

Advanced Sentencing

Jamie Markham

February 2025



1

Overview

- Presentence Investigations
- Extraordinary mitigation
- Substantial assistance
- Advanced Supervised Release (ASR)
- Sex offender issues

2

Presentence Investigations

3

A broad inquiry...

“[P]rior to imposing a sentence, a judge may appropriately conduct an inquiry broad in scope, largely unlimited either as to the kind of information he may consider, or the source from which it may come.”

State v. Thompson, 310 N.C. 209 (1984)

4

Appropriate to inquire...

“In determining the proper sentence to impose upon a convicted defendant, it is appropriate for the trial judge to inquire into such matters as the age, character, education, environment, habits, mentality, propensities, and record of the person about to be sentenced.”

State v. Smith, 300 N.C. 71 (1980)



5

Presentence Investigations

“Pre-sentence investigations are favored and encouraged.”

State v. Pope, 257 N.C. 326 (1962)



6

Presentence Investigation

- G.S. 15A-1332
- Court may order PSI for *any* defendant
 - Even pre-conviction, on defendant's motion
- Completed by Probation Officer



7

Presentence Investigation

- Unless you ask otherwise, Probation will use a modified version of their Risk-Needs Assessment
 - **Risk:** Offender Traits Inventory, Revised (OTI-R)
 - **Needs:** Officer Interview + Offender Self-Report



8

Pre-Sentence Investigation Report

Requested By: _____

Prepared By: _____

Date Requested: _____

Date Prepared: _____

District Attorney: _____

Email: _____

Defense Counsel: _____

Email: _____

Sentencing Judge: _____

Email: _____

PSI Ordered as:

☐

Pre-trial Release

☐

Condition of Bond

☐

Neither

Employment		
<input type="checkbox"/> Employed How long? _____ <input type="checkbox"/> Unemployed How long? _____		
Verified by: <input type="checkbox"/> in person <input type="checkbox"/> phone <input type="checkbox"/> letter <input type="checkbox"/> recent pay stub		
Current Employer: _____		
Employer Address: _____		
Employer Phone: _____		
Hours Worked: _____		
Previous Employer: _____ (If employed less than 1 year)		
Dates Employed: _____		
Employment Comments: _____		
Education/Vocational Skills		
Highest Grade Completed: _____		
Name and Location of School (most recent first)	Dates Attended	Degree, diploma Certificate
Specialized Skills or Training: _____		
Professional License(s): _____		

Page 4 of 7

Mental/Physical Health	
Any known mental health issues? <input type="checkbox"/> Yes <input type="checkbox"/> No	
The defendant has been diagnosed with the following:	
<input type="checkbox"/> Bipolar <input type="checkbox"/> Depression <input type="checkbox"/> PTSD <input type="checkbox"/> Schizophrenia <input type="checkbox"/> Other: _____	
Is the defendant receiving counseling: <input type="checkbox"/> Yes <input type="checkbox"/> No Doctor's Name: _____	
List mental health medications: _____	
Any known physical health issues: <input type="checkbox"/> Yes <input type="checkbox"/> No	
List any physical health issues: _____	
Mental/Physical Health Comments: _____	

Presentence Commitment

- Any felony or Class A1 or Class 1 misdemeanor
- Requires defendant consent (except for sexually violent predatory determination)
- Commit for up to 90 days



11

Presentence Reports

- Sentencing hearing may be held before you in different district upon completion of report
- Probation officer may make a sentence recommendation only if you request one
- Not a public record
- May be expunged upon request



12

Extraordinary Mitigation

13

Extraordinary Mitigation

- Allows an Intermediate sentence in certain “A-only” grid cells

14

Extraordinary Mitigation

- Cannot use with Class A or Class B1
- Cannot use for drug trafficking
- Must have fewer than 5 prior record points
- **Result: Class B1, C, or D, with 0 to 4 points**

15

EM

Grid cells in which EM might be possible are flagged with this symbol.

OFFENSE CLASS	PRIOR RECORD LEVEL					
	I 0-1 Pt	II 2-5 Pts	III 6-9 Pts	IV 10-13 Pts	V 14-17 Pts	VI 18+ Pts
A Max. Death or Life w/o Parole	Death or Life without Parole Defendant under 18 at Time of Offense: Life with or without Parole					
B1 Max. Life w/o Parole	240-300 144-192	276-345 166-221	312-397 190-254	365-456 219-292	Life w/o Parole 252-336	Life w/o Parole 290-386
B2 Max. 404 (332)	157-196 125-157 94-125	180-225 144-180 108-144	207-258 165-207 124-165	238-297 190-238 143-190	273-342 219-273 164-219	314-393 251-314 189-251
C Max. 231 (209)	73-92 58-73 44-58	83-104 67-83 50-67	96-120 77-96 58-77	10-118 88-110 66-88	127-159 101-127 76-101	146-182 117-146 87-117
D Max. 204 (252)	64-80 51-64 38-51	73-92 59-73 44-59	84-105 67-84 51-67	97-121 78-97 58-78	111-139 89-111 67-89	128-160 103-128 77-103
E Max. 88 (136)	25-31 20-25 15-20	29-36 23-29 17-23	33-41 26-33 20-26	38-48 30-38 23-30	44-55 35-44 26-35	50-63 40-50 30-40
F Max. 59	16-20 13-16 10-13	19-23 15-19 11-15	21-27 17-21 13-17	25-31 20-25 15-20	28-36 23-28 17-23	33-41 26-33 20-26
G Max. 47	13-16 10-13 8-10	14-18 12-14 9-12	17-21 13-17 10-13	19-24 15-19 11-15	22-27 17-22 13-17	25-31 20-25 15-20
H Max. 39	6-8 5-6 4-5	8-10 6-8 4-6	10-12 8-10 6-8	11-14 9-11 7-9	15-19 12-15 9-12	20-25 16-20 12-16
I Max. 24	6-8 4-6 3-4	6-8 4-6 3-4	6-8 5-6 4-5	8-10 6-8 4-6	9-11 7-9 5-7	10-12 8-10 6-8

B2	A A = 88 (100%) n = 88 124 min 174 max	A A = 39 (100%) n = 39 147 min 194 max
C	A A = 158 (100%) n = 158 61 min 104 max	A A = 123 (100%) n = 123 71 min 107 max
D	A I = 20 (7%) A = 260 (93%) n = 280 52 min 77 max	A A = 147 (100%) n = 147 58 min 82 max

16

Felony Death by Vehicle

Felony death by vehicle is a Class D felony. Notwithstanding the provisions of G.S. 15A-1340.17, intermediate punishment is authorized for a defendant who is a Prior Record Level I offender.

