

N.C.P.I.—Crim 208.81D  
SIMPLE ASSAULT—ARREST SITUATIONS (ISSUE AS TO FORCE USED BY  
DEFENDANT TO RESIST UNLAWFUL ARREST). MISDEMEANOR.  
CRIMINAL VOLUME  
REPLACEMENT JUNE 2015  
N.C. Gen. Stat. § 14-33(c)(4)  
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208.81D SIMPLE ASSAULT—ARREST SITUATIONS (ISSUE AS TO FORCE  
USED BY DEFENDANT TO RESIST UNLAWFUL ARREST).

*NOTE WELL: See N.C.P.I. 208.80 for an index to other factual  
situations involving assaults on arresting officers.*

*NOTE WELL: N.C.P.I. 208.81 provides a model instruction for the  
offense of assault on a law enforcement officer in arrest  
situations. The instruction incorporates all of the various  
scenarios presented in the index set forth in N.C.P.I. 208.80 into  
one instruction.*

*An assault on an officer can involve a variety of issues  
depending on whether or not the officer is in uniform, acted with  
or without a warrant, the lawfulness of the arrest, the force used  
by the officer, or the force used by the defendant.*

*Use this instruction when it is undisputed that the officer  
(in uniform or not) was making an arrest without a warrant, you  
have ruled that the arrest was unlawful as a matter of law,<sup>1</sup> and  
the only issue being submitted to the jury is whether the  
defendant acted within the defendant's right to resist an  
unlawful, warrantless arrest.*

Because the court has ruled that the officer was making an unlawful  
arrest and consequently was not performing a duty of the officer's office,  
you will not consider the original charge, but instead determine whether the  
defendant is guilty of simple assault.

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

First, that the defendant assaulted (*name officer*) by intentionally<sup>2</sup>  
(*describe conduct, e.g., striking*) (*name officer*).

And Second, that the defendant acted without justification or  
excuse. Since the arrest was not a lawful arrest, the defendant had a right

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to resist that unlawful arrest. In so doing, the defendant was justified in using such force as reasonably appeared necessary to the defendant under the circumstances to prevent the unlawful restraint.<sup>3</sup> The resisting force cannot have been excessive. In making this determination, you should consider the circumstances as you find them to have existed from the evidence, (including (the size, age and strength of the defendant as compared to (*name officer*)). You should consider (the fierceness of the assault, if any, upon the defendant), (the number of officers involved), (whether or not (*name officer*) had a weapon in the officer's possession), (and the reputation, if any, of (*name officer*) for danger and violence)). You, the jury, determine the reasonableness of the defendant's belief from the circumstances then appearing to the defendant.

If the State proves beyond a reasonable doubt that the defendant used excessive force or did not reasonably believe that the defendant's action was necessary or apparently necessary to prevent the defendant's unlawful restraint, the defendant would be guilty of simple assault. If the State fails to prove at least one of these elements, the defendant would be not guilty.

#### MANDATE

If you find from the evidence beyond a reasonable doubt that on or about the alleged date the defendant intentionally (*describe conduct, e.g., struck*) (*name officer*) and that the defendant did so without justification or excuse, your duty would be to return a verdict of guilty of simple assault. If you do not so find, or have a reasonable doubt as to one or more of these elements, your duty would be to return a verdict of not guilty.

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You would find that the defendant acted without justification or excuse if the State has satisfied you beyond a reasonable doubt either

(1) that the defendant did not reasonably believe that (*describe conduct, e.g., striking*) (*name officer*) was necessary to prevent the unlawful restraint of the defendant's liberty, or

(2) that the defendant used excessive force (,or

(3) that the defendant was the aggressor).

If you do not so find or have a reasonable doubt that the State has proved any of these things, then the defendant's action would be justified by self-defense and it would be your duty to return a verdict of not guilty.

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1 See, N.C.P.I.-Crim. 208.81C, note 4.

2 If there is an issue as to whether the defendant intended the assault itself, incorporate N.C.P.I.-Crim. 120.10 at this point.

3 See, N.C.P.I.-Crim. 208.81.

