

# EXAMPLE EXERCISES

## SECTION I

### EXAMPLE FELONY EXERCISES

*Each exercise presents a brief hypothetical case (offense and prior criminal record). A list of questions follows. The answer to the question and additional commentary appear after entering an answer. Assume that all crimes were committed on or after **December 1, 2021**.*

#### EXAMPLE #1

**OFFENSE:** Assault with a deadly weapon with intent to kill inflicting serious injury

**G.S. No.:** 14-32

**F/M:** Felony

**Class:** C

**PRIOR RECORD:** No prior record.

#### QUESTIONS

1. What is the offender's prior record level?
2. What is the longest minimum sentence which can be imposed from the presumptive range?
3. What is the longest possible maximum sentence which can be imposed, assuming the court finds aggravating factors which outweigh mitigating factors?
4. Can the active sentence be suspended?

## EXAMPLE #2

**OFFENSE:** Obtaining property by false pretenses (value less than \$100,000)

**G.S. No.:** 14-100

**F/M:** Felony

**Class:** H

### **PRIOR RECORD**

**Prior Offense:** Driving while license revoked for impaired driving

**Conviction Date:** 2007 **F/M:** Misdemeanor

**Current Class:** 1

**Prior Offense:** Embezzlement (value less than \$100,000)

**Conviction Date:** 2014 **F/M:** Felony

**Current Class:** H

**Prior Offense:** Larceny (value more than \$1,000)

**Conviction Date:** 2016 **F/M:** Felony

**Current Class:** H

**Prior Offense:** Larceny (value more than \$1,000)

**Conviction Date:** 2020 **F/M:** Felony

**Current Class:** H

The defendant was on probation when he committed the current offense.

(Assume the offender is not charged as an habitual felon and is not ordered into the Advanced Supervised Release program.)

### **QUESTIONS**

1. What is the offender's prior record level?
2. What is the shortest minimum sentence the court could impose from the mitigated range?
3. What is the shortest amount of time this offender (in question #2) must serve in prison if the sentence is activated?
4. What is the longest possible maximum sentence that the court could impose from the aggravated range?
5. Could this offender be sentenced to a community punishment?

### EXAMPLE #3

**OFFENSE:** Second degree kidnapping

**G.S. No.:** 14-39

**F/M:** Felony

**Class:** E

**OFFENSE:** Possession with intent to sell a Controlled Substance (cocaine)

**G.S. No.:** 90-95

**F/M:** Felony

**Class:** H

#### **PRIOR RECORD**

**Prior Offense:** First-degree rape (in Pennsylvania)

**Conviction Date:** 1995 **F/M:** Felony

**Current Class:** B1\*

**Prior Offense:** Sale of a Controlled Substance

**Conviction Date:** 2013 **F/M:** Felony

**Current Class:** H

**Prior Offense:** Assault inflicting serious injury

**Conviction Date:** 2015 **F/M:** Misdemeanor

**Current Class:** A1

**Prior Offense:** Assault inflicting serious injury

**Conviction Date:** 2015 **F/M:** Misdemeanor

**Current Class:** A1

The offender was convicted of the assaults inflicting serious injury at the same session of court in 2015.

\*(Assume that the prosecution proves that the first-degree rape conviction is substantially similar to first-degree rape in North Carolina.)

#### **QUESTIONS**

1. What is the offender's prior record level?
2. What is the longest minimum sentence which could be imposed (from the presumptive ranges) if the sentences were consolidated?
3. What is the longest total minimum sentence which could be imposed (assume presumptive range) if the sentences were run consecutively?
4. Assuming consecutive sentences, must the judge activate both sentences?

## EXAMPLE #4

**OFFENSE:** First-degree rape

**G.S. No.:** 14-27.21

**F/M:** Felony

**Class:** B1

### **PRIOR RECORD**

**Prior Offense:** Assault with a deadly weapon

**Conviction Date:** 1998 **F/M:** Misdemeanor

**Current Class:** A1

**Prior Offense:** Second-degree rape

**Conviction Date:** 2000 **F/M:** Felony

**Current Class:** C

**Prior Offense:** Assault with a deadly weapon inflicting serious injury

**Conviction Date:** 2011 **F/M:** Felony

**Current Class:** E

**Prior Offense:** Second-degree burglary

**Conviction Date:** 2017 **F/M:** Felony

**Current Class:** G

**Prior Offense:** Larceny (value more than \$1,000)

**Conviction Date:** 2017 **F/M:** Felony

**Current Class:** H

The offender was convicted of both the burglary and the larceny during the same week of court and the sentences ran concurrently.

(Assume the offender was not charged as an habitual felon or as a violent habitual felon.)

### **QUESTIONS**

1. What is the offender's prior record level?
2. What is the longest aggravated minimum sentence the offender can receive?
3. What is the shortest maximum sentence that can be imposed, assuming the minimum sentence is selected from the mitigated range?
4. Can the sentence ever be suspended?
5. How much time, if any, will this offender be on post-release supervision when released from prison (assuming a life sentence is not imposed)?