D Max. 204 (252)	A	EM
	64–80	
	51–64	
	ASR	38–51

17

Extraordinary Mitigation

- Court must find:
 - Extraordinary mitigating factors of a kind significantly greater than the normal case
 - That those factors substantially outweigh any aggravating factors
 - That it would be a manifest injustice to impose an active punishment in the case

18

Extraordinary Mitigation

- Extraordinary factors cannot be ordinary mitigating factors
 - **Improper:** The 14-year-old victim consented to the crime (statutory sexual offense). It's an ordinary mitigating factor that the victim was a "voluntary participant"—and even that applies only when the victim is at least 16
- A large quantity of ordinary mitigating factors does not make mitigation extraordinary

19

Extraordinary Mitigation

- **Proper:**

"That at the time of incident, the victim was much larger than the defendant and while defendant was walking with the victim behind him, some words were exchanged and the victim struck defendant in the face, and slammed him to the ground, straddled his body on the ground and began striking defendant in the head multiple times. Defendant shot the victim multiple times while the victim was on top of him. Defendant was provoked by the victim at the time of the shooting and as a result of the blows to his head, Defendant suffered memory loss. Defendant gave notice to the state of Self Defense."

State v. Brewington, 2025 WL 548400 (Feb. 19, 2025)

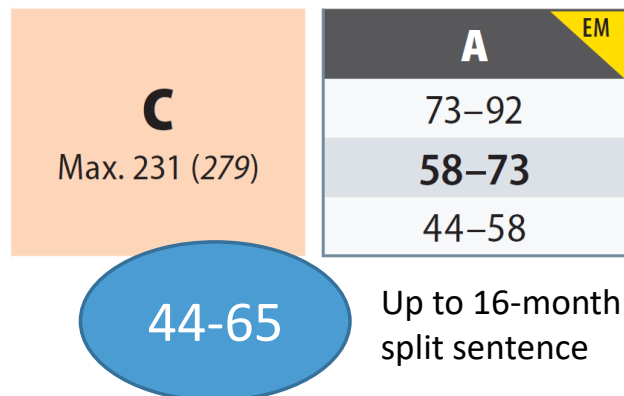
20

STATE OF NORTH CAROLINA		File No.
County		In The General Court Of Justice Superior Court Division
STATE VERSUS	EXTRAORDINARY MITIGATION FINDINGS (STRUCTURED SENTENCING)	
Name Of Defendant	G.S. 15A-1340.13	
<p>NOTE: The finding of extraordinary mitigation permits the Court, in its discretion, to impose an intermediate punishment for a class of offense and prior record level that requires the imposition of an active punishment under statute. The Court is not permitted to use extraordinary mitigation if (1) the defendant committed a Class A or B1 offense, (2) the defendant committed a drug trafficking offense under G.S. 90-95(h) or a drug trafficking conspiracy offense under G.S. 90-95(i), or (3) the defendant has five or more prior record points under G.S. 15A-1340.14.</p>		
<p>1. The Court finds that the class of offense and prior record level upon which the defendant stands convicted require the imposition of active punishment.</p> <p>2. After hearing evidence, and arguments of counsel on the issue of dispositional deviation for extraordinary mitigation, the Court, in its discretion, finds the following extraordinary mitigating factors:</p>		
<div style="background-color: black; color: white; padding: 10px; text-align: center; font-weight: bold;">AOC-CR-606</div>		

21

Example

- 18-year-old defendant has intercourse with a 13-year-old victim
- No prior record



22

Drug Trafficking

23

Drug Trafficking

<u>Drug Trafficking Offense Class</u>	<u>Minimum</u>	<u>Maximum</u>
Class C	225	282
Class D	175	222
Class E	90	120
Class F	70	93
Class G	35	51
Class H	25	39

24

Drug Trafficking

- Substantial Assistance
- Attempted Trafficking



25

Substantial Assistance

- “Substantial assistance in the identification, arrest, or conviction of any accomplices, accessories, co-conspirators, or principals.”
- Judge has discretion to give reduced sentence, reduced fine, or probation



26

Offense Class and Trafficking Offense		Type of Punishment						Minimum Active Sentence (Months)	Maximum Active Sentence (Months)	Total
		Active		Intermediate		Community				
		#	%	#	%	#	%			
C	Consp. Traffic Meth.	1	100	.	.	.	.	225	282	1
	Traffic Methamphetamine	5	71	1	14	1	14	134	173	7
	Traffic Opium/Heroin	10	77	2	15	1	8	170	216	13
	Consp. Traffic Op./Heroin	.	.	.	.	1	100	67	93	1
	Other Trafficking	13	76	2	12	2	12	133	171	17
	Subtotal	29	74	5	13	5	13	146	187	39
D	Traffic Cocaine	5	83	.	.	1	17	154	197	6
	Other Trafficking	3	100	.	.	.	.	134	172	3
	Subtotal	8	89	.	.	1	11	147	189	9
E	Traffic Methamphetamine	18	95	1	5	.	.	83	112	19
	Traffic Opium/Heroin	36	95	1	3	1	3	84	113	38
	Consp. Traffic Op./Heroin	1	100	.	.	.	.	90	120	1
	Other Trafficking	33	97	1	3	.	.	88	117	34
	Subtotal	88	96	3	3	1	1	85	114	92
F	Consp. Traffic Meth.	3	100	.	.	.	.	49	68	3
	Traffic Methamphetamine	93	94	4	4	2	2	65	87	99
	Traffic Cocaine	8	73	2	18	1	9	61	83	11
	Traffic Opium/Heroin	92	91	6	6	3	3	64	86	101
	Consp. Traffic Cocaine	2	40	2	40	1	20	39	56	5
	Other Trafficking	65	94	1	1	3	4	63	84	69
	Subtotal	263	91	15	5	10	3	64	85	228
G	Traffic LSD	5	100	.	.	.	.	35	51	5
	Traffic MDA/MDMA	2	67	1	33	.	.	27	41	3
	Traffic Amphetamine	1	100	.	.	.	.	35	51	1
	Traffic Cocaine	40	93	1	2	2	5	32	48	43
	Consp. Traffic Marijuana	.	.	.	.	1	100	35	51	1
	Other Trafficking	23	82	1	4	4	14	32	47	28
	Subtotal	71	88	3	4	7	9	32	47	81
H	Other Trafficking	.	.	.	.	1	100	6	17	1
	Subtotal	.	.	.	.	1	100	6	17	1
Total		459	90	26	5	25	5	70	94	510

2023**510 trafficking convictions****51 probationary sentences (10%)****Many reduced terms of imprisonment**

27

Attempted Trafficking

- Reverts to regular sentencing grid for assigned class of offense and prior record level
- No mandatory fine

Class E

90

120

E Max. 88 (136)	I/A	I/A
	25–31	29–36
	20–25	23–29
	ASR 15–20	ASR 17–23

28

Advanced Supervised Release (ASR)

29

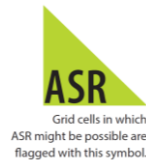
Advanced Supervised Release

- Created by Justice Reinvestment Act (2011)
- Allows early release from prison to post-release supervision for inmates who complete “risk reduction incentives” in prison
- Used 156 times in 2023

30

ASR Eligibility

- Only certain grid cells
- Only Active sentences
- Only if court ordered
- Never over prosecutor objection



