THINK YOU KNOW CRIMINAL LAW?

Statutes

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Question-Answer Format

Brain Teasers

Rowan County Bar Association
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52nd CLE!

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Introduction

James is honored to present his 52nd CLE at the 2026 Practical Criminal Law seminar sponsored by the Rowan County Bar Association.

He is a N.C. State Bar Board Certified Specialist in Federal Criminal Law, State Criminal Law, and Family Law with over 35 years of experience in criminal, domestic, and general litigation. James is deeply committed to excellence and professionalism in the practice of law, having served on the N.C. State Bar Specialization Criminal Law Committee, the N.C. State Bar Board of Continuing Legal Education, the N.C. State Bar Disciplinary Hearing Commission, and was Issue Planning Editor of the Law Review at Regent University. He also lectures at criminal law, family law, and trial practice CLE programs. James has been counsel of record in 39 murder cases, including not guilty verdicts in capital and non-capital cases.

Think You Know Criminal Law in North Carolina?

This presentation follows a unique format designed to stimulate your legal brain. It is framed to test your functional knowledge, unearthing useful nuggets—and landmines—in the rules of law. Our friend, John Rubin, calls it the pursuit of "practical scholarship."

My approach to seminars is simple: if it does not work, I am not interested.

This presentation is designed for the practitioner. Resources include, *inter alia*, statutes, case law, UNC School of Government publications, and trial experience. I attribute any success to those willing to help me, the courage to try cases, and God's grace. I wish to acknowledge Timothy J. Readling for his able assistance in researching, designing, and creating this presentation.

Please note: (1) all questions refer to North Carolina criminal law unless otherwise stated; (2) do not worry about answering all questions as the presentation is not designed for you to finish; (3) the underlined language directs you to the subject matter of the question; and (4) the explanations contain rich practice pointers.

1. True or False: If the Defendant is convicted of only Class 3 Misdemeanors at sentencing, the Court may not impose a consecutive sentence, regardless of the number of offenses and Prior Conviction Level.

ANSWER: ______________.

1. **ANSWER:** **True.**

EXPLANATION: A consecutive sentence is not authorized when the Defendant is convicted of only Class 3 Misdemeanors at sentencing. N.C. Gen. Stat. § 15A-1340.22(a).

2. Which offense does not have a rebuttable presumption against pre-trial release.

(A) Attempted Misdemeanor Stalking.
(B) Misdemeanor Stalking.
(C) Conspiracy to Commit First Degree Murder.
(D) Death by Distribution Through Unlawful Delivery of Certain Controlled Substances.

ANSWER: _____________.

2. **ANSWER:** **(C).**

EXPLANATION: Certain offenses are defined as "violent offenses" for purposes of determining pre-trial release under the Pre-Trial Integrity Act, as amended by Iryna's Law. N.C. Gen. Stat. § 15A-531(9).

For violent offenses, a rebuttable presumption exists that no condition of release will reasonably assure the appearance of the Defendant and the safety of the community. N.C. Gen. Stat. § 15A-534(b1).

Violent offenses include: (1) any Class A through G felony which has an essential element of assault, the use of physical force against a person, or the threat of such force; (2) any felony sex registration offense; (3) Stalking; (4) Discharging a Weapon into Occupied Property; (5) First or Second Degree Burglary; (6) Breaking and Entering a Building with Intent to Terrorize or Injure; (7) Death by Distribution of Certain Controlled Substances; (8) Felony Trafficking in Fentanyl; (9) Possession of Firearm by Felon; and (10) an attempt to commit any offense referenced herein. *Id.* N.C. Gen. Stat. § 15A-531(9).

Inchoate offenses of conspiracy and solicitation are not included within the definition of "violent offenses." N.C. Gen. Stat. § 15A-531(9).

Other types of offenses may have rebuttable presumptions against release. For example, N.C. Gen. Stat. § 15A-533(b) lists 18 offenses subject to the presumption (e.g., First Degree Murder, Statutory Sexual Offenses, etc.). Additionally, offenses relating to methamphetamine, trafficking, gangs, and illegal use or possession of firearms are also subject to the presumption. *See, e.g.*, N.C. Gen. Stat. § 15A-534.6 (methamphetamine); N.C. Gen. Stat. § 15A-533(d) (trafficking); N.C. Gen. Stat. § 15A-533(e) (gangs); and N.C. Gen. Stat. § 15A-533(f) (illegal firearms).

3. The Defendant was convicted of a <u>sex registration offense</u> involving an unrelated minor child. There was evidence of <u>sexual abuse</u> of the child. The Defendant has a 14-year-old son who has always resided with him. The Defendant was placed on probation, including special conditions of probation for a registered sex offender.

Which of the following is true?

(A) The Defendant may reside with his son without the Court making any express finding.

(B) The Defendant may reside with his son if the Court expressly finds: (1) it is unlikely that the Defendant's conduct will recur; and (2) it would be in the best interest of the son to allow the Defendant to reside with him.

(C) The Defendant may reside with his son upon completion of psychiatric treatment ordered by the Court.

(D) The Defendant cannot reside with his son while on probation.

ANSWER: _____________.

3. **ANSWER:** **(D).**

EXPLANATION: If the sex registration offense involves evidence of sexual abuse of a minor child, the Defendant cannot reside with any minor child as a special condition of probation for registered sex offenders. N.C. Gen. Stat. § 15A-1343(b2)(4).

However, if the sex registration offense involves evidence of physical or mental abuse of a minor child, the Defendant may reside with a child if the Court expressly finds: (1) it is unlikely that the Defendant's conduct will recur; and (2) it would be in the best interest of a child to allow the Defendant to reside with the child. N.C. Gen. Stat. § 15A-1343(b2)(5) (probation); N.C. Gen. Stat. § 15A-1368.4(b1)(5) (post-release supervision).

Unsupervised probation is not allowed for a sex registration offense. N.C. Gen. Stat. § 15A-1343(b2).

4. A person cannot commit a DWI while operating which of the following?

A. Segway with a maximum speed of 15 mph.
B. Segway with a maximum speed of 20 mph.
C. Bicycle.
D. Electric Assisted Bicycle.

ANSWER: _____________.

