

## Habitual Drug Trafficking

**Author :** Jamie Markham

**Categories :** [Sentencing](#), [Uncategorized](#)

**Tagged as :** [drug trafficking](#), [eaton](#), [habitual felon](#), [Sentencing](#)

**Date :** April 8, 2011

As most of you probably know, [G.S. 90-95\(h\)](#) sets out special sentencing rules for drug trafficking offenses, including mandatory fines and minimum and maximum sentences that apply regardless of the defendant's prior record. [This chart](#) summarizes the law.

During the *Felony Sentencing* installment of my colleague Alyson Grine's "Lunchinar" series (available on demand for free viewing or for CLE purchase [here](#)), a participant asked whether drug trafficking sentences could be enhanced under the habitual felon law. At the time of the lunchinar, that was a question that had never been answered by our appellate courts. Since then, however, the court of appeals decided [State v. Eaton](#), \_\_ N.C. App. \_\_ (Mar. 1, 2011).

In *Eaton*, the defendant was convicted of trafficking by possession of 4–14 grams of an opiate (specifically, dihydrocodeinone). That's a Class F felony under G.S. 90-95(h)(4), which prescribes a 70–84 month sentence and a fine of not less than \$50,000. The defendant, who had a lengthy criminal record, was also found to be a habitual felon. He was sentenced as a Class C felon to 133–169 months, the high end of the presumptive range for his record level (IV) under the pre-December 1, 2009 sentencing grid.

The defendant appealed, arguing that drug trafficking sentences—"mandatory" under G.S. 90-95(h), "[n]otwithstanding any other provision of law"—can't be habitualized. The court of appeals disagreed, reasoning that the drug trafficking law isn't really any more "mandatory" than any other statutory provision setting out the punishment for a particular crime. Statutes "almost universally employ mandatory language directing that a person convicted of a particular offense 'shall be punished' as a Class 'X' felon or providing that specific terms of imprisonment are authorized for particular offenses and prior record levels." Slip op. at 12. The habitual felon law itself provides in [G.S. 14-7.6](#) that a covered offender "*must*, upon conviction . . . be sentenced as a Class C felon . . .," language the court of appeals described as "arguably even more mandatory" than the language in the drug trafficking law. *Id.* The court concluded by noting that the habitual felon law explicitly excludes a few types of offenses, but drug trafficking isn't among them.

For now, the rule from *Eaton* is that drug trafficking convictions may be sentenced under the habitual felon law. The defendant [petitioned for discretionary review](#) just last week, so there's a chance the supreme court might weigh in, and I'll let you know if it does. As a practical matter, note that under the [post-December 1, 2009 sentencing grid](#) many trafficking defendants—all Class C and D traffickers and even some convicted of Class E and F trafficking crimes, depending on their prior record—would actually *benefit* from being sentenced as habitual felons.