OFFENSE CLASS	PRIOR RECORD LEVEL					
	I 0-1 Pt	II 2-5 Pts	III 6-9 Pts	IV 10-13 Pts	V 14-17 Pts	VI 18+ Pts
A Max. Death or Life w/o Parole	Death or Life without Parole Defendant under 18 at Time of Offense: Life with or without Parole					
B1 Max. Life w/o Parole	A	A	A	A	A	A
B2 Max. 404 (310)	240-300 192-240 144-192	296-346 227-276 166-221	352-397 254-317 190-254	365-406 292-365 219-292	Life w/o Parole 336-420 252-336	Life w/o Parole 386-483 290-386
C Max. 231 (279)	157-196 125-157 94-125	180-225 144-180 108-144	207-258 165-207 124-165	238-297 190-238 143-190	273-342 219-273 164-219	314-393 251-314 189-251
D Max. 204 (252)	77-92 58-73 44-58	89-104 67-83 50-67	99-120 77-96 58-77	109-138 88-110 66-88	127-159 101-127 79-101	146-183 117-146 87-117
E Max. 88 (136)	44-60 38-51 31-44	79-92 59-73 44-59	84-100 67-84 51-67	99-121 78-97 58-78	116-139 89-111 67-89	128-160 103-128 77-103
F Max. 59	19-20 13-16 10-13	29-33 15-19 11-15	31-37 17-21 13-17	35-38 20-25 15-20	38-39 23-28 17-23	41-41 26-33 20-28
G Max. 47	11-16 10-13 9-10	16-18 12-14 9-12	17-21 13-17 10-13	19-24 15-19 11-15	22-27 17-22 13-17	25-31 20-25 15-20
H Max. 39	6-8 5-6 4-5	8-10 6-8 4-6	10-12 8-10 6-8	11-14 9-11 7-9	15-19 12-15 9-12	20-25 16-20 12-16
I Max. 24	4-8 4-6 3-4	6-8 4-6 3-4	8-10 5-8 4-5	10-12 8-10 6-8	12-15 9-11 7-9	16-20 12-16 8-10

31

ASR Process & Date

- Court imposes regular sentence
- ASR date flows from regular sentence
 - If presumptive or aggravated, ASR date is lowest possible mitigated minimum sentence in the grid cell
 - If mitigated, ASR date is 80% of imposed minimum

Any presumptive or aggravated sentence:

C/I/A	
6-8	
5-6	
4-5	ASR

Mitigated example:

4-14 month sentence

ASR date: 3.2 months

32

Example

- Obtaining property by false pretenses
- Prior Record Level III
- Regular sentence is presumptive, 8-19 months

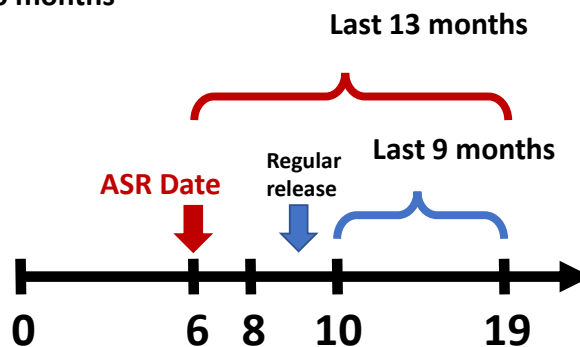
H Max. 39	C/I/A	I/A	I/A
	6-8	8-10	10-12
	5-6	6-8	8-10
	ASR 4-5	ASR 4-6	ASR 6-8

<input type="checkbox"/> to Life Imprisonment With Parole, pursuant to G.S. Chapter 15A, Article 81B, Part 2A.		
for a minimum term of: 8 months	and a maximum term of: 19 months	ASR term (Order No. 4, Side Two) 6 months
The defendant shall be given credit for _____ days spent in confinement prior to the date of this Judge		

33

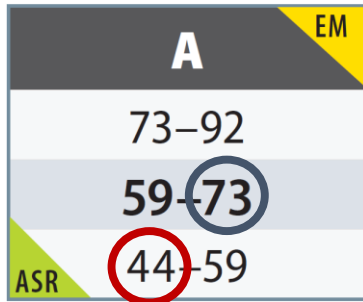
Regular sentence: 8-19 months

ASR date: 6 months



34

ASR Date (Class D, Level II)



Regular sentence: 73-100 months

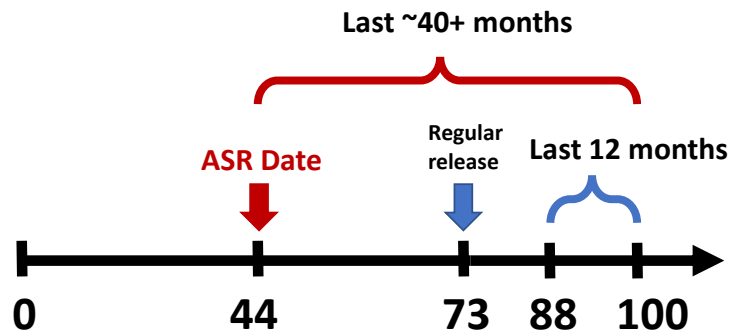
Regular release: ~73 months

ASR: 44 months

35


Regular sentence: 73-100 months

ASR date: 44 months



36

Institutions / Policies and Procedures / Chapter C - Classification

 C .2600 - Advanced Supervised Release

162% ~ - +



***Division of Institutions
Policy and Procedure***

Chapter: C
Section: .2600
Title: Advanced Supervised Release
Issue Date: May 1, 2023
Supersedes: July 10, 2018

I. PURPOSE

Advanced Supervised Release (hereafter referred to as ASR term) is a program developed and initiated as part of the Justice Reinvestment Act of 2011 and established by NCGS 15A-1340.18. The program allows sentenced offenders in certain felony classes to serve a term lower than their court-imposed sentence required by statute (hereafter referred to as non-ASR term) if agreed upon by appropriate parties prior to the offenders' admission to the North Carolina Department of Adult Correction (DAC). To justify the early release the offender will be required, while incarcerated, to participate in certain risk-reduction programs and maintain a defined level of positive behavior in

37

OFFENDER ASSIGNMENTS

- A. Once an ASR participating offender completes Admission Processing, every effort will be made for that offender to participate in necessary Correctional Risk Reduction Incentives based upon risk score and identified criminogenic needs as determined by the Risk/Needs Assessment (RNA). When possible and, as necessary, the offender will participate in individually prescribed risk reduction incentives that are categorized as Programs (based on Evidence Based Practices), Services and/or Activities. If through no fault of their own offenders cannot participate in the recommended Correctional Risk Reduction Incentives, then they will remain in the ASR sentence track and be released according to that track. Otherwise, offenders will be expected to make reasonable progress towards fulfillment of the ASR Agreement.

