

N.C.P.I.—Crim 208.72

ASSAULT BY [INFLICTING SERIOUS INJURY] [USING A DEADLY WEAPON] IN THE PRESENCE OF A MINOR. MISDEMEANOR.

JUNE 2017

N.C. Gen. Stat. § 14-33(d)

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208.72 ASSAULT BY [INFLICTING SERIOUS INJURY] [USING A DEADLY WEAPON] IN THE PRESENCE OF A MINOR. MISDEMEANOR.

*NOTE WELL: This instruction is to be used for offenses occurring on or after December 1, 2015. See N.C. Gen. Stat. § 14-33(d).*

The defendant has been charged with assault on the alleged victim by [inflicting serious injury] [using a deadly weapon] in the presence of a minor.

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 intentionally<sup>1</sup> (and without justification or excuse)<sup>2</sup> (*describe assault*).

Second, that the defendant [inflicted serious injury]<sup>3</sup> [used a deadly weapon] upon the alleged victim.

Third, that the alleged victim is a person with whom the defendant has a personal relationship (*describe personal relationship*).<sup>4</sup>

And Fourth, that the defendant committed the assault in the presence of a minor<sup>5</sup>. A minor is any person under the age of 18 years who is [residing with] [under the care and supervision of] and who has a personal relationship with the [alleged victim] [defendant].

*NOTE WELL: If self-defense is an issue, use N.C.P.I.—Crim. 308.40 or 308.45, as appropriate.*<sup>6</sup>

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant intentionally assaulted the alleged victim inflicting serious injury by (*describe assault*), (nothing else appearing)

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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>7</sup>

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

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

3 Serious injury may be defined as "such physical injury as causes great pain and suffering." See *S. v. Jones*, 258 N.C. 89 (1962), and *S. v. Ferguson*, 261 N.C. 558 (1964).

If there is evidence as to injuries which could not conceivably be considered anything but serious, the trial judge may instruct the jury as follows: "*Describe injury* would be a serious injury." *S. v. Johnson*, 320 N.C. 746, 751 (1987).

4 See *N.C. Gen. Stat.* § 50B-1(b). A "personal relationship" means a relationship wherein the parties involved:

- (1) Are current or former spouses;
- (2) Are persons of opposite sex who live together or have lived together;
- (3) Are related as parents and children, including others acting in loco parentis to a minor child, or as grandparents and grandchildren. For purposes of this subdivision, an aggrieved party may not obtain an order of protection against a child or grandchild under the age of 16;
- (4) Have a child in common;
- (5) Are current or former household members;
- (6) Are persons of the opposite sex who are in a dating relationship or have been in a dating relationship. For purposes of this subdivision, a dating relationship is one wherein the parties are romantically involved over time and on a continuous basis during the course of the relationship. A casual acquaintance or ordinary fraternization between persons in a business or social context is not a dating relationship.

5 See *N.C. Gen. Stat.* § 14-33(d)(3).

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

7 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."