intercourse and all sexual acts included within first- and second-degree sexual offense.

**Sample Charges:**

**I. Inflicting serious physical injury**

**G.S. 14-318.4(a)**

... unlawfully, willfully, and feloniously did intentionally inflict serious physical injury, two broken arms, on Emily Radford, who was 9 years old and thus under 16 years of age. At the time the defendant inflicted the injury the defendant was the child's parent.

**V. Reckless disregard for life/serious bodily injury**

**G.S. 14-318.4(a4)**

... unlawfully, willfully, and feloniously did show a reckless disregard for human life by committing a grossly negligent omission, allowing the child to play unattended in a busy parking lot, in the care of Steven Saunders, who was 6 years old and thus under 16 years of age. The defendant's omission resulted in serious bodily injury, being hit by a car and losing his left leg at the knee, to the child. At the time the defendant committed the offense, the defendant was providing care for the child as the live-in boyfriend of the child's mother.

**AOC Forms for This Offense:**

None.

**Punishment:**

Offense I is a Class D felony. Offense II is a Class B2 felony. Offense III is a Class D felony. Offense IV is a Class D felony. Offense V is a Class E felony. Offense VI is a Class G felony.



**Introductory Comment:**

This charging form is to be used in preparing a bill of indictment or a criminal information—not an arrest warrant or the like—that alleges that the defendant is subject to an enhanced sentence under G.S. 15A-1340.16A. That statute, under certain circumstances, increases by 12 to 72 months the minimum term of imprisonment for a defendant convicted of a felony committed by using, displaying, or threatening the use or display of a firearm or deadly weapon. The statute does not apply when “the evidence of the use, display, or threatened use or display of the firearm or deadly weapon is needed to prove an element of the felony or if the person is not sentenced to an active term of imprisonment.” G.S. 15A-1340.16A(f).

**Charging Language:**

The defendant committed the felony (*substitute felonies for felony if more than one felony is subject to the firearm enhancement*) alleged in this (*choose one*: bill of indictment; criminal information) by using, displaying, or threatening the use or display of a (*choose one*: firearm; deadly weapon), (*describe firearm or weapon*), and the defendant did actually possess the (*choose one*: firearm; deadly weapon) about the defendant’s person.

**Notes about Charging Language:**

- G.S. 15A-1340.16A(d) provides that the charging language set out above is sufficient to allege a firearm enhancement, and one pleading is sufficient for all qualifying felonies that are tried at a single trial.
- The charging language set out above includes all of the statutory options: use, display, and threatening use and display. If any of these terms are inappropriate, they may be deleted.
- For the procedure in proving a firearm enhancement, see G.S. 15A-1340.16A(e).

**Sample Charge:**

The defendant committed the felony alleged in this bill of indictment by displaying a firearm, a 9mm Glock Model 19 handgun, and the defendant did actually possess the firearm about the defendant’s person.

**AOC Forms for This Offense:**

None.

**Punishment:**

This enhancement increases the defendant’s minimum term of imprisonment by 12 to 72 months, depending on the class of the underlying felony offense, and increases the defendant’s maximum term by a corresponding amount. G.S. 15A-1340.16A(c).



**Introductory Comment:**

None.

**Charging Language:**

. . . unlawfully and willfully did drive a motor vehicle on (*name or describe highway or the right-of-way of a highway*), a (*choose one*: highway; right-of-way of a highway), with an open container of alcoholic beverage after drinking.

**Notes about Charging Language:**

- G.S. 20-138.7(g) provides that the language above is sufficient to charge this offense.
- “Motor vehicle” is defined in the statute to mean “any vehicle driven or drawn by mechanical power and manufactured primarily for use on public highways . . . includ[ing] mopeds.” This differs from the definition of “motor vehicle” in G.S. 20-4.01(23), which, for example, does not include mopeds.
- “Highway” is defined in G.S. 20-4.01(13).
- A second or subsequent violation of this statute is subject to elevated punishment. In such a case, the prior conviction must be alleged in the pleading; give the date of the conviction and the court in which the defendant was convicted.

**Sample Charge:**

. . . unlawfully and willfully did drive a motor vehicle on U.S. 64, Raleigh, N.C., a highway, with an open container of alcoholic beverage after drinking.

**AOC Forms for This Offense:**

None.

**Punishment:**

Class 3 misdemeanor. For a second or subsequent offense, Class 2 misdemeanor.



**Introductory Comment:**

Although other subsections of G.S. 20-157 contain prohibitions against, e.g., following a fire truck too closely and driving over a fire hose, this form is limited to G.S. 20-157(a), failure to stop for an emergency vehicle.

**Charging Language:**

. . . unlawfully and willfully did, while driving a vehicle, upon the approach of a (*choose one*: law enforcement vehicle; fire department vehicle; public ambulance; private ambulance; rescue squad emergency service vehicle; vehicle operated by the Division of Marine Fisheries of the Department of Environment and Natural Resources that was traveling in response to an emergency and; vehicle operated by the Division of Parks and Recreation of the Department of Environment and Natural Resources that was traveling in response to an emergency and; vehicle operated by the North Carolina Forest Service of the Department of Agriculture and Consumer Services that was traveling in response to an emergency and) that was giving warning signal by appropriate light and by (*choose one*: bell; siren; exhaust whistle), audible under normal conditions from a distance of not less than 1,000 feet, fail to

(*choose one or more*)

- (1) drive (*choose one*: his; her) vehicle to a position as near as possible and parallel to the right-hand (*choose one*: edge; curb), clear of any intersection of streets or highways;
- (2) stop (*choose one*: his; her) vehicle.

**Notes about Charging Language:**

- The statute also applies when a driver initially pulls over and stops but fails to “remain in such position” until the emergency vehicle passes or the driver is otherwise instructed by a law enforcement officer or a traffic officer. In an appropriate case, alter the charging language accordingly.
- The statute does not apply to vehicles on the opposite side of a divided highway from an emergency vehicle.
- G.S. 20-157(h) and (i) set forth aggravated versions of this offense, which may apply in cases resulting in property damage or injuries. In an appropriate case, alter the charging language to allege the additional circumstances required by those subsections.

**Sample Charge:**

. . . unlawfully and willfully did, upon the approach of a fire department vehicle that was giving warning signal by appropriate light and by siren, audible under normal conditions from a distance of not less than 1,000 feet, fail to stop his vehicle.

**AOC Forms for This Offense:**

None.

**Punishment:**

Class 2 misdemeanor. The aggravated versions of this offense referenced above are a Class 1 misdemeanor and a Class I felony.