## EXAMPLE #5

**OFFENSE:** Possession of marijuana – 2 ounces

**G.S. No.:** 90-95(d)(4) **F/M:** Felony

**Class:** I

### **PRIOR RECORD**

**Prior Offense:** Worthless check (value more than \$2,000)

**Conviction Date:** 2010 **F/M:** Felony

**Current Class:** I

**Prior Offense:** Larceny (value not more than \$1,000)

**Conviction Date:** 2012 **F/M:** Misdemeanor

**Current Class:** 1

**Prior Offense:** Possession of marijuana – more than 1.5 ounces

**Conviction Date:** 2016 **F/M:** Felony

**Current Class:** I

### **QUESTIONS**

1. How many prior record points does the offender receive?
2. Can the judge impose an active sentence in this case?
3. Can the judge suspend the sentence and impose unsupervised probation?
4. In this case, could the court impose a term of supervised probation longer than 36 months?
5. What is the shortest minimum sentence which may be activated if the offender is revoked for violating the conditions of probation by committing a new crime (assume the court initially sentenced the offender to a minimum term of 6 months from the presumptive range)?

## EXAMPLE #1: ANSWERS AND COMMENTARY

1. What is the offender's prior record level?

**Answer: Prior Record Level I**

Commentary: The offender has no prior convictions and therefore receives no prior record points. This places the offender in Prior Record Level I.

2. What is the longest minimum sentence which can be imposed from the presumptive range?

**Answer: 73 months**

Commentary: For a Class C offense and a Prior Record Level I, the minimum sentence within the presumptive range is 58 to 73 months.

3. What is the longest possible maximum sentence which can be imposed, assuming the court finds aggravating factors which outweigh mitigating factors?

**Answer: 123 months**

Commentary: For a Class C offense and Prior Record Level I, the aggravated range is 73 to 92 months. The longest possible minimum sentence is 92 months, and from **Figure B**, the longest possible corresponding maximum sentence is 123 months. To impose a sentence from the aggravated range, the jury must find that aggravating factors exist and the court must find that the aggravating factors outweigh any mitigating factors.

4. Can the active sentence be suspended?

**Answer: No, unless the court finds extraordinary mitigation.**

Commentary: The prescribed disposition for a Class C offense and Prior Record Level I is active punishment ("A"). The only exception is if the court finds extraordinary mitigation. If it finds extraordinary mitigation, the court may suspend the sentence and impose an intermediate punishment. Extraordinary mitigation can be used only in Offense Classes B2, C, and D and cannot be used if the prior record score is five points or more.

## EXAMPLE #2: ANSWERS AND COMMENTARY

1. What is the offender's prior record level?

**Answer: Prior Record Level III**

Commentary: The offender receives a total of seven prior record points and falls into Prior Record Level III: two points for each of the prior Class H convictions and one for being on probation at the time of arrest. The offender receives no points for the prior misdemeanor conviction because misdemeanor traffic offenses do not count (except for impaired driving and death by vehicle).

2. What is the shortest minimum sentence the court could impose from the mitigated range?

**Answer: 6 months**

Commentary: For a Class H offense and a Prior Record Level III, the mitigated range is 6 to 8 months. To impose a sentence from the mitigated range, the court must find mitigating factors which outweigh any aggravating factors.

3. What is the shortest amount of time this offender (in question #2) must serve in prison if the sentence is activated?

**Answer: 6 months**

Commentary: Since the shortest possible minimum sentence is six months, the shortest amount of time which must be served is six months. The offender must serve the entire minimum sentence. There is no parole.

4. What is the longest possible maximum sentence that the court could impose from the aggravated range?

**Answer: 24 months**

Commentary: The aggravated range for a Class H offense and Prior Record Level III is 10 to 12 months. The longest possible minimum sentence is 12 months, and from **Figure B** (for Class F through I felonies), the longest possible corresponding maximum sentence is 24 months.

5. Could this offender be sentenced to a community punishment?

**Answer: No**

Commentary: The court, in its discretion, may either impose an active punishment ("A") or an intermediate punishment ("I"). However, the court is not authorized to impose a community punishment ("C").

## EXAMPLE #3: ANSWERS AND COMMENTARY

1. What is the offender's prior record level?

**Answer: Prior Record Level IV**

Commentary: The offender receives a total of 12 prior record points and falls into Prior Record Level IV. The offender receives nine points for the Class B1 felony, two points for the Class H felony, and one point for the Class A1 misdemeanors. Only one of the two prior assault convictions counts, since the convictions occurred on the same day of court. If the prosecutor did not prove that the out-of-state conviction for rape was substantially similar to a first-degree rape in North Carolina (or another felony), then that conviction would be treated as a Class I felony and would receive two points.

2. What is the longest minimum sentence which could be imposed (from the presumptive ranges) if the sentences were consolidated?