38

-
- B. Offenders admitted to Institutions to serve ASR terms may or may not have received specific court recommendations for certain programs as a part of their ASR program participation. If the sentencing court has made specific recommendations for program participation, these recommendations will be evaluated by Diagnostic Center staff to determine if it will be necessary, appropriate, and possible for the offender to participate in said programs. From this information and in conjunction with the Case Factor score of the offender, the initial custody classification action will be generated, and appropriate recommendations for custody, assigned unit and program participation will be made by the assigned Diagnostic Case Analyst. In addition to this initial custody classification action, the Diagnostic Case Analyst will document that the offender has an ASR sentence using OPUS Online/OPUS Sig Issue/Case Mgt. Notes screen using code "71" for "ASR Notes".

39

Sex Offenders

40

Felony Offenses Committed on or after October 1, 2013							
MINIMUM SENTENCES AND DISPOSITIONAL OPTIONS							
OFFENSE CLASS	I 0-1 Pt	II 2-5 Pts	III 6-9 Pts	IV 10-13 Pts	V 14-17 Pts	VI 18+ Pts	
A Max. Death or Life w/o Parole	Death or Life without Parole Defendant under 18 at Time of Offense: Life with or without Parole						
B1 Max. Life w/o Parole	A 240-300 192-240 144-192	A 276-345 221-276 166-221	A 317-397 254-317 190-254	A 365-456 292-365 219-292	A Life w/o Parole 336-420 252-336	A Life w/o Parole 386-483 290-386	DISPOSITION Aggravated PRESUMPTIVE Mitigated
B2 Max. 684 (532)	A 157-196 125-157 94-125	A 180-225 144-180 108-144	A 207-258 165-207 124-165	A 238-297 190-238 143-190	A 273-342 219-273 164-219	A 314-393 251-314 189-251	
C Max. 231 (279)	A 73-92 58-73 44-58	A 83-104 67-83 50-67	A 96-120 77-96 58-77	A 110-138 88-110 66-88	A 127-159 101-127 76-101	A 146-182 117-146 85-117	
D Max. 204 (242)	A 64-80 51-64 38-51	A 73-92 59-73 44-59	A 84-105 67-84 51-67	A 97-121 78-97 58-78	A 111-139 89-111 67-89	A 128-160 103-128 77-103	
E Max. 88 (136)	A 20-27 15-20	A 29-36 23-29 17-23	A 31-41 26-33 20-26	A 38-48 30-38 23-30	A 44-55 35-44 26-35	A 50-63 40-50 30-40	
F Max. 59	A 16-20 13-16 10-13	A 19-23 15-19 11-15	A 21-27 17-21 13-17	A 25-31 20-25 15-20	A 28-36 23-28 17-23	A 33-41 26-33 20-26	
G Max. 47	A 13-16 10-13 8-10	A 14-18 12-14 9-12	A 15-21 13-17 10-13	A 16-24 15-19 11-15	A 22-27 17-22 13-17	A 25-31 20-25 15-20	
H Max. 39	C/A 6-8 5-6 4-5	A 8-10 6-8 4-6	A 10-12 8-10 6-8	A 11-14 9-11 7-9	A 15-19 12-15 9-12	A 20-25 16-20 12-16	
I Max. 24	C 6-8 4-6 3-4	C/I 6-8 4-6 3-4	I 6-8 5-6 4-5	A 8-10 6-8 4-6	A 9-11 7-9 5-7	A 10-12 8-10 6-8	

41

Class B1 – E
120% + 12

Class F – I
120% + 9

MAXIMUM SENTENCES

The tables below show the maximum sentence that corresponds to each minimum sentence. For minimum sentences of 360 months or more, the maximum sentence is 120 percent of the minimum sentence, rounded to the next highest month, plus 12 additional months. G.S. 15A-1340.17(a).
See Crimes: The maximum sentence for a Class B1 through E felony subject to the registration requirements of G.S. Chapter 14, Article 27a is 120 percent of the minimum sentence, rounded to the next highest month, plus 60 additional months, as indicated in parentheses below. G.S. 15A-1340.17(b).