4. **ANSWER:** **(A).**

EXPLANATION: Under Chapter 20, the definition of "vehicle" expressly excludes an "Electric Personal Assistive Mobility Device" as long as it: (1) is designed to transport one person; (2) has two non-tandem wheels; and (3) has a maximum speed of 15 mph or less. N.C. Gen. Stat. § 20-4.01(49) (defining vehicle); N.C. Gen. Stat. § 20-4.01(7b) (defining "Electric Personal Assistive Mobility Device").

Generally, a segway is considered an Electric Personal Assistive Mobility Device. *See* Jeff Welty, *What's a Vehicle*, N.C. Crim. L. Blog (Sept. 28, 2010), https://nccriminallaw.sog.unc.edu/2010/09/28/whats-a-vehicle.

This author notes that some segways have a maximum speed in excess of 15 mph.

5. For a Tier I Sex Offender under SORNA (Sex Offender Registration and Notification Act), which criterion is unnecessary to satisfy the "clean record" requirements which may reduce the registration period from 15 years to 10 years?

(A) Cannot be convicted of any subsequent offense punishable by more than 1 year.
(B) Cannot be convicted of any subsequent sex offense.
(C) Cannot be subject to lifetime satellite-based monitoring.
(D) Must successfully complete any period of supervised probation, parole, or release.
(E) Must successfully complete an appropriate sex offender treatment program certified by a jurisdiction or the Attorney General.

ANSWER: **____________.**

5. **ANSWER:** **(C).**

EXPLANATION:	A Tier I Sex Offender may be subject to a reduced registration period if he meets the four criteria of a "clean record." 42 U.S.C. § 16915(b)(1).

6. True or False: Under SORNA, Third Degree Sexual Exploitation of a Minor is a <u>Tier II offense</u>.

ANSWER: **____________.**

6. **ANSWER:** **False.**

EXPLANATION:	This is a Tier I offense under SORNA. This distinction is important as the Defendant would only be subject to a 15-year registration period under SORNA. This period may be reduced to 10 years under the "clean record" exception. Second Degree Sexual Exploitation of a Minor may be either a Tier I or Tier II offense under SORNA.

7. True or False: A registered sex offender is required to report all of the following changes to law enforcement:

(A) Address and employment status.
(B) Hairstyles and facial features.
(C) Accessibility to vehicles.
(D) Scars, marks, and tattoos.

ANSWER: **_____________.**

7. **ANSWER:** **True.**

EXPLANATION:	This author contacted local probation and parole and received various documents therefrom. The answer was derived from Form CIIS-65, noting that agencies with responsibilities under the sex registration law may choose to use it in conjunction with the sex offender registration card. *See State v. McLamb*, 243 N.C. App. 486 (2015) (noting the Defendant understood the registration requirements set forth in Form CIIS-65).

8. True or False: Rule 404(b) is a "rule of inclusion" under case law.

ANSWER: **______________.**

8. **ANSWER:** **False in certain scenarios.**

EXPLANATION:	While Rule 404(b) is referred to as a "rule of inclusion," *State v. Coffey*, 326 N.C. 268 (1990), the North Carolina Supreme Court has held that the as a "general rule . . . in a prosecution for a particular crime, the State <u>cannot</u> offer evidence tending to show that the accused has committed <u>another distinct, independent, or separate offense</u> . . . . even though the other offense is of the same nature as the crime charged." *State v. Carpenter*, 361 N.C. 382 (2007) (emphasis added). We argue that *Carpenter* provides a "rule of exclusion" for such evidence. Additionally, the Court is to apply <u>strict scrutiny</u> in deciding whether to admit such evidence. *Id.* For the purpose of *modus operandi*, the appellate courts look to see if it is "<u>strikingly similar</u>" to the crime charged. *State v. Beckelheimer*, 366 N.C. 127 (2012).

9. True or False: The Defendant has the <u>right</u> to make a statement at sentencing.

ANSWER: _____________.

9. **ANSWER:** **True.**

EXPLANATION:	If requested by the defense in a non-capital case, the Defendant has the right to make a statement at sentencing, often referred to as a right of allocution. N.C. Gen. Stat. § 15A-1334(b). In general, an allocution allows a convicted Defendant to apologize, explain his circumstances, ask for leniency, or maintain his innocence.

10. True or False: An expunged conviction granted on or after July 1, 2018, can be used in calculating the Defendant's Prior Record Level for a subsequent conviction.

ANSWER: _____________.

10. **ANSWER:** **True.**

EXPLANATION: For expungements granted on or after July 1, 2018, the expungements can be used against the Defendant when calculating a Prior Record Level. N.C. Gen. Stat. § 15A-151.5(b)(1).

For expungements granted before July 1, 2018, *ex post facto* challenges could be made according to Jeff Welty of the UNC School of Government.

11. True or False: An expunged conviction granted on or after July 1, 2018, can be used to impeach a witness's credibility under Rule 609.

ANSWER: **______________.**

11. **ANSWER:** **True.**

EXPLANATION:	For expungements granted <u>on or after July 1, 2018</u>, the witness's prior convictions can be used to impeach him when allowed under Rule 609. N.C. Gen. Stat. § 15A-151.5(b)(5). Additionally, such expungements can be used: (1) as underlying convictions to indict the Defendant as a Habitual Felon and Habitual Breaking and Entering Status Offender; (2) to raise the offense level of a subsequent offense based on the expunged conviction; (3) to determine eligibility under N.C. Gen. Stat. § 90-96(a); and (4) under Rule 404(b) when criteria for admissibility is met therein. N.C. Gen. Stat. § 15A-151.5(b). For expungements granted <u>before July 1, 2018</u>, *ex post facto* challenges could be made according to Jeff Welty of the UNC School of Government.

12. Which of the following is permissible under <u>extraordinary mitigation</u>?

(A) Reducing the minimum sentence of imprisonment.
(B) Reducing the maximum sentence of imprisonment.
(C) Allowing probation when imprisonment is otherwise mandatory.
(D) Arresting the judgment.

ANSWER: _____________.

