

## PRAYER FOR JUDGMENT CONTINUED

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### Contents

I.	Introduction .....	1
	A. Generally .....	1
	B. Common Uses.....	1
II.	Procedural Issues.....	2
	A. When a PJC is Really a Judgment.....	2
	B. Defendant's Consent .....	2
	C. Duration.....	2
	D. Definite or Indefinite Period.....	3
	E. Sample Language.....	3
	F. When a PJC is Prohibited .....	3
	G. Entering Judgment.....	3
	H. Effect of a PJC.....	4
	I. Prayer for Judgment and Vindictiveness .....	4

### I. Introduction

**A. Generally.** After a defendant has been found guilty or entered a guilty plea, the court may (1) pronounce judgment and place it into immediate execution; (2) pronounce judgment and suspend or stay its execution; or (3) enter a prayer for judgment continued (PJC). *State v. Griffin*, 246 N.C. 680, 682 (1957); see G.S. 15A-101(4a).

### B. Common Uses

1. **No Further Sentencing to Occur.** Sometimes a PJC is entered with the idea that no further sentencing will occur. See, e.g., *State v. Lea*, 156 N.C. App. 178, 178-81 (2003) (defendant found guilty of multiple crimes, sentenced entered on some, PJC on others).
2. **Until the State Prays for Judgment.** Other times a PJC is set to continue from term to term for a specified period, with the idea that the State may pray for judgment at any time within the specified period. Typically the State prays for judgment if the defendant commits another crime or engages in other misconduct. See e.g., *State v. Thompson*, 267 N.C. 653, 655-56 (1966) (PJC entered for three years; State prayed for judgment when the defendant engaged in misconduct in prison).
3. **Defendant Flees.** A PJC is employed when a defendant flees during trial and is tried in absentia. Since the defendant may not be sentenced in his or her absence, a PJC is entered to continue sentencing until the defendant is apprehended. See, e.g., *State v. Bass*, 303 N.C. 267, 267 (1981). For a discussion of when a defendant may be tried in absentia, see [Trial in the Defendant's Absence](#), in this Bench Book.
4. **Additional Information Needed for Sentencing.** A PJC is used to delay sentencing when the judge wants additional information about the defendant that is not available when guilt is determined or admitted (e.g., a pre-sentencing report).

## II. Procedural Issues

- A. When a PJC is Really a Judgment.** A PJC is converted into a judgment when it includes conditions that amount to punishment. *Griffin*, 246 N.C. at 682-83; *State v. Brown*, 110 N.C. App. 658, 659-60 (1993). If a PJC is deemed to be a judgment, no further punishment may be imposed for that crime. *Brown*, 110 N.C. App. at 660.
1. **Permissible Conditions.** The following terms do not convert a PJC into a judgment.
    - a. **Costs.** G.S. 15A-101(4a); *Brown*, 110 N.C. App. at 659-60.
    - b. **Requirements to Obey the Law.** *Brown*, 110 N.C. App. at 659.
  2. **Impermissible Conditions.** The following terms or conditions constitute punishment and convert a PJC into a judgment:
    - a. **Fine.** *Griffin*, 246 N.C. 682-83; *Brown*, 110 N.C. App. at 659.
    - b. **Imprisonment.** *Griffin*, 246 N.C. at 682-83; *Brown*, 110 N.C. App. at 659.
    - c. **Restitution.**
    - d. **Continue Psychiatric Treatment.** *Brown*, 110 N.C. App. at 660 (condition went beyond an obligation to obey the law).
    - e. **Abide by a Curfew.** *State v. Popp*, 197 N.C. App. 226, 228 (2009).
    - f. **Complete High School.** *Id.*
    - g. **Enroll in an Institution of Higher Learning or Join the Armed Forces.** *Id.*
    - h. **Cooperate with Random Drug Testing.** *Id.*
    - i. **Perform Community Service.** *Id.*
    - j. **Remain Employed.** *Id.*
    - k. **Write a Letter of Apology.** *Id.*
- B. Defendant's Consent.** The defendant's consent is not required if the PJC includes no conditions. *Griffin*, 246 N.C. at 682. However, the defendant's consent is required for a PJC with conditions.
- C. Duration.** A PJC may last for a reasonable time. *State v. Degree*, 110 N.C. App. 638, 640-41 (1993).
1. **Reasonable Time.** Reasonableness depends on the length of delay in sentencing, the reason for the delay, whether the defendant consented to the delay, and actual prejudice to the defendant caused by the delay. *Id.* at 641; *State v. Craven*, 205 N.C. App. 393, 405 (2010) (duration of just over two years was not unreasonable where the defendant never requested sentencing), *reversed in part on other grounds*, \_\_\_ N.C. \_\_\_, 744 S.E.2d 458 (2013); *State v. Lea*, 156 N.C. App. 178, 180-81 (2003) (five-year duration not unreasonable in light of the particular circumstances of the case, including a decision by the North Carolina Supreme Court that led the trial court to set aside the defendant's non-PJC convictions and the State to seek judgment on those not set aside); *State v. Watkins*, \_\_\_ N.C. App. \_\_\_, 747 S.E.2d 907, 910 (2013). A defendant's failure to request sentencing on the last date of a PJC is treated as consent to its continuation. *Id.* (remanding for a determination whether the PJC was continued for an unreasonable time).
  2. **PJC for an Unreasonable Time.** If a PJC extends for an unreasonable period, the court is deprived of jurisdiction to later enter judgment. *Degree*, 110 N.C. App. at 641-42; *see also Watkins*, \_\_\_ N.C. App. \_\_\_,

