

N.C.P.I.—Crim 207.45.1

FIRST DEGREE SEXUAL OFFENSE—CHILD UNDER THE AGE OF THIRTEEN YEARS. (OFFENSES PRIOR TO DEC. 1, 2015) FELONY.
CRIMINAL VOLUME

REPLACEMENT JUNE 2016

N.C. Gen. Stat. § 14-27.4

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NOTE WELL: N.C. Gen. Stat. § 14.27.4 covers sexual acts other than vaginal intercourse and applies regardless of the gender of the defendant or the alleged victim. Use this instruction only for crimes committed between April 18, 1983 and July 10, 1983 or on or after October 1, 1983 but before December 1, 2015. For offenses committed on or after December 1, 2015, use N.C.P.I.—Crim. 207.45.1A.

The defendant has been charged with first degree sexual offense.

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 a sexual act with the alleged victim. A sexual act means

- (A) [cunnilingus, which is any touching, however slight, by the lips or the tongue of one person to any part of the female sex organ of another.]¹
- (B) [fellatio, which is any touching by the lips or tongue of one person and the male sex organ of another.]²
- (C) [analingus, which is any touching by the lips or tongue of one person and the anus of another.]
- (D) [anal intercourse, which is any penetration, however slight, of the anus of any person by the male sexual organ of another.]
- (E) [any penetration, however slight, by an object into the [genital] [anal] opening of a person's body.]³

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

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And Third, that, at the time of the alleged offense 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 a sexual act 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 alleged victim, it would be your duty to return a verdict of guilty. If you do not so find or if you have a reasonable doubt as to one or more of these things, it would be your duty to return a verdict of not guilty.⁴

NOTE WELL: In an appropriate case the judge should use N.C.P.I.—Crim. 207.45A.1 to charge on attempted first degree sexual offense against a child.

1 *State v. Ludlum*, 303 N.C. 666 (1981), held that penetration of the female sex organ is not required to complete the act of cunnilingus under the Sexual Offense Statutes set out in N.C. Gen. Stat. § 14.27.4 *et seq.* However, the Court did specifically adhere to the rule of earlier cases that penetration is required to complete the offense of Crime Against Nature. (N.C. Gen. Stat. § 14-177; N.C.P.I.—Crim. 226.10).

2 *State v. Warren*, 309 N.C. 224 (1983) held that Crime Against Nature is not a lesser included offense of first or second degree sexual offense (fellatio).

3 N.C. Gen. Stat. § 14-27.1(d) provides that it shall be an affirmative defense to the final type of sexual act that the penetration was for accepted medical purposes. If there is evidence of such a purpose, instruct accordingly at the end of this charge.

4 If there are lesser included offenses, the last phrase should read, ". . . you would not return a verdict of guilty of first degree sexual offense, but would consider whether the defendant is guilty of"