FOR OFFENSE CLASSES B1 THROUGH E (Minimum Sentence → Corresponding Maximum (Sex Crimes))									
15=30 (78)	56=80 (128)	97=129 (177)	138=178 (226)	179=227 (275)	220=276 (324)	261=326 (374)	302=375 (423)	343=420 (468)	384=468 (516)
16=32 (80)	57=81 (129)	98=130 (178)	139=179 (227)	180=228 (276)	221=278 (325)	262=327 (375)	303=376 (424)	344=421 (469)	385=469 (517)
17=33 (81)	58=82 (130)	99=131 (179)	140=180 (228)	181=229 (277)	222=279 (326)	263=328 (376)	304=377 (425)	345=422 (470)	386=470 (518)
18=34 (82)	59=83 (131)	100=132 (180)	141=181 (229)	182=230 (278)	223=280 (327)	264=329 (377)	305=378 (426)	346=423 (471)	387=471 (519)
20=36 (84)	61=85 (133)	102=134 (182)	143=183 (231)	184=232 (280)	225=282 (329)	266=331 (379)	307=380 (428)	348=425 (473)	389=473 (521)
21=37 (85)	62=86 (134)	103=135 (183)	144=184 (232)	185=233 (281)	226=283 (330)	267=332 (380)	308=381 (429)	349=426 (474)	390=474 (522)
22=38 (86)	63=87 (135)	104=136 (184)	145=185 (233)	186=234 (282)	227=284 (331)	268=333 (381)	309=382 (430)	350=427 (475)	391=475 (523)
23=39 (87)	64=88 (136)	105=137 (185)	146=186 (234)	187=235 (283)	228=285 (332)	269=334 (382)	310=383 (431)	351=428 (476)	392=476 (524)
24=40 (88)	65=89 (137)	106=138 (186)	147=187 (235)	188=236 (284)	229=286 (333)	270=335 (383)	311=384 (432)	352=429 (477)	393=477 (525)
25=41 (89)	66=90 (138)	107=139 (187)	148=188 (236)	189=237 (285)	230=287 (334)	271=336 (384)	312=385 (433)	353=430 (478)	394=478 (526)
26=42 (90)	67=91 (139)	108=140 (188)	149=189 (237)	190=238 (286)	231=288 (335)	272=337 (385)	313=386 (434)	354=431 (479)	395=479 (527)
27=43 (91)	68=92 (140)	109=141 (189)	150=190 (238)	191=239 (287)	232=289 (336)	273=338 (386)	314=387 (435)	355=432 (480)	396=480 (528)
28=44 (92)	69=93 (141)	110=142 (190)	151=191 (239)	192=240 (288)	233=290 (337)	274=339 (387)	315=388 (436)	356=433 (481)	397=481 (529)
29=45 (93)	70=94 (142)	111=143 (191)	152=192 (240)	193=241 (289)	234=291 (338)	275=340 (388)	316=389 (437)	357=434 (482)	398=482 (530)
30=46 (94)	71=95 (143)	112=144 (192)	153=193 (241)	194=242 (290)	235=292 (339)	276=341 (389)	317=390 (438)	358=435 (483)	399=483 (531)
31=47 (95)	72=96 (144)	113=145 (193)	154=194 (242)	195=243 (291)	236=293 (340)	277=342 (390)	318=391 (439)	359=436 (484)	400=484 (532)
32=48 (96)	73=97 (145)	114=146 (194)	155=195 (243)	196=244 (292)	237=294 (341)	278=343 (391)	319=392 (440)	360=437 (485)	401=485 (533)
33=49 (97)	74=98 (146)	115=147 (195)	156=196 (244)	197=245 (293)	238=295 (342)	279=344 (392)	320=393 (441)	361=438 (486)	402=486 (534)
34=50 (98)	75=99 (147)	116=148 (196)	157=197 (245)	198=246 (294)	239=296 (343)	280=345 (393)	321=394 (442)	362=439 (487)	403=487 (535)
35=51 (99)	76=100 (148)	117=149 (197)	158=198 (246)	199=247 (295)	240=297 (344)	281=346 (394)	322=395 (443)	363=440 (488)	404=488 (536)
36=52 (100)	77=101 (149)	118=150 (198)	159=199 (247)	200=298 (345)	241=298 (345)	282=347 (395)	323=396 (444)	364=441 (489)	405=489 (537)
37=53 (101)	78=102 (150)	119=151 (199)	160=200 (248)	201=299 (346)	242=299 (346)	283=348 (396)	324=397 (445)	365=442 (490)	406=490 (538)
38=54 (102)	79=103 (151)	120=152 (200)	161=201 (249)	202=300 (347)	243=300 (347)	284=349 (397)	325=398 (446)	366=443 (491)	407=491 (539)
39=55 (103)	80=104 (152)	121=153 (201)	162=202 (250)	203=301 (348)	244=301 (348)	285=350 (398)	326=399 (447)	367=444 (492)	408=492 (540)
40=56 (104)	81=105 (153)	122=154 (202)	163=203 (251)	204=302 (349)	245=302 (349)	286=351 (399)	327=400 (448)	368=445 (493)	409=493 (541)
41=57 (105)	82=106 (154)	123=155 (203)	164=204 (252)	205=303 (350)	246=303 (350)	287=352 (400)	328=401 (449)	369=446 (494)	410=494 (542)
42=58 (106)	83=107 (155)	124=156 (204)	165=205 (253)	206=304 (351)	247=304 (351)	288=353 (401)	329=402 (450)	370=447 (495)	411=495 (543)
43=59 (107)	84=108 (156)	125=157 (205)	166=206 (254)	207=305 (352)	248=305 (352)	289=354 (402)	330=403 (451)	371=448 (496)	412=496 (544)
44=60 (108)	85=109 (157)	126=158 (206)	167=207 (255)	208=306 (353)	249=306 (353)	290=355 (403)	331=404 (452)	372=449 (497)	413=497 (545)
45=61 (109)	86=110 (158)	127=159 (207)	168=208 (256)	209=307 (354)	250=307 (354)	291=356 (404)	332=405 (453)	373=450 (498)	414=498 (546)
46=62 (110)	87=111 (159)	128=160 (208)	169=209 (257)	210=308 (355)	251=308 (355)	292=357 (405)	333=406 (454)	374=451 (499)	415=499 (547)
47=63 (111)	88=112 (160)	129=161 (209)	170=210 (258)	211=309 (356)	252=309 (356)	293=358 (406)	334=407 (455)	375=452 (500)	416=500 (548)
48=64 (112)	89=113 (161)	130=162 (210)	171=211 (259)	212=310 (357)	253=310 (357)	294=359 (407)	335=408 (456)	376=453 (501)	417=501 (549)
49=65 (113)	90=114 (162)	131=163 (211)	172=212 (260)	213=311 (358)	254=311 (358)	295=360 (408)	336=409 (457)	377=454 (502)	418=502 (550)
50=66 (114)	91=115 (163)	132=164 (212)	173=213 (261)	214=312 (359)	255=312 (359)	296=361 (409)	337=410 (458)	378=455 (503)	419=503 (551)
51=67 (115)	92=116 (164)	133=165 (213)	174=214 (262)	215=313 (360)	256=313 (360)	297=362 (410)	338=411 (459)	379=456 (504)	420=504 (552)
52=68 (116)	93=117 (165)	134=166 (214)	175=215 (263)	216=314 (361)	257=314 (361)	298=363 (411)	339=412 (460)	380=457 (505)	421=505 (553)
53=69 (117)	94=118 (166)	135=167 (215)	176=216 (264)	217=315 (362)	258=315 (362)	299=364 (412)	340=413 (461)	381=458 (506)	422=506 (554)
54=70 (118)	95=119 (167)	136=168 (216)	177=217 (265)	218=316 (363)	259=316 (363)	300=365 (413)	341=414 (462)	382=459 (507)	423=507 (555)
55=71 (119)	96=120 (168)	137=169 (217)	178=218 (266)	219=317 (364)	260=317 (364)	301=366 (414)	342=415 (463)	383=460 (508)	424=508 (556)
56=72 (120)	97=121 (169)	138=170 (218)	179=219 (267)	220=318 (365)	261=318 (365)	302=367 (415)	343=416 (464)	384=461 (509)	425=509 (557)
57=73 (121)	98=122 (170)	139=171 (219)	180=220 (268)	221=319 (366)	262=319 (366)	303=368 (416)	344=417 (465)	385=462 (510)	426=510 (558)
58=74 (122)	99=123 (171)	140=172 (220)	181=221 (269)	222=320 (367)	263=320 (367)	304=369 (417)	345=418 (466)	386=463 (511)	427=511 (559)
59=75 (123)	100=124 (172)	141=173 (221)	182=222 (270)	223=321 (368)	264=321 (368)	305=370 (418)	346=419 (467)	387=464 (512)	428=512 (560)
60=76 (124)	101=125 (173)	142=174 (222)	183=223 (271)	224=322 (369)	265=322 (369)	306=371 (419)	347=420 (468)	388=465 (513)	429=513 (561)
61=77 (125)	102=126 (174)	143=175 (223)	184=224 (272)	225=323 (370)	266=323 (370)	307=372 (420)	348=421 (469)	389=466 (514)	430=514 (562)
62=78 (126)	103=127 (175)	144=176 (224)	185=225 (273)	226=324 (371)	267=324 (371)	308=373 (421)	349=422 (470)	390=467 (515)	431=515 (563)
63=79 (127)	104=128 (176)	145=177 (225)	186=226 (274)	227=325 (372)	268=325 (372)	309=374 (422)	350=423 (471)	391=468 (516)	432=516 (564)
64=80 (128)	105=129 (177)	146=178 (226)	187=227 (275)	228=326 (373)	269=326 (373)	310=375 (423)	351=424 (472)	392=469 (517)	433=517 (565)
65=81 (129)	106=130 (178)	147=179 (227)	188=228 (276)	229=327 (374)	270=327 (374)	311=376 (424)	352=425 (473)	393=470 (518)	434=518 (566)
66=82 (130)	107=131 (179)	148=180 (228)	189=229 (277)	230=328 (375)	271=328 (375)	312=377 (425)	353=426 (474)	394=471 (519)	435=519 (567)
67=83 (131)	108=132 (180)	149=181 (229)	190=230 (278)	231=329 (376)	272=329 (376)	313=378 (426)	354=427 (475)	395=472 (520)	436=520 (568)
68=84 (132)	109=133 (181)	150=182 (230)	191=231 (279)	232=330 (377)	273=330 (377)	314=379 (427)	355=428 (476)	396=473 (521)	437=521 (569)
69=85 (133)	110=134 (182)	151=183 (231)	192=232 (280)	233=331 (378)	274=331 (378)	315=380 (428)	356=429 (477)	397=474 (522)	438=522 (570)
70=86 (134)	111=135 (183)	152=184 (232)	193=233 (281)	234=332 (379)	275=332 (379)	316=381 (429)	357=430 (478)	398=475 (523)	439=523 (571)
71=87 (135)	112=136 (184)	153=185 (233)	194=234 (282)	235=333 (380)	276=333 (380)	317=382 (430)	358=431 (479)	399=476 (524)	440=524 (572)
72=88 (136)	113=137 (185)	154=186 (234)	195=235 (283)	236=334 (381)	277=334 (381)	318=383 (431)	359=432 (480)	400=477 (525)	441=525 (573)
73=89 (137)	114=138 (186)	155=187 (235)	196=236 (284)	237=335 (382)	278=335 (382)	319=384 (432)	360=433 (481)	401=478 (526)	442=526 (574)
74=90 (138)	115=139 (187)	156=188 (236)	197=237 (285)	238=336 (383)	279=336 (383)	320=385 (433)	361=434 (482)	402=479 (527)	443=527 (575)
75=91 (139)	116=140 (188)	157=189 (237)	198=238 (286)	239=337 (384)	280=337 (384)	321=386 (434)	362=435 (483)	403=480 (528)	444=528 (576)
76=92 (140)	117=141 (189)	158=190 (238)	199=239 (287)	240=338 (385)	281=338 (385)	322=387 (435)	363=436 (484)	404=481 (529)	445=529 (577)
77=93 (141)	118=142 (190)	159=191 (239)	200=240 (288)	241=339 (386)	282=339 (386)	323=388 (436)	364=437 (485)	405=482 (530)	446=530 (578)
78=94 (142)	119=143 (191)	160=192 (240)	201=241 (289)	242=340 (387)	283=340 (387)	324=389 (437)	365=438 (486)	406=483 (531)	447=531 (579)
79=95 (143)	120=144 (192)	161=193 (241)	202=242 (290)	243=341 (388)	284=341 (388)	325=390 (438)	366=439 (487)	407=484 (532)	448=532 (580)
80=96 (144)	121=145 (193)	162=194 (242)	203=243 (291)	244=342 (389)	285=342 (389)	326=391 (439)	367=440 (488)	408=485 (533)	449=533 (581)
81=97 (145)	122=146 (194)	163=195 (243)	204=244 (292)	245=343 (390)	286=343 (390)	327=392 (440)	368=441 (489)	409=486 (534)	450=534 (582)
82=98 (146)	123=147 (195)	164=196 (244)	205=245 (293)	246=344 (391)	287=344 (391)	328=393 (441)	369=442 (490)	410=487 (535)	451=535 (583)
83=99 (147)	124=148 (196)	165=197 (245)	206=246 (294)	247=345 (392)	288=345 (392)	329=394 (442)	370=443 (491)	411=488 (536)	452=536 (584)
84=100 (148)	125=149 (197)	166=198 (246)	207=247 (295)	248=346 (393)	289=346 (393)	330=395 (443)	371=444 (492)	412=489 (537)	453=537 (585)
85=101 (149)	126=150 (198)	167=199 (247)	208=248 (296)	249=347 (394)	290=347 (394)	331=396 (444)	372=445 (493)	413=490 (538)	454=538 (586)
86=102 (150)	127=151 (199)	168=200 (248)	209=249 (297)	250=348 (395)	291=348 (395)	332=397 (445)	373=446 (494)	414=491 (539)	455=539 (587)
87=103 (151)	128=152 (200)	169=201 (249)	210=250 (298)	251=349 (396)	292=349 (396)	333=398 (446)	374=447 (495)	415=492 (540)	456=540 (588)
88=104 (152)	129=153 (201)	170=202 (250)	211=251 (299)	252=350 (397)	293=350 (397)	334=399 (447)	375=448 (496)	416=493 (541)	457=541 (589)
89=105 (153)	130=154 (202)	171=203 (251)	212=252 (300)	253=351 (398)	294=351 (398)	335=400 (448)	376=449 (497)	417=494 (542)	458=542 (590)
90=106 (154)	131=155 (203)	172=204 (252)	213=253 (301)	254=352 (399)	295=352 (399)	336=401 (449)	377=450 (498)	418=495 (543)	459=543 (591)
91=107 (155)	132=156 (204)	173=205 (253)	214=254 (302)	255=353 (400)	296=353 (400)	337			