12. **ANSWER:** **(C).**

EXPLANATION: Extraordinary mitigation does not authorize the Court to modify the length of a sentence imposed, only to impose an intermediate punishment when an active punishment was otherwise mandatory under Structured Sentencing. N.C. Gen. Stat. § 15A-1340.13(g). Please know that an intermediate punishment may include, *inter alia*, a period of special probation.

Extraordinary mitigation is not available for those: (1) convicted of a Class A or B1 Felony; (2) convicted of a drug trafficking offense or conspiracy therewith; or (3) having five or more points in a Prior Record Level calculation. N.C. Gen. Stat. § 15A-1340.13(h).

In the Court's discretion, extraordinary mitigation applies when: (1) extraordinary mitigating factors are present which are of a kind significantly greater than in the normal case; (2) said factors substantially outweigh any aggravating factors; and (3) manifest injustice would result if an active punishment occurred. N.C. Gen. Stat. § 15A-1340.13(g). Absent additional facts, a normal mitigating factor cannot constitute an extraordinary mitigation factor. *State v. Riley*, 202 N.C. App. 299 (2008).

13. True or False: It is ineffective assistance of counsel to not advise the Defendant of a 5-year post-release supervision period with a guilty plea.

ANSWER: **____________.**

13. **ANSWER:** **Likely True.**

EXPLANATION: To make a knowing and voluntary guilty plea, the Defendant must be made aware of the "direct consequences" of the same. *State v. Bozeman*, 115 N.C. App. 658 (1994) (holding direct consequences of a guilty plea include mandatory minimum prison sentences or consecutive sentences). Direct consequences are defined as those that have "definite, immediate and largely automatic effect on the range of the defendant's punishment." *Id.*

A 5-year post-release supervision term is "direct consequence" of a guilty plea. *State v. Spry*, 297 N.C. App. 641 (2025), *temp. stay allowed*, ___ N.C. ___, 911 S.E.2d 489 (2025); *see also* Jeff Welty, *Surprise Post-Release Supervision*, N.C. Crim. L. Blog (June 11, 2015), https://nccriminallaw.sog.unc.edu/2015/06/11/surprise-post-release-supervision.

14. The adult-Defendant solicited a 15-year-old minor child to commit the offense of Armed Robbery (Class D) of another person in exchange for money. The minor refuses and walks away, later reporting the matter to law enforcement. What is the most serious charge that the Defendant could receive?

(A) Solicitation of Armed Robbery (Class F).
(B) Solicitation of Armed Robbery (Class D).
(C) Contributing to the Delinquency of a Minor (Class 1 Misdemeanor).
(D) Compounding a Felony (Class 1 Misdemeanor).

ANSWER: ____________.

14. **ANSWER:** **(B).**

EXPLANATION: Beware of a fact pattern where an adult solicits a minor to commit a serious offense.

Generally, a solicitation offense is an offense which is two classes lower than the crime being solicited. N.C. Gen. Stat. § 14-2.6(a).

However, when an adult solicits a minor to commit a felony or a misdemeanor, the adult is guilty of the same class offense being solicited. N.C. Gen. Stat. § 14-2.6(e) and (f).

15. The Defendant is subject to a Violent Habitual Felon status if he has prior convictions for which two offenses?

(A) Assault Inflicting Serious Bodily Injury.
(B) Manufacturing a Controlled Substance within 1,000 Feet of a Park.
(C) Involuntary Manslaughter.
(D) Obtaining Property by False Pretenses Worth $100,000.00 or More.

ANSWER: _____________.

15. **ANSWER:** **(B) and (D).**

EXPLANATION: "Any person who has been convicted of <u>two violent felonies</u> in any federal court, in a court of this or any other state of the United States, or in a combination of these courts is declared to be a violent habitual felon." N.C. Gen. Stat. § 14-7.7(a) (emphasis added).

A "<u>violent felony</u>" includes all Class A through E felonies. N.C. Gen. Stat. § 14-7.7(b). This provision includes substantially similar offenses in other jurisdictions, but does <u>not</u> include pardoned or habitual felon convictions. *Id.*

Answer choice (B) is correct because it is a Class E Felony.
Answer choice (D) is correct because it a Class C Felony.

Answer choice (A) is incorrect because it is a Class F Felony.
Answer choice (C) is incorrect because it is Class F Felony.

16. Which statutory <u>privilege</u> does <u>not</u> have a court-ordered exception allowing disclosure which is necessary for the administration of justice?

A. Physician-Patient Privilege.
B. Clergy-Communicant Privilege.
C. Psychologist-Patient Privilege.
D. Social Worker Privilege.

ANSWER: _____________.

16. **ANSWER:** **(B).**

EXPLANATION: The Clergy-Communicant Privilege has <u>no exception</u> for disclosure by the Clergy unless the Communicant waives the same. N.C. Gen. Stat. § 8-53.2.

The remaining choices have exceptions for disclosure when the Court believes it is necessary for the administration of justice. *See* N.C. Gen. Stat. § 8-53.1 (Physician-Patient Privilege); N.C. Gen. Stat. § 8-53.3 (Psychologist-Patient Privilege); and N.C. Gen. Stat. § 8-53.7 (Social Worker Privilege).

17. True or False: North Carolina has a statute addressing the Defendant's right to a <u>speedy trial</u>?

ANSWER: **_____________.**

17. **ANSWER:** **True.**

EXPLANATION: N.C. Gen. Stat. § 15-10.

The statute is "for the protection of persons held without bail and does not apply to persons allowed bail." *State v. Lowry*, 263 N.C. 536 (1965) (emphasis added).

Please note that the statute applies only to felonies, requires discharge from custody under certain circumstances, and does not bar further prosecution. N.C. Gen. Stat. § 15-10; *see, e.g.*, *State v. Hardin*, 20 N.C. App. 193 (1973).

18. True or False: North Carolina has no good faith exception to the exclusionary rule unlike its federal counterpart?

ANSWER: _____________.

18. **ANSWER:** **False.**

EXPLANATION:	The exclusionary rule no longer applies when law enforcement acts under an objectively reasonable, good faith belief that the actions were lawful. *State v. Rogers*, 388 N.C. 453 (2025). *Rogers* overturned precedent that Article I, Section 20 of the North Carolina State Constitution did not allow for a good faith exception to the exclusionary rule. *See, e.g., State v. Carter*, 322 N.C. 709 (1988).

