

208.61 ASSAULT INFLICTING PHYSICAL INJURY BY STRANGULATION. FELONY.

The defendant has been charged with assault inflicting physical injury by strangulation.¹

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

First, that the defendant assaulted the victim by intentionally² (and without justification or excuse)³ strangling the victim.

And Second, that the defendant inflicted physical injury⁴ upon the victim.

NOTE WELL: If self-defense is an issue, use N.C.P.I.—Crim. 308.40 or 308.45, as appropriate.

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant intentionally assaulted the victim inflicting physical injury by strangulation, (nothing else appearing) 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 both of these things, it would be your duty to return a verdict of not guilty.⁵

NOTE WELL: If self-defense is an issue, use mandate from N.C.P.I.—Crim. 308.40 or 308.45, as appropriate.⁶

1. Strangulation is defined as a form of asphyxia characterized by closure of the blood vessels and/or air passages of the neck as a result of external pressure on the neck brought about by hanging, ligature, or the manual assertion of pressure.

Strangulation does not require proof of a complete closure or the complete inability to breathe; rather, there must be evidence that the defendant applied sufficient pressure to the victim's throat, such that the victim had difficulty breathing. *State v. Braxton*, 183 N.C. App. 36, 43 (2007).

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

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

4. A "physical injury" is hurt, damage, or loss to one's body. *State v. Christenson*, 284 N.C. App. 772 (2022) (unpublished), 2022-NCCOA-545 ¶ 5.

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 assault inflicting serious injury."

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