The tables below show the maximum sentence that corresponds to the minimum sentence. The maximum sentence is 120 percent of the minimum sentence. **Sex Crimes:** The maximum sentence for a Class B1 through E sex crime is 120% of the minimum sentence, rounded to the next highest month.

FOR OFFENSE CLASSES B1 THROUGH E

15 → 30 (78)	56 → 80 (128)	97 → 129 (177)
16 → 32 (80)	57 → 81 (129)	98 → 130 (178)
17 → 33 (81)	58 → 82 (130)	99 → 131 (179)
18 → 34 (82)	59 → 83 (131)	
19 → 35 (83)	60 → 84 (132)	
20 → 36 (84)	61 → 85 (133)	

**Class B1 – E
Sex Crime
120% + 60**

**All felony sex offenders get 5 years
of Post-Release Supervision**

43

The five years of post-release supervision to which Defendant was subjected, as opposed to the nine months to which he agreed, were a “direct consequence” of his guilty plea, because those additional months had a “definite, immediate and largely automatic effect on the range of the defendant's punishment.” . . . Without being aware of the direct consequences of his guilty plea, Defendant cannot be said to have made his plea “voluntarily, intelligently and understandingly.” For Defendant's plea to be knowing and voluntary, and thus valid, Defendant must have been made aware of “the actual value of any commitments made to him by the court.”

