

210.88 UNLAWFUL [SALE] [SURRENDER] [PURCHASE] OF A MINOR.
FELONY.

The defendant has been charged with the [sale] [surrender] [purchase] of a minor.

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

First, that the defendant participated in the [acceptance] [solicitation] [offer] [payment] [transfer] of any compensation in [money] [property] [other thing of value] by any person in connection with the unlawful¹ [acquisition] [transfer] of the physical custody of a minor. A minor is someone who has not attained the age of eighteen years (or who has not otherwise been emancipated²).

And Second, that the defendant acted with [willful] [reckless] disregard for the [life] [safety] of a minor.³

NOTE WELL: For offenses occurring on or after December 1, 2018, if the defendant claims the defendant was a victim, and there is evidence to support this affirmative defense, the following language should be used:

(There is evidence in this case tending to show that the defendant was [coerced] [deceived] into committing this offense as a direct result of the defendant's status as a victim.⁴ The burden of proving [coercion] [deceit] as a defense is upon the defendant. It need not be proved beyond a reasonable doubt, but only to your satisfaction. The defendant would not be guilty of the unlawful [sale] [surrender] [purchase] of a minor if:

First, the defendant was a victim of [human trafficking]⁵ [involuntary servitude]⁶ (or) [sexual servitude]⁷ at the time of the offense.

And Second, that the defendant was [coerced] [deceived] into committing the offense as a direct result of the defendant's status as a victim.

The defendant's assertion of [coercion] [deceit] is a denial that the defendant has committed any crime. The burden remains on the State to prove the defendant's guilt beyond a reasonable doubt.)

If you find from the evidence beyond a reasonable doubt that on or about the alleged date the defendant participated in the [acceptance] [solicitation] [offer] [payment] [transfer] of any compensation in [money] [property] [other thing of value] by any person in connection with the unlawful [acquisition] [transfer] of the physical custody of a minor, and that the defendant acted with [willful] [reckless] disregard for the [life] [safety] of a minor, and that the defendant was not a victim [coerced] [deceived] into committing the offense of the unlawful [sale] [surrender] [purchase] of a minor), 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, then it would be your duty to return a verdict of not guilty.⁸

1 N.C. Gen. Stat. § 14-43.14 (a) states that this section "does not apply to actions that are ordered by a court, authorized by a statute, or otherwise lawful."

2 N.C. Gen. Stat. § 7B-3505 states "After reviewing the considerations for emancipation, the court may enter a decree of emancipation if the court determines: (1) That all parties are properly before the court or were duly served and failed to appear and that time for filing an answer has expired; (2) That the petitioner has shown a proper and lawful plan for adequately providing for the petitioner's needs and living expenses; (3) That the petitioner is knowingly seeking emancipation and fully understands the ramifications of the act; and (4) That emancipation is in the best interests of the petitioner. The decree shall set out the court's findings. If the court determines that the criteria in subdivisions (1) through (4) are not met, the court shall order the proceeding dismissed."

3 N.C. Gen. Stat. § 14-43.14 (c) states that “A minor whose parent, guardian, or custodian has sold or attempted to sell a minor in violation of this Article is an abused juvenile as defined by N.C. Gen. Stat. § 7B-101(1). The court may place the minor in the custody of the Department of Social Services or with such other person as is in the best interest of the minor.”

4 N.C. Gen. Stat. § 14-43.16

5 See N.C. Gen. Stat. § 14-43.11 for a definition of human trafficking.

6 See N.C. Gen. Stat. § 14-43.12 for a definition of involuntary servitude.

7 See N.C. Gen. Stat. § 14-43.13 for a definition of sexual servitude.

8 N.C. Gen. Stat. § 14-43.14 (d) states “a violation of this section is a lesser included offense of N.C. Gen. Stat. § 14-43.11,” which refers to Human Trafficking. See N.C.P.I.-Crim. 210.84 and N.C.P.I.—Crim. 210.86