19. True or False: If an arrestee is required by statute to provide <u>fingerprints or a DNA sample</u> but refuses to do so, law enforcement may use reasonable force to compel the same before he is released on bond.

ANSWER: _____________.

19. **ANSWER:** **False.**

EXPLANATION:	An arrestee who refuses to provide fingerprints or a DNA sample shall be required to provide it as a condition of release. N.C. Gen. Stat. § 15A-534(a).

20. True or False: Law enforcement may conduct a warrantless search of a home if they smell an odor of marijuana while conducting a knock and talk.

ANSWER: **_____________.**

20. **ANSWER:** **True.**

EXPLANATION: Generally, the odor of marijuana constitutes probable cause. *See State v. Reel*, 297 N.C. App. 205 (2024), *aff'd*, 388 N.C. 737 (2025); *State v. Dobson*, 389 N.C. 542 (2026).

Generally, lawful industrial hemp and unlawful marijuana are generally indistinguishable by sight, appearance, or odor. However, it appears that law enforcement can use the purported odor of marijuana as one factor under the totality of the circumstances to establish probable cause for a warrantless search. *State v. Schiene*, 296 N.C. App. 126 (2024), *disc. rev. improvidently allowed*, ___ N.C. ___, 2026 N.C. Lexis 916 (Aug. 14, 2026) (holding, to the extent that the Court of Appeals opinion was consistent with *Dobson*, the opinion was left undisturbed).

The "<u>exigent circumstances</u>" exception to the warrant requirement is governed by the totality of the circumstances. The following factors are considered: (1) the degree of urgency involved and the time necessary to obtain a warrant; (2) law enforcement's reasonably objective belief that the contraband is about to be removed or destroyed; (3) the possibility of danger to law enforcement guarding the site; (4) information indicating the possessors of the contraband are aware that law enforcement is on his trail; and (5) the ready destructibility of the contraband. *State v. Marrero*, 248 N.C. App. 787 (2016).

In *Marrero*, exigent circumstances existed when: (1) alleged drugs were at issue; (2) the Defendant allowed a visitor to come in seconds before; (3) the Defendant closed to the door to law enforcement; (4) the Defendant did not respond after law enforcement identified themselves; and (5) law enforcement perceived a brace being placed on the door. *See State v. Reel*, 297 N.C. App. 205 (2024), *aff'd*, 388 N.C. 737 (2025).

21. True or False: At trial, Rule 408 (Offer of Compromise) bars the use of the Defendant's jail letter to law enforcement offering cooperation?

ANSWER: ______________.

21. **ANSWER:** **False.**

EXPLANATION:	Rule 408 does not apply to criminal cases in North Carolina. *State v. Wilson*, 301 N.C. App. 149 (2025). In *Wilson*, the Defendant sent a jail letter to law enforcement offering to buy from drug dealers, noting he shot a "gang banger" and needed to get out of jail to see his 7-year-old daughter. *Id.* The State introduced the letter at trial as an admission to the crime. *Id.* Rule 410 applies to criminal cases in North Carolina and bars the use of a plea of guilty which was later withdrawn, a plea of no contest, or plea discussions and related statements. *See also* N.C. Gen. Stat. § 15A-1025 (rendering plea discussions and arrangements inadmissible).

22. True or False: In a DWI case, a substitute lab analyst may testify about the Defendant's blood alcohol concentration as long as he performed administrative and technical reviews of the original analyst's work and reports.

ANSWER: _____________.

22. **ANSWER:** **False.**

EXPLANATION: The Confrontation Clause is violated when the substitute analyst testifies about the test results and other statements of the original analyst who handled and observed the blood sample, including whether it showed clotting, fermentation, vial leaks, a sufficient test volume, or otherwise. *State v. Holt*, ___ N.C. App. ___ 932 S.E.2d 494 (May 20, 2026), *temp. stay allowed*, 389 N.C. 695 (June 8, 2026); *Smith v. Arizona*, 602 U.S. 779 (2024).

For Confrontation Clause purposes, a statement is offered for its truth when an expert conveys an out-of-court statement in support of his opinion and the statement supports the opinion only if true. *Smith v. Arizona*, 602 U.S. 779 (2024). The constitutional analysis differs from Rules of Evidence analysis.

23. True or False: An attorney may use a subpoena to obtain police recordings?

ANSWER: **_____________.**

23. **ANSWER:** **False.**

EXPLANATION:	The exclusive procedure to obtain custodial law enforcement agency recordings is through the filing of a petition in Superior Court under N.C. Gen. Stat. § 132-1.4A. *State v. Chemuti*, 388 N.C. 412 (2025). Remember, the Defendant has no right to discovery in District Court. However, he still has the constitutional right to *Brady*, *et al.*, material.

24. True or False: The Defendant's failure to report to the jail on the date ordered by the Court constitutes direct criminal contempt?

ANSWER: _____________.

24. **ANSWER:** **False.**

EXPLANATION: <u>Direct</u> criminal contempt occurs when the act is: (1) committed within the sight or hearing of the Court; (2) committed in, or in immediate proximity to, the room where proceedings are being held before the Court; or (3) likely to interrupt or interfere with matters then before the Court. N.C. Gen. Stat. § 5A-13(a).

Otherwise, the act is <u>indirect</u> criminal contempt which requires application of the procedures under N.C. Gen. Stat. § 5A-15, including serving an Order to Show Cause. N.C. Gen. Stat. § 5A-13(b).

The Defendant's failure to report to the jail approximately <u>two months</u> after his sentencing court date could not be direct criminal contempt since it did not, *inter alia*, occur in the presence of the Court. *State v. Brinkley*, 300 N.C. App. 513 (2025).

25. True or False: The Court has authority to enter a <u>civil judgment</u> for costs or fines immediately at <u>sentencing</u>.

ANSWER: _____________.

25. **ANSWER:** **False.**

EXPLANATION:	The Court may enter a civil judgment against the Defendant for unpaid costs or fines only when he has <u>defaulted</u> in payment. N.C. Gen. Stat. § 15A-1365. Therefore, the entry of a civil judgment at sentencing is <u>not</u> allowed by statute. *State v. Santana*, 301 N.C. App. 133 (2025). However, the Court may enter a civil judgment at the time of sentencing for <u>attorney fees</u> of court-appointed counsel. N.C. Gen. Stat. § 7A-455(b).