- 747 S.E.2d at 910 (2013).
3. **Special Rule for PJs for Class B1-E Felonies.** For offenses committed on or after December 1, 2012, S.L. 2012-149 sec.11, G.S. 15A-1331.2 provides that the court may not dispose of a Class B1 through E felony by ordering a PJC that exceeds twelve months. If the court orders a PJC in such a case, it must include a condition that the State pray for judgment within a specific period of time, not to exceed twelve months. G.S. 15A-1331.2. When the State prays for judgment, or twelve months from the date of PJC order, whichever is earlier, the court must enter final judgment unless it finds that the interest of justice require it to continue the PJC. *Id.* If the court continues the PJC, it must do so for a specific period of time, not to exceed twelve months. *Id.* The court may not continue the PJC for more than one additional twelve month period. *Id.*
- D. **Definite or Indefinite Period.** A PJC may be for a definite period (e.g., thirty days) or an indefinite period. *See Degree*, 110 N.C. App. at 641.
1. **Special rule for Class B1-E Felonies.** See Section C.3, above, for a special rule regarding the period of a PJC for a Class B1 through E felony.
  2. **Judgment Entered Outside of a Definite Period.** If a PJC is ordered for a definite period but the judgment is not entered until after that period ends, the PJC is valid, provided that it did not continue for an unreasonable period and the defendant was not prejudiced. *State v. Absher*, 335 N.C. 155, 156-57 (1993) (PJC entered on 5/18/89 for thirty days but sentence not entered until 10/27/89); *Degree*, 110 N.C. App. at 641-42 (PJC entered until 6/3/91 but sentence not entered until 7/16/91).
- E. **Sample Language.** There is no form language for entering a PJC. Sample language for imposing a PJC for a definite period, with no conditions, is as follows: It is Ordered that Prayer for Judgment be continued, with the express consent of the defendant in open court, from term to term and session to session of the [insert county name] County Superior Court for a maximum term of [enter period of time e.g., three years] from this date unless the Prosecutor for the State in his/her discretion prays judgment in the next [insert period of time e.g., three years].
- F. **When a PJC is Prohibited**
1. **Impaired Driving.** A PJC may not be entered for any impaired driving offense sentenced under G.S. 20-179 because sentences under that provision are mandatory. *In Re Greene*, 297 N.C. 305, 312 (1979); *In re Tucker*, 348 N.C. 677, 682 (1998).
  2. **Speeding.** A PJC may not be entered on a charge of speeding in excess of twenty-five miles per hour over the posted speed limit. G.S. 20-141(p).
  3. **Passing Stopped School Bus.** A defendant may not receive a PJC for a violation of G.S. 20-217(a). See G.S. 20-217(e).
  4. **Solicitation of Prostitution.** A defendant may not receive a PJC for a conviction of solicitation of prostitution. G.S. 14-205.1 (enacted by S.L. 2013-368).
- G. **Entering Judgment.** Judgment may be entered by the judge who entered the

PJC or by another judge. *State v. Sauls*, 291 N.C. 253, 263-64 (1976); *Degree*, 110 N.C. App. at 640-41.

#### H. Effect of a PJC

1. **Appeal.** A defendant may not appeal a PJC. *State v. Pledger*, 257 N.C. 634, 638 (1962); *State v. Perry*, 316 N.C. 87, 94-95 (1986); see also *State v. Broom*, \_\_ N.C. App. \_\_, 736 S.E.2d 802, 811 (2013).
2. **Chapter 20.** For purposes of Chapter 20 of the Motor Vehicle Laws, a third or subsequent PJC for a North Carolina offense within any five-year period constitutes a "conviction." G.S. 20-4.01(4a)a.4.
3. **Rule 609.** When a PJC is entered after a defendant freely, understandingly, and voluntarily pleads guilty, the PJC counts as a conviction for purposes of Evidence Rule 609. *State v. Sidberry*, 337 N.C. 779, 781-82 (1994). However, at least one case has held that a PJC is not a conviction for purposes of the rule when it is entered after a finding of guilt at trial. *State v. Lynch*, 337 N.C. 415, 421-22 (1994).
4. **Sentencing.** Under the Fair Sentencing Act, a PJC does not count as a prior conviction. *State v. Southern*, 314 N.C. 110 (1985). However, under the Structured Sentencing Act, a PJC counts for prior record level. *State v. Hatcher*, 136 N.C. App. 524, 527 (2000); *State v. Graham*, 149 N.C. App. 215, 220-21 (2002).
5. **Sex Offender Registration.** A PJC is not a final conviction and therefore cannot be a reportable conviction for purposes of the sex offender registration statute. *Walters v. Cooper*, \_\_ N.C. App. \_\_, 739 S.E.2d 185, 188 (2013), *aff'd*, \_\_ N.C. \_\_, 748 S.E.2d 144 (2013) (per curiam).
6. **Collateral Consequences.** Whether a PJC counts as a conviction or other disqualifying event for purposes of collateral consequences, such as licensing or benefit eligibility, depends on the statute governing that consequence and the definition of conviction or other disqualifying event therein.

- I. **Prayer for Judgment and Vindictiveness.** Occasionally, when a defendant is found guilty of multiple crimes, the judge will sentence on some of the crimes and enter a PJC for others. At least one case has held that a defendant's due process rights protecting against judicial and prosecutorial vindictiveness were not violated when the State prayed for judgment after the defendant successfully appealed a conviction for which sentence was entered. *State v. Van Trusell*, 170 N.C. App. 33, 40-42 (2005).