

5.1 Scope of Chapter

Prosecutors have wide discretion in deciding what charges to pursue and plea bargains to offer. For example, they can charge a person as a habitual felon if he or she has a certain number of prior felony convictions and commits a new felony, which significantly enhances the potential punishment, while charging a similarly situated person with the new felony without “habitualizing” the person. Guarantees of equal protection in the Fourteenth Amendment to the U.S. Constitution and article I, section 19 of the N.C. Constitution prohibit the State from making charging or plea bargaining decisions based on improper grounds such as race or ethnicity. However, demonstrating that a prosecutor’s decision was unconstitutionally selective may be challenging. Attorneys must present evidence of both discriminatory intent and discriminatory effect to prevail on a claim of selective prosecution. This chapter reviews the legal requirements for selective prosecution claims, including the showing an attorney must make up front to require the State to turn over information about its charging practices as well as the statistical showing needed to establish a violation.