26. True or False: For most criminal offenses, the Defendant can prevent the Clerk of Superior Court from <u>executing</u> on a civil judgment of costs or fines from a criminal case if he elects to serve a <u>suspended sentence</u> issued by the Court.

ANSWER: _____________.

26. **ANSWER:** **True.**

EXPLANATION: "The clerk may not issue an execution . . . if the fine or costs were imposed for an offense and the defendant elects to serve the suspended sentence . . . ." N.C. Gen. Stat. § 15A-1365.

The Official Commentary notes the statute "gives the defendant in any case an election to serve a term of imprisonment rather than pay a fine." N.C. Gen. Stat. § 15A-1365 (Official Commentary).

However, the Defendant's election to serve the suspended sentence has no effect on the judgment, only the Clerk's ability to issue an execution. *Id.*; *see* Jamie Markham, *Civil Judgments for Court Costs*, N.C. Crim. L. Blog (Nov. 8, 2012), https://nccriminallaw.sog.unc.edu/2012/11/08/civil-judgments-for-court-costs. The judgment would continue to act as a lien on his real property. N.C. Gen. Stat. § 15A-1365.

The statute does not apply to trafficking offenses or conspiracies to commit such offenses under N.C. Gen. Stat. § 90-95(h) and (i). N.C. Gen. Stat. § 15A-1365.

27. What can happen when an inmate refuses post-release supervision?

(A) He may be found in criminal contempt, but he would receive credit on his underlying sentence for any time served.
(B) He may be found in criminal contempt, but he would not receive credit on his underlying sentence for any time served.
(C) He is brought before the Parole Commission for imposition of his post-release supervision time.
(D) His term of imprisonment is extended by 10%.

ANSWER: _____________.

27. **ANSWER:** **(B).**

EXPLANATION: "A prisoner shall not refuse post-release supervision. Willful refusal to accept post-release supervision or to comply with the terms of post-release supervision by a prisoner whose offense requiring post-release supervision is a sex registration offense, is punishable as <u>contempt</u> of court under N.C. Gen. Stat. § 5A-11 and may result in imprisonment under N.C. Gen. Stat. § 5A-12." N.C. Gen. Stat. § 15A-1368.2(b) (emphasis added). Said statutes reference criminal contempt and allow a fine, censure, imprisonment up to 30 days, or any combination thereof.

"Notwithstanding any other provision of law, a prisoner punished for the offense of contempt of court . . . is <u>not</u> eligible for credit for time served against the sentence for which the prisoner is subject to post-release supervision." *Id.* (emphasis added).

<u>Hypothetical</u>: What if the prisoner willfully refuses to accept post-release supervision in perpetuity?

<u>Answer</u>: Eventually, the statutory framework may conflict with the 8th Amendment and due process principles. *See, e.g.*, *Turner v. Rogers*, 564 U.S. 431 (2011) (holding, *inter alia*, constitutional right to a jury trial and other protections apply in a contempt proceeding where the result is more than 6 months of imprisonment); *State v. Belcher*, 173 N.C. App. 620 (2005) (holding the Defendant, who had served 30 days for criminal contempt for his first probation violation, was entitled to 30 days credit towards an activated sentence for his second probation violation).

At some point, it would appear the statute may result in an unconstitutional punishment as laid out in this hypothetical.

28. True or False: DWLR-IR (Driving While License Revoked for Impaired Driving) is a qualifying conviction in computing Prior Record Level points for felony sentencing.

ANSWER: _____________.

28. **ANSWER:** **False.**

EXPLANATION: With few exceptions, misdemeanor traffic offenses under Chapter 20 do not qualify as convictions for felony sentencing.

For felony sentencing, the Court allocates 1 point for "any Class A1 and Class 1 nontraffic misdemeanor offense, impaired driving (G.S. 20-138.1), impaired driving in a commercial vehicle (G.S. 20-138.2), and misdemeanor death by vehicle (G.S. 20-141.4(a2)), but not any other misdemeanor traffic offense under Chapter 20 of the General Statutes." N.C. Gen. Stat. § 15A-1340.14; *State v. Wilson*, 298 N.C. App. 278 (2025).

In *Wilson*, the trial court erred by assigning 1 point for a DWLR-IR as the offense qualified as an "other misdemeanor traffic offense under Chapter 20." *Id.*

29. True or False. Although the Defendant has not yet appealed a DWI conviction in District Court and his time to appeal has not expired, the conviction can still be used in calculating his Prior Record Level.

ANSWER: _____________.

29. **ANSWER:** **False.**

EXPLANATION:	A "<u>prior conviction</u>" is defined as, *inter alia*, a conviction in District Court where the Defendant has not appealed and the time to appeal has expired. N.C. Gen. Stat. § 15A-1340.11(7).

30. Which of the following enhancements is a <u>two-class</u> enhancement?

(A) Bullet Proof Vest Enhancement.
(B) Protective Order Violation.
(C) Gang Leader or Organizer Enhancement.
(D) Mask Enhancement.

ANSWER: _____________.

30. **ANSWER:** **(C).**

EXPLANATION: When the Defendant is convicted of a Class C through I felony which was committed by "criminal gang members" as part of "criminal gang activity" for which he was a "criminal gang leader organizer," he is sentenced at a felony class two levels higher than the principal felony. N.C. Gen. Stat. § 15A-1340.16E(b); N.C. Gen. Stat. § 14-50.16A (defining applicable terms).

This enhancement is capped at Class C and must be ran consecutively to any sentence being served. N.C. Gen. Stat. § 15A-1340.16E(c).

The remaining choices are one-level enhancements.

31. True or False: For DWI sentencing in Superior Court, the amount of notice required to be given by the State differs between aggravating and grossly aggravating factors.

ANSWER: _____________.

31. **ANSWER:** **False.**

EXPLANATION: For DWI cases in Superior Court, both aggravating and grossly aggravating factors require a written notice at least 10 days prior to trial. N.C. Gen. Stat. § 20-179(a1).