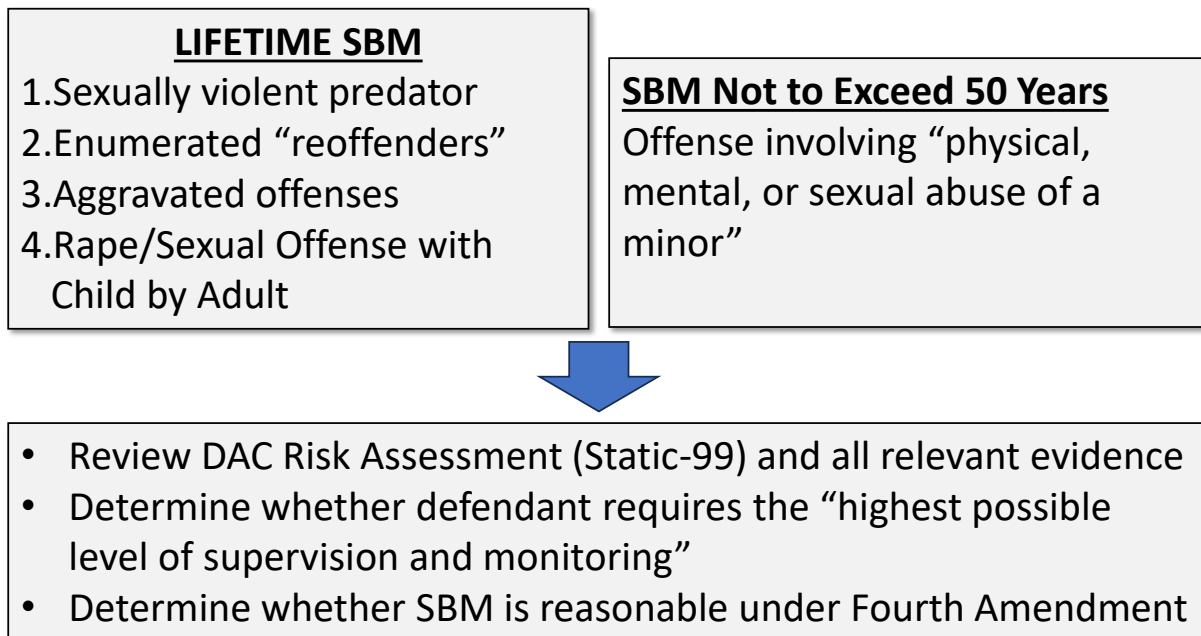
State v. Spry, 2025 WL 395022, at *9 (N.C. Ct. App. Feb. 5, 2025)

44

Satellite-Based Monitoring

- Enacted in 2006
- Procedure codified in 2007
- Grady v. North Carolina (2015): SBM is a search
- State v. Grady (2018): Unconstitutional for all recidivists
- Amended 2021 (defendant favorable; no lifetime SBM)
- Amended again 2023 (more rigorous; lifetime returns)
- Current SBM population: ~800

45



46

LIFETIME SBM

1. Sexually violent predator
2. Enumerated “reoffenders”
3. Aggravated offenses
4. Rape/Sexual Offense with Child by Adult

SBM Not to Exceed 50 Years

Offense involving “physical, mental, or sexual abuse of a minor”



- Review DAC Risk Assessment (Static-99) and all relevant evidence
- Determine whether defendant requires the “highest possible level of supervision and monitoring”
- Determine whether SBM is reasonable under Fourth Amendment

47

Satellite-Based Monitoring

- 2021: “Recidivist” replaced by “Reoffender”

Recidivist. - A person who has a prior conviction for an offense that is described in G.S. 14-208.6(4).

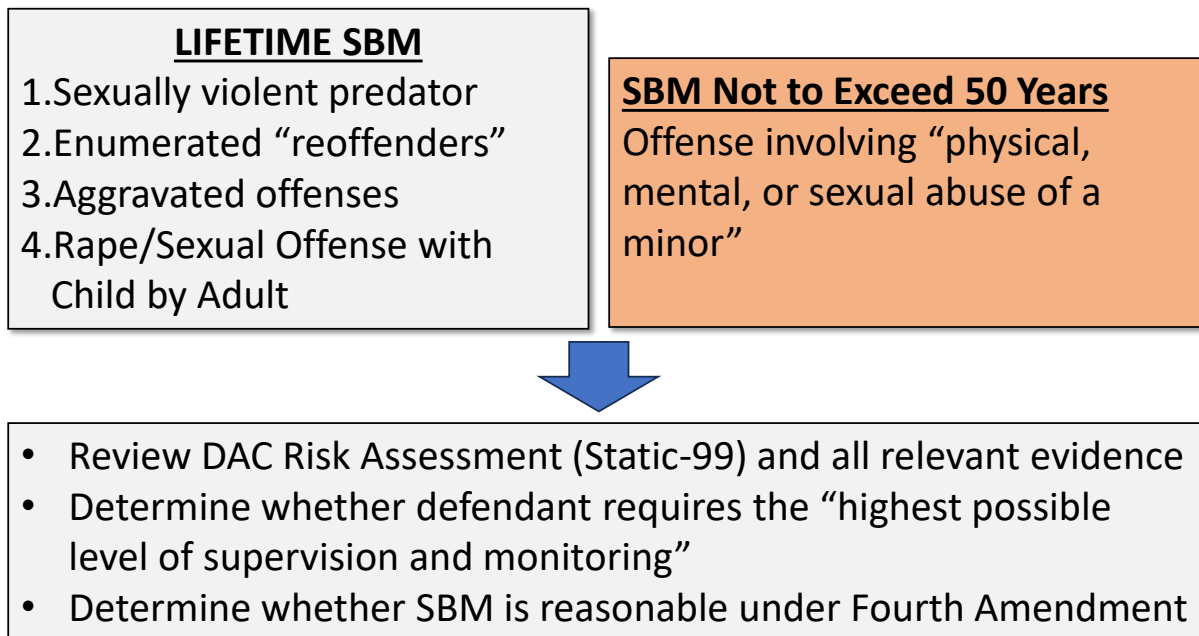
Reoffender. – A person who has two or more convictions for a **felony** that is described in G.S. 14-208.6(4). For purposes of this definition, if an offender is convicted of more than one offense in a single session of court, only one conviction is counted.

