

N.C.P.I.—Crim 207.15.1

FIRST DEGREE RAPE-FEMALE UNDER THE AGE OF THIRTEEN YEARS.

(OFFENSES PRIOR TO DEC. 1, 2015) FELONY.

CRIMINAL VOLUME

REPLACEMENT JUNE 2016

N.C. Gen. Stat. § 14-27.2(a)(1)

207.15.1 FIRST DEGREE RAPE—FEMALE UNDER THE AGE OF THIRTEEN YEARS. (OFFENSES PRIOR TO DEC. 1, 2015) FELONY.

NOTE WELL: Use the following instruction when the alleged crime was committed between April 18, 1983 and July 10, 1983, or on or after October 1, 1983 and before December 1, 2015. For offenses committed on or after December 1, 2015, use N.C.P.I.—Crim. 207.15.1A.

The defendant has been charged with first degree rape.

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

First, that the defendant engaged in vaginal intercourse with the victim. Vaginal intercourse is penetration, however slight, of the female sex organ by the male sex organ. (The actual emission of semen is not necessary.)

Second, that at the time of the acts alleged, the alleged victim was a child under the age of thirteen years.¹

And Third, that at the time of the acts alleged, the defendant was at least twelve years old and was at least four years older than the alleged victim.

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant engaged in vaginal intercourse with the alleged victim and that at that time the alleged victim was a child under the age of thirteen years and that the defendant was at least twelve years old and was at least four years older than the victim, 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.²

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NOTE WELL: If the indictment alleges both forcible and statutory rape, and if there is any question as to the age of the victim, and if there is evidence of a forcible rape, give either N.C.P.I.-Crim. 207.10 or 207.20 as an alternative instruction.

In an appropriate case the judge should use N.C.P.I.-Crim. 207.15A.1 to charge on attempted first degree (statutory) rape as a lesser included offense.

Taking Indecent Liberties with a Child, N.C. Gen. Stat. § 14-202.1, Assault on a Female, N.C. Gen. Stat. § 14-33(c)(2), and Assault on a Child Under Twelve, N.C. Gen. Stat. § 14-33(c)(3), are still crimes. However, in State v. Weaver, 306 N.C. 629 (1983), the North Carolina Supreme Court held that none of those crimes is a lesser included offense of N.C. Gen. Stat. § 14-27.2(a)(1).

1 A child would be under the age of thirteen if she had not yet reached her thirteenth birthday. *In re Robinson*, 120 N.C. App. 874 (1995).

2 If there are lesser included offenses, change the last phrase to ". . . you would not return a verdict of guilty of first degree rape."