For other offenses, the State must provide written notice of its intent to prove any aggravating factor at least 30 days before trial or plea, absent waiver, in District Court or Superior Court. N.C. Gen. Stat. § 15A-1340.16(a6).

Additionally, the State must provide written notice of its intent to prove a Prior Record Level point under N.C. Gen. Stat. § 15A-1340.17(b)(7) (offense committed while the Defendant was serving a period of probation, post-release supervision, imprisonment, or had escaped from a correctional institution) at least 30 days before trial, absent waiver, in District Court or Superior Court. N.C. Gen. Stat. § 15A-1340.16(a6).

32. True or False: The State must provide written notice of its intent to prove the existence of all points in computing a Prior Record Level.

ANSWER: _____________.

32. **ANSWER:** **False.**

EXPLANATION: Generally, the State is required to give written notice of its intent to prove the existence when a Defendant is on supervised or unsupervised probation, parole, or post-release supervision, was serving a sentence of imprisonment, of while the Defendant was on escape from a correctional institution while serving a term of imprisonment. N.C. Gen. Stat. § 15A-1340.14(b)(7).

However, an <u>exception</u> exists when the additional sentencing point arises because all of the elements of the present offense were included in any prior offense for which the Defendant was convicted. N.C. Gen. Stat. § 15A-1340.14(b)(6). The Defendant <u>cannot</u> stipulate to the same because it is a question of the law for the Court. *State v. Prush*, 185 N.C. App. 472 (2007).

33. For a DWI, what is the longest <u>probation</u> period allowed by statute without any <u>special findings</u>?

(A) 2 years.
(B) 3 years.
(C) 4 years.
(D) 5 years.

ANSWER: _____________.

33. **ANSWER:** **(D).**

EXPLANATION:	Since DWI offenses are not "Structured Sentencing" offenses, the Court may impose a 5-year probation period without special findings. N.C. Gen. Stat. § 15A-1342(a) and (d).

34. True or False: For <u>any</u> level of offense for a DWI, the Court may order the Defendant to abstain from alcohol consumption verified by CAM.

    ANSWER: _____________.

34. **ANSWER:** **True.**

EXPLANATION:	The Court may order this as a condition of special probation for any level of offense of a DWI. N.C. Gen. Stat. § 20-179(k2).

35. True or False: Generally, granting a <u>conditional discharge</u> under N.C. Gen. Stat. § 90-96 is <u>mandatory</u> for a first-time offender.

ANSWER: ____________.

35. **ANSWER: True <u>unless</u> (1) the Court makes a written finding that the first-time offender is "inappropriate" for a conditional discharge <u>and</u> (2) the District Attorney agrees.**

EXPLANATION:	*State v. Deil*, 255 N.C. App. 645 (2017) (the trial court erred in denying the conditional discharge without a finding that the Defendant was "inappropriate" for same, noting the court denied the relief because he had received the benefit of a prior dismissal). Absent said finding and the District Attorney's agreement to the finding, "Where an eligible first-time offender consents to sentencing under the conditional discharge program, the 'shall' language of N.C. Gen. Stat. § 90-96 constitutes a 'mandate to trial judges,' and that failure to comply with that mandate constitutes reversible error." *Id.*

36. True or False: An <u>incompetency</u> adjudication remains in effect until a subsequent finding of restored competency is made by the Court.

ANSWER: _____________.

36. **ANSWER:** **True.**

EXPLANATION: *State v. Cooke*, ___ N.C. App. ___, 928 S.E.2d 361 (Feb. 18, 2026).

In *Cooke*, the trial court found that the Defendant was not competent to proceed, relying on a forensic evaluation. Nearly 9 months later, another evaluation concluded that the Defendant was competent. However, the trial court never conducted a later competency hearing either adopting or rejecting the later evaluation. Therefore, the Defendant remained under an Order finding him incompetent, receiving the protections under the Fourteenth Amendment's Due Process Clause which forbids a trial of the incompetent. *Id.*

37. True or False. A Defendant does <u>not</u> abscond by leaving a residential treatment facility and without contacting his probation officer for nine days thereafter?

ANSWER: **_____________.**

37. **ANSWER:** **False.**

EXPLANATION:	*State v. Stephens*, 301 N.C. App. 527 (2025). A Defendant absconds when he "willfully avoids supervision" or "willfully mak[es] [his] whereabouts unknown to the supervising probation officer." N.C. Gen. Stat. § 15A-1343(b)(3a). In *Stephens*, the Defendant was required to attend a residential program, but he left the facility without permission or contacting his probation officer. Law enforcement made attempts to locate him at his listed residence without success. The trial court did not err by finding the Defendant's actions were "the functional equivalent of failing to make himself reasonably available for supervision and otherwise known as absconding." *Id.*

38. True or False. The law no longer authorizes a written promise to appear as a condition of pre-trial release.

ANSWER: _____________**.**

38. **ANSWER:** **True.**

EXPLANATION:	Effective December 1, 2025, this condition of release was removed from the statute. N.C. Sess. Law 2025-93, s. 1(d); N.C. Gen. Stat. § 15A-534.

39. True or False: Through a <u>tax warrant</u>, the North Carolina Department of Revenue may conduct a search of a <u>home</u> to locate property to levy and sell without the homeowner's consent.

ANSWER: **_____________.**

39. **ANSWER:** **False.**

EXPLANATION: A judicial search warrant <u>must</u> be obtained to search the home under these facts. *State v. Hickman*, 301 N.C. App. 506 (2025), *temp. stay allowed*, 388 N.C. 752 (2025).

In *Hickman*, DOR issued a tax warrant for unpaid taxes from the Defendant's illegal drug sales. DOR agents arrived at the Defendant's home, a camper, and requested her to produce anything of value. Agents followed her into her home and refused to leave despite her request. The agents located at least 400 grams of methamphetamine.

The Court held the search violated the Fourth Amendment as it was conducted without a judicial warrant. *Id.* The statute authorizing tax warrants allows agents to levy and sell property to satisfy unpaid taxes. N.C. Gen. Stat. § 105-242. Relying on U.S. Supreme Court precedent, the Court held that the tax warrant did not allow "intrusions into privacy" protected by the Fourth Amendment. *Id.*; *G.M. Leasing Corp. v. U.S.*, 429 U.S. 338 (1972).