48

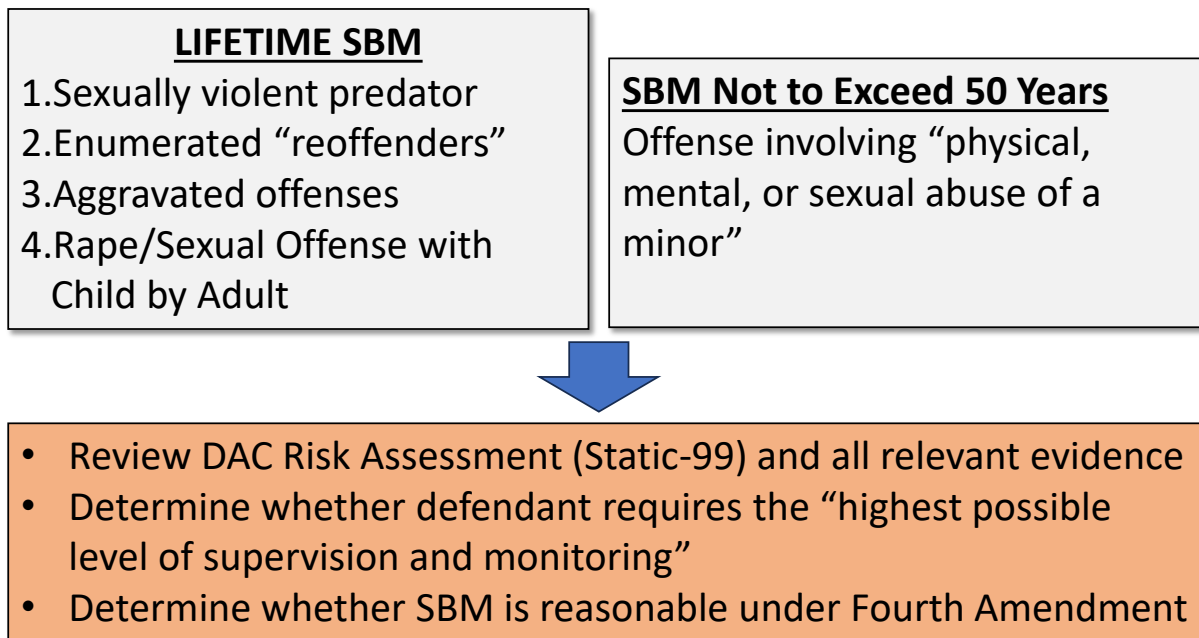
Lifetime-Eligible Reoffenders

- After 2023 amendments, only certain reoffenders get lifetime SBM
 - Rape
 - Sexual offense
 - Human trafficking
 - Sexual servitude
 - Incest (with young victim and requisite age range)
 - First-degree sexual exploitation of a minor
 - Patronizing a prostitute with a mental disability
 - Promoting prostitution of a minor or person with a mental disability
 - Child abuse by prostitution or sexual act

49



50



51

Risk Score + Relevant Evidence

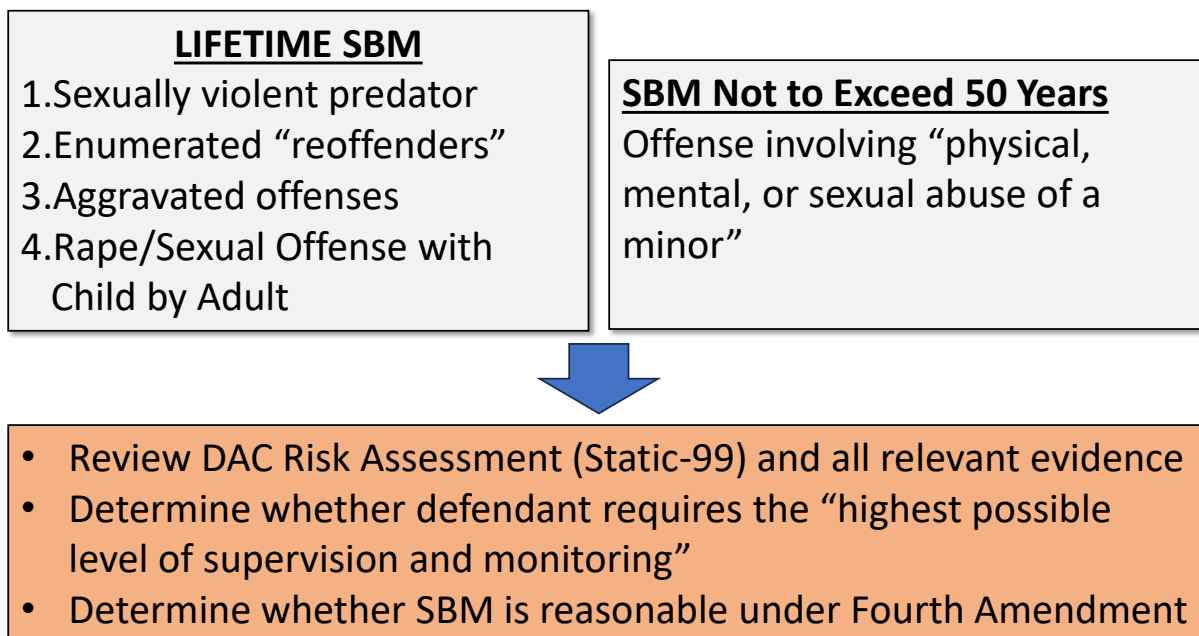
- “High” on Static-99
- Findings sufficient to override an other-than-High Static-99
 - Must not be duplicative of Static-99 factors (e.g., stranger victims, same-sex victims, prior sex crimes)

52

Risk Score + Relevant Evidence

- Approved findings
 - Very young victim
 - Escalating sexual aggressiveness
 - Temporal proximity of offenses
 - Homelessness/use of halfway houses
 - Difficulty locating the person

53



54

Reasonableness Analysis

Nature of the privacy
interest intruded upon.

Character of the intrusion.



Nature, immediacy, and
importance of the
governmental interest.

55

Nature of the Intrusion

- “Unlike punitive measures, SBM does not impose a significant affirmative disability or restraint. As the trial court found, the ankle monitoring device is light weight, small in size, can be adjusted for comfort and is of little intrusion to the person wearing the device.”
- State v. Hilton, 378 N.C. 692 (2021)

56

Reasonableness Analysis

Nature of the privacy
interest intruded upon.

Character of the intrusion.



Nature, immediacy, and
importance of the
governmental interest.

57

Efficacy: 2021 Legislation

The General Assembly finds that empirical and statistical reports such as the 2015 California Study, “Does GPS Improve Recidivism among High Risk Sex Offenders? Outcomes for California's GPS Pilot for High Risk Sex Offender Parolees,” show that sex offenders monitored with the global positioning system (GPS) are less likely than other sex offenders to receive a violation for committing a new crime, and that offenders monitored by GPS demonstrated significantly better outcomes for both increasing compliance and reducing recidivism. G.S. 14-208.39.

58

Efficacy: Supreme Court (2021)

- “SBM’s efficacy as a deterrent is supported by empirical data.”
- “Since we have recognized the efficacy of SBM in assisting with the apprehension of offenders and in deterring recidivism, there is no need for the State to prove SBM’s efficacy on an individualized basis.”

- State v. Hilton, 378 N.C. 692 (2021)

59

Reasonableness

- SBM deemed reasonable in *Hilton* as applied to an aggravated offense (rape)

60

Reasonableness Procedure

- Don't wait to assess reasonableness—even if defendant is facing a long sentence
- Assess at sentencing and use Rule 60 as needed in the future
 - State v. Strudwick, 379 N.C. 94 (2021)



61

SBM Termination

- Formerly done by Parole Commission, now by Superior Court in the county of conviction
- For offenders enrolled in SBM before December 1, 2021 for a period of longer than 10 years, G.S. 14-208.46 applies
 - Mandatory conversion to 10 years, or
 - Immediate termination of SBM if offender has already enrolled for 10 years



62

SBM Termination

- For offenders enrolled on or after December 1, 2021, G.S. 14-208.43 applies
- After 5 years of enrollment, offender may petition superior court
- If court finds defendant no longer requires the highest possible level of supervision and monitoring, the court may:
 - Terminate SBM immediately, or
 - Order enrollment for a reduced period
- “If the court denies the petition, the person may again petition the court for relief in accordance with this section two years from the date of the denial of the original petition to terminate the satellite-based monitoring requirement.”

63



64