

N.C.P.I.—Crim. 238.21D
FIRST DEGREE SEXUAL EXPLOITATION OF A MINOR BY CREATING
MATERIAL THAT APPEARS TO BE AN IDENTIFIABLE MINOR ENGAGED IN
SEXUAL ACTIVITY. FELONY.
GENERAL CRIMINAL VOLUME
JANUARY 2025
N.C. Gen. Stat. § 14-190.16(a)(5)

238.21D. FIRST DEGREE SEXUAL EXPLOITATION OF A MINOR BY CREATING
MATERIAL THAT APPEARS TO BE AN IDENTIFIABLE MINOR ENGAGED IN
SEXUAL ACTIVITY. FELONY.

*NOTE WELL: N.C. Gen. Stat. § 14-190.16(c) provides that a
mistake of age is not a defense to prosecution.*

The defendant has been charged with first degree sexual exploitation of
a minor by creating material that appears to be an identifiable minor engaged
in sexual activity.

For you to find the defendant guilty of this offense, the State must prove
three things beyond a reasonable doubt:

First, that the defendant created for [sale] [pecuniary gain] material¹
[[created] [adapted] [modified]] to appear that a person engaged in sexual
activity.² (*Define sexual activity, i.e., masturbation*) is sexual activity.

Second, that person was an identifiable minor.³

And Third, that the defendant knew the [character] [content] of the
material.

If you find from the evidence beyond a reasonable doubt that on or
about the alleged date, the defendant created for [sale] [pecuniary gain]
material [[created] [adapted] [modified]] to appear that a person engaged in
sexual activity, that person was an identifiable minor, and that the defendant
knew the [character] [content] of the material, it would be your duty to return
a verdict of guilty. If you do not so find or have a reasonable doubt as to one
or more of these things, it would be your duty to return a verdict of not guilty.

*NOTE WELL: N.C. Gen. Stat. § 14-190.16(b) states that "[i]n a
prosecution under this section, the trier of fact may infer that a
participant in sexual activity whom material through its title, text,*

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*visual representations, or otherwise represents or depicts as a
minor is a minor.”*

1. N.C. Gen. Stat. § 14-190.13(2) defines “material” as “pictures, drawings, video recordings, films or other visual or physical depictions or representations, including digital or computer-generated visual depictions or representations created, adapted, or modified by technological means, such as algorithms or artificial intelligence, but not material consisting entirely of written words.”

2. N.C. Gen. Stat. § 14-190.13(5) defines sexual activity.

3. N.C. Gen. Stat. § 14-190.13(3) defines “minor” as “an individual who is less than eighteen (18) years old and is not married or judicially emancipated.” N.C. Gen. Stat. § 14-190.13(1a) provides that “identifiable minor” means “[a]n individual who meets all of the following criteria:

- a. Was a minor at the time either of the following occurred:
 1. The material was created, adapted, or modified,
 2. The image that was used in creating, adapting, or modifying the material was taken.
- b. Is recognizable as an actual person by the person’s face, likeness, or other distinguishing characteristic, such as a unique birthmark or other recognizable feature.

The term “identifiable minor” does not require proof of the actual identity of the minor.