40. True or False: <u>After deliberations begin</u>, the Court may substitute a juror with an alternate.

ANSWER: **_____________.**

40. **ANSWER:** **True.**

EXPLANATION: *State v. Chambers*, 387 N.C. 521 (2025); N.C. Gen. Stat. § 15A-1215(a).

Additionally, the Court must instruct the jury that they are to disregard their prior deliberations and begin anew. *Id.*

41. An alternate juror was present during the first 19 minutes of jury deliberations. Upon discovery of the same, the trial court removed him and instructed the jury to restart its deliberations anew. The defense informed the trial court that it did not have any concerns. Thereafter, the jury found the Defendant guilty.

True or False: The Defendant would not be granted a new trial on appeal under the foregoing facts.

ANSWER: _____________.

41. **ANSWER:** **False.**

EXPLANATION: *State v. Humphrey*, ___ N.C. App. ___, 2026 N.C. App. Lexis 715 (Sept. 2, 2026).

In *Humphrey*, <u>structural error</u> occurred when 13 jurors were present for deliberations, constituting error *per se* which is deemed prejudicial without any need of showing prejudice. *Id.*

42. True or False: If the Defendant <u>agrees</u> with the jury instructions at trial, he <u>waives</u> all appellate review, including plain error.

ANSWER: _____________.

42. **ANSWER:** **True.**

EXPLANATION: *State v. Jenkins*, 300 N.C. App. 168 (2025).

Therefore, counsel should consider, *inter alia*: (1) distinguishing the facts of your case with precedent; (2) articulating your interpretation of the law or what it should be; and/or (3) expressing your lack of authority to consent on behalf of your client.

43. A 16-year-old alleged victim testified at an Indecent Liberties trial. During cross-examination, the defense pointed out: (1) multiple inconsistencies between her trial testimony and her prior statements at a child advocacy center; and (2) her purported bias in that the Defendant reported her mother to probation the same year of the alleged event.

True or False: The State is allowed to present <u>rehabilitative evidence</u> of its witness's character for <u>truthfulness</u> under the foregoing facts.

ANSWER: _____________.

43. **ANSWER:** **False.**

EXPLANATION: *State v. Braswell*, ___ N.C. App. ___, 926 S.E.2d 440 (Jan. 21, 2026), *pet. for writ of supersedeas denied*, ___ N.C. ___, 2026 N.C. Lexis 905 (Aug. 12, 2026) (Rule 23(e) of the North Carolina Appellate Rules of Procedure appears to provide that the prior temporary stay was dissolved by the writ of supersedeas denial).

A Party "only opens the door to rehabilitative evidence concerning a witness's good character for truthfulness if he employs an impeachment method attacking the witness's <u>character for untruthfulness</u>—i.e., a method implicating the witness is a liar <u>in general</u>." *Id.* (emphasis added); N.C. R. Evid. 608(a).

In *Braswell*, the witness's general character for truthfulness had not been attacked. Impeachment methods challenging whether a witness is truthful in the "instant case" (e.g., pointing out inconsistencies in prior statements and bias) are considered direct attacks which do <u>not</u> trigger rehabilitative evidence. *Id.*

44. True or False: To prove the victim was the <u>aggressor</u> during a murder trial, the Defendant may use <u>specific instances of conduct</u> to show the victim acted in conformity therewith.

ANSWER: _____________.

44. **ANSWER: False.**

EXPLANATION:	The Defendant may use only reputation and opinion evidence to prove the victim was the aggressor. *State v. Bass*, 371 N.C. 535 (2018); N.C. R. Evid. 404(a)(2) and 405(a). However, if the State uses a character witness to give reputation and opinion testimony about the victim's character for peacefulness, the Defendant may cross-examine about specific instances of conduct of the victim to cast doubt on such testimony. N.C. R. Evid. 405(a); *State v. Hargett*, 157 N.C. App. 90 (2003).

45. True or False: North Carolina continues to have common law perfect self-defense.

ANSWER: ______________.

45. **ANSWER:** **False.**

EXPLANATION: Perfect self-defense under the common law is no longer available (i.e., *Norris* test). *State v. McLymore,* 380 N.C. 185, 191 (2022). Enactment of the perfect self-defense statute in 2011 supplanted the common law on all aspects addressed by its provisions. *Id.*

However, common law imperfect self-defense remains by meeting the first two elements of the following test:

(1)*** The Defendant believed it was necessary to kill to save himself from death or great bodily harm;

(2)*** His belief was reasonable;

(3) He was not the aggressor; and

(4) He did not use excessive force.

State v. Norris, 303 N.C. 526 (1981).

46. True or False: The Castle Doctrine cannot be used when the Defendant uses defensive force at his workplace against another.

ANSWER: _____________.

46. **ANSWER:** **False.**

EXPLANATION:	The Castle Doctrine applies to a "lawful occupant" of his home, motor vehicle, or workplace. N.C. Gen. Stat. § 14-51.2(b) and (e)

47. True or False: When the Castle Doctrine applies, it is legally impossible for the Defendant to use excessive force against another person.

ANSWER: _____________.

47. **ANSWER:** **True.**

EXPLANATION: N.C. Gen. Stat. § 14-51.2(b); *State v. Austin*, 279 N.C. App. 377, 380 (2021); *State v. Phillips*, 386 N.C. 513, 527 (2024).

First, the Castle Doctrine applies when:

(1) An "occupant" of a home used defensive force against a person who:

(A) was in the process of unlawfully and forcefully entering, or had done so; or

(B) had removed or was attempting to remove another individual against his will from the home.

AND

(2) The occupant knew or had reason to believe that an unlawful and forcible entry or act was occurring or had occurred.

Second, if both conditions are met, the Castle Doctrine creates a rebuttable presumption that the occupant held a reasonable fear of imminent death or serious bodily injury to himself or another when using defensive force that is intended or likely to cause death or serious bodily harm. N.C. Gen. Stat. § 14-51.2(b) and (c).

