

208.40A SIMPLE ASSAULT ON AN INDIVIDUAL WITH A DISABILITY.  
MISDEMEANOR.

The defendant has been charged with simple assault on an individual with a disability.<sup>1</sup>

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

First, that the defendant assaulted the alleged victim by (describe assault).

Second, that the defendant acted intentionally<sup>2</sup> (and without justification or excuse).<sup>3</sup>

Third, that the alleged victim had a disability. An individual with a disability is a person who has

- a) a [physical] (or) [mental] disability, such as [decreased use of arms or legs] [blindness] [deafness] [mental retardation] (or) [mental illness],
- b) an infirmity, which would substantially impair that person's ability to defend [himself] [herself].

And Fourth, that the defendant knew or had reasonable grounds to know that the alleged victim had a disability.

*NOTE WELL: If self-defense is an issue, use N.C.P.I.—Crim. 308.40.*

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant intentionally assaulted the alleged victim, that the alleged victim had a disability, and that the defendant knew

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or had reasonable grounds to know that the alleged victim had a disability, (nothing else appearing)<sup>4</sup> 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.<sup>5</sup>

*NOTE WELL: If self-defense is an issue, use mandate from N.C.P.I.—Crim. 308.40.<sup>6</sup>*

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1 If a definition of assault is needed, see N.C.P.I.—Crim. 120.20.

2 If a definition of intent is needed, see N.C.P.I.—Crim. 120.10.

3 The parenthetical phrase should be used only where there is evidence of justification or excuse, such as self-defense.

4 The parenthetical phrase should be used only where there is some evidence of justification or excuse, such as self-defense.

5 If there is to be instruction on lesser included offenses, the last phrase should be: ". . . you will not return a verdict of guilty of simple assault on a handicapped person."

6 Including self-defense in the mandate is required by *S. v. Woodsen*, 31 N.C. App. 400 (1976). *Cf. S. v. Dooley*, 285 N.C. 158 (1974).