

N.C.P.I.—Criminal 208.75

ASSAULT ON A CHILD UNDER THE AGE OF TWELVE YEARS. MISDEMEANOR. G.S. 14-33(c)(3).

General Criminal Volume

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The defendant has been charged with assault¹ on a child under the age of twelve years.

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

First, that the defendant intentionally² (and without justification or excuse³)⁴ assaulted the victim by (*describe assault*).

And Second, that the victim had not reached his twelfth birthday at the time the assault was committed.

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 (*describe assault*) and that at that time the victim had not yet reached his twelfth birthday, (nothing else appearing)⁵ 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.⁶

NOTE WELL: *If self-defense is an issue, use mandate from N.C.P.I.—Crim. 308.40.*⁷

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 A school teacher is not guilty of assault for inflicting corporal punishment on a pupil for the breaking of a reasonable rule, where the punishment was inflicted in a reasonable manner. *S. v. Stafford*, 113 N.C. 635 (1893). The presumption is that a school teacher has properly exercised his judgment in administering corporal punishment to a pupil. *S. v. Thornton*, 136 N.C. 610 (1904).

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

⁵ The parenthetical phrase should be used only when there is evidence of justification or excuse, such as self-defense.

⁶ 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 on a child under the age of twelve."

⁷Including self-defense in the mandate is required by *S. v. Dooley*, 285 N.C. 158 (1974).