Third, the State may rebut the presumption through only five limited circumstances:

(1) The other person had the right to be in the home;

(2) The other person was removing his child or grandchild;

(3) The occupant was engaged in, attempting to escape from, or using the home to further any criminal offense that involves the use or threat of physical force or violence against any individual;

(4) The other person was a law enforcement officer or bail bondsman who enters or attempts to enter a home in the lawful performance of his duties; and

(5) The other person discontinued all efforts to unlawfully and forcefully enter the home and had exited the home.

	Fourth, accordingly, "Under the Castle Doctrine, excessive force is impossible unless that State rebuts the Castle Doctrine presumption by proving one of the five circumstances listed in section 14-51.2(c)." *State v. Phillips*, 386 N.C. 513 (2024) (emphasis added); N.C. Gen. Stat. § 14-51.2(c); *see also* Joseph L. Hyde, *Outsourcing Reasonableness: Redefining Defensive Force in State v. Phillips*, N.C. Crim. L. Blog (Sept. 10, 2024), https://nccriminallaw.sog.unc.edu/outsourcing-reasonableness-redefining-defensive-force-in-state-v-phillips.

48. A man was killed by a gunshot fired by the Defendant at a gas station. Neither the man nor the Defendant worked at the gas station. At the murder trial, the Defendant testified that the shot at issue was a warning shot.

Which of the following instructions may the Defendant receive?

(A) Perfect Self-Defense.
(B) Voluntary Manslaughter.
(C) Involuntary Manslaughter.
(D) None of the Above.

ANSWER: _____________.

48. **ANSWER:** **(D).**

EXPLANATION:	When the Defendant testifies that the shot was a "warning shot," he cannot receive an instruction on perfect self-defense. *State v. Cook*, 254 N.C. App. 150, 154 (2017). Additionally, he cannot receive an instruction on either voluntary or involuntary manslaughter through imperfect self-defense. Our Courts reason that since he did not intend to shoot the victim, he could not have reasonably believed the shot was necessary to kill the victim. Counsel may have to resort to requesting an instruction on the defense of accident, although this defense is barred if culpable negligence exists. *See, e.g.*, *State v. Riddick*, 340 N.C. 338 (1995).

49. True or False: During closing argument, defense counsel may inform the jury of sex registration consequences.

ANSWER: _____________.

49. **ANSWER:** **True (unpublished opinion).**

EXPLANATION:	The Defendant has the right to inform the jury of sex registration consequences for an offense requiring the same. *State v. Prestwood*, 211 N.C. App. 198 (2011) (unpublished). "[T]he whole case as well of law as of fact may be argued to the jury." N.C. Gen. Stat. § 7A-97; *see also State v. McMorris*, 290 N.C. 286 (1976) (holding defendant has the right to inform the jury of the punishment for the crime tried, stating "[i]n a real sense the sanction prescribed for criminal behavior is part of the law of the case").

50. True or False: A *Harbison* inquiry is necessary when defense counsel admits only one <u>element</u> of an offense to the jury, but he maintains the Defendant is not guilty of the crime.

ANSWER: _____________.

50. **ANSWER:** **True.**

EXPLANATION:	*Harbison* applies when counsel admits an element of a crime even if he maintains the Defendant is not guilty. *State v. Arnett*, 276 N.C. App. 106 (2021). This form of a concession does not necessarily amount to ineffective assistance of counsel when defense counsel maintains the Defendant's innocence. *State v. Wilson*, 236 N.C. App. 472 (2014). Counsel should ensure the record reflects Defendant's express consent prior to any admission. *State v. Maready*, 205 N.C. App. 1 (2010). A lack of objection by or silence from Defendant is insufficient under *Harbison*. *Id.* Additionally, counsel should ensure the record reflects whether consent is contingent upon presentation of a certain defense. *State v. Berry*, 356 N.C. 490 (2002). Counsel should conduct *Harbison* inquiries before jury selection to address admissions (fact, element, etc.) made by the defense throughout trial to include, *inter alia*, jury selection, opening statement, and closing argument. Counsel should consider having the client sign a document authorizing the same for his file.

51. The Court has inherent authority to authorize the jury to take evidence into the jury room.

ANSWER: **______________.**

51. **ANSWER:** **False.**

EXPLANATION: All parties must <u>consent</u>. Otherwise, it is error under N.C. Gen. Stat. § 15A-1233(b), although not prejudicial. *State v. Mumma*, 372 N.C. 226 (2019).

The statute provides:

> "Upon request by the jury and with consent of all parties, the judge may in his discretion permit the jury to take to the jury room exhibits and writings which have been received in evidence. If the judge permits the jury to take to the jury room requested exhibits and writings, he may have the jury take additional material or first review other evidence relating to the same issue so as not to give undue prominence to the exhibits or writings taken to the jury room. If the judge permits an exhibit to be taken to the jury room, he must, upon request, instruct the jury not to conduct any experiments with the exhibit." N.C. Gen. Stat. § 15A-1233(b).

52. Match the case with its holding.

ANSWER:

(A) *Napue*. ______

(B) *Giglio*. ______

(C) *Brady*. ______

(1) The prosecution must disclose evidence favorable to the Defendant and material to guilt or sentencing under due process.

(2) The prosecution must not knowingly use false evidence under due process.

(3) The prosecution must inform the jury that testimony was obtained from a witness in exchange for non-prosecution under due process.

52. **ANSWER:**

(A)	*Napue*. **2.**	(1)	The prosecution must disclose evidence favorable to the Defendant and material to guilt or sentencing under due process.
(B)	*Giglio*. **3.**	(2)	The prosecution must not knowingly use false evidence under due process.
(C)	*Brady*. **1.**	(3)	The prosecution must inform the jury that testimony was obtained from a witness in exchange for non-prosecution under due process.

EXPLANATION: *Napue v. Illinois*, 360 U.S. 264 (1959) (holding that due process requires the prosecution to not knowingly use false testimony of a witness, even if the same affects only the credibility of that witness rather than the defendant's guilt or innocence).

Giglio v. U.S., 405 U.S. 150 (1972) (holding that due process requires the prosecution to inform the jury that testimony was obtained from a witness in exchange for non-prosecution).

Brady v. Maryland, 373 U.S. 83 (1963) (holding that due process requires the prosecution to provide material evidence to the defendant that is favorable as to guilt or punishment).

Conclusion