**Answer: 38 months**

Commentary: When consolidating offenses, refer to the sentence disposition and sentence range for the conviction with the highest offense class (in this case the Class E felony). For the Class E felony with a Prior Record Level IV, the presumptive sentence range is from 30 to 38 months. Therefore, the longest presumptive minimum sentence which can be imposed is 38 months, assuming both offenses are consolidated.

3. What is the longest total minimum sentence which could be impose (assume presumptive ranges) if the sentences were run consecutively?

**Answer: 49 months**

Commentary: For consecutive sentences, the court separately determines the disposition and minimum sentence for each offense. For the Class E felony with a Prior Record Level IV, the presumptive range is from 30 to 38 months. For the Class H felony with a Prior Record Level IV, the presumptive range is from 9 to 11 months. Running these sentences consecutively results in a combined longest total minimum sentence of 49 months (38 months on the Class E offense plus 11 months on the Class H offense).

4. Assuming consecutive sentences, must the judge activate both sentences?

**Answer: No**

Commentary: The disposition prescribed for the Class E felony is "A", and the sentence must be activated. The disposition prescribed for the Class H felony is "I/A", and the court has discretion to either activate the sentence or suspend the sentence and impose an intermediate punishment "I".



## EXAMPLE #4: ANSWERS AND COMMENTARY

1. What is the offender's prior record level?

**Answer: Prior Record Level V**

**Commentary:** The offender receives a total of 15 prior record points and falls into Prior Record Level V. The offender receives one point for the Class A1 misdemeanor, six points for the Class C felony, four points for the Class E felony, and four points for the Class G felony. The offender does not receive any points for the Class H felony, since the conviction occurred during the same week of court as the Class G felony (in such cases, only the most serious conviction counts).

2. What is the longest aggravated minimum sentence the offender can receive?

**Answer: Life imprisonment without parole**

**Commentary:** For a Class B1 offense with a Prior Record Level V, the aggravated range prescribes a sentence of life without parole. Because this is the offender's third conviction for a Class E or higher felony, the offender is potentially eligible to be charged and sentenced as a violent habitual felon. If the offender were found to be a violent habitual felon, a sentence of life imprisonment without parole would have to be imposed.

3. What is the shortest maximum sentence that can be imposed, assuming the minimum sentence is selected from the mitigated range?

**Answer: 363 months**

**Commentary:** The mitigated range for a Class B1 felony with Prior Record Level V is from 252 to 336 months. Assuming a minimum sentence of 252 months is imposed, the maximum sentence is automatically set by G.S. 15A-1340.17(f) to be 363 months.

4. Can the sentence ever be suspended?

**Answer: No**

**Commentary:** The disposition prescribed for Class B1 felonies is "A", and the sentence must be activated. A finding of extraordinary mitigation is not authorized for Class B1 offenses or for Prior Record Level V.

5. How much time, if any, will this offender be on post-release supervision when released from prison (assuming a life sentence is not imposed)?

**Answer: Sixty months**

**Commentary:** All offenders convicted of Class B1, B2, C, D, or E felonies automatically receive twelve months of post-release supervision following their release from prison, unless the offense was a sex offense, in which case the offender receives five years of post-release supervision.

## EXAMPLE #5: ANSWERS AND COMMENTARY

1. How many prior record points does the offender receive?

**Answer: 6 points**

**Commentary:** The offender receives a total of six prior record points and falls into Prior Record Level III. The offender receives two points for each of the prior Class I felonies, one point for the prior Class 1 misdemeanor, and one point enhancement because all of the elements of the current conviction are included in a prior conviction (possession of marijuana).

2. Can the judge impose an active sentence in this case?

**Answer: No**

**Commentary:** Only an intermediate punishment is authorized for a Class I offense and Prior Record Level III.

3. Can the judge suspend the sentence and impose unsupervised probation?

**Answer: No**

**Commentary:** An intermediate punishment must include a period of supervised probation.

4. In this case, could the court impose a term of supervised probation longer than 36 months?

**Answer: Yes, if the court finds such a length is necessary.**

**Commentary:** When sentencing a felon to an intermediate punishment, the recommended length of probation is no less than 18 months and no more than 36 months. However, the court may impose a different term if the court finds that a longer or shorter term is necessary. In no case, however, can the court initially impose a term of probation longer than five years.

5. What is the shortest minimum sentence which may be activated if the offender is revoked for violating the conditions of probation by committing a new crime (assume the court initially sentenced the offender to a minimum term of 6 months from the presumptive range)?

**Answer: 5 months**

**Commentary:** When activating a sentence upon a revocation of probation, the minimum term must be equal to the suspended term or to a lesser term from within the original sentence range used by the court. The original presumptive range for this Class I felony and Prior Record Level III was 5 to 6 months. Upon revocation, the court cannot impose a new minimum sentence more than 6 months (the original term) or less than 5 months (the low end of the original sentence range used by the court).