216.38 LARCENY OF LAW ENFORCEMENT EQUIPMENT WORTH MORE THAN $1,000 FROM CERTAIN LAW ENFORCEMENT VEHICLES. FELONY.

The defendant has been charged with felonious larceny of law enforcement equipment worth more than $1,000. For you to find the defendant guilty of this offense, the State must prove nine things beyond a reasonable doubt:

First, that the defendant took[1] law enforcement equipment belonging to another person. Law enforcement equipment means any equipment owned or operated by a law enforcement agency, and used by law enforcement agencies to conduct law enforcement operations. ((*Name equipment enumerated in N.C.G.S. § 14-92.9(a)(1)*) is law enforcement equipment.)[2]

Second, that the defendant carried away[3] the law enforcement equipment.

Third, that the alleged victim did not consent to the taking and carrying away of the law enforcement equipment.

Fourth, that at the time, the defendant intended to deprive the alleged victim of its use permanently.[4]

Fifth, that the defendant knew the defendant was not entitled to take the law enforcement equipment.

Sixth, that the law enforcement equipment was taken from a law enforcement vehicle. A law enforcement vehicle is a motor vehicle, railroad car, trailer, aircraft, or boat or other watercraft, owned or operated by a law enforcement agency, the North Carolina National Guard, or any branch of the Armed Forces of the United States.[5]

Seventh, that the defendant knew or reasonably should have known that the [railroad car] [motor vehicle] [trailer] [aircraft] [boat or other

watercraft] was owned or operated by [a law enforcement agency] [the North Carolina National Guard] [(*name branch of the United States Armed Forces*)].

Eighth, that the defendant knew or reasonably should have known that the property was law enforcement equipment.

And Ninth, that the law enforcement equipment was worth more than $1,000.

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant took and carried away another person's law enforcement equipment without the alleged victim's consent, knowing that the defendant was not entitled to take it, intending at that time to deprive the alleged victim of its use permanently, which the defendant knew or reasonably should have known was law enforcement equipment, and that the law enforcement equipment was taken from a law enforcement vehicle, which the defendant knew or reasonably should have known was a law enforcement vehicle, and that the law enforcement equipment was worth more than $1,000, it would be your duty to return a verdict of guilty of felonious larceny of law enforcement equipment worth more than $1,000. If you do not so find or have a reasonable doubt as to one or more of these things, you will not return a verdict of guilty of felonious larceny of law enforcement equipment worth more than $1,000, but must determine whether the defendant is guilty of felonious larceny of law enforcement equipment. Felonious larceny of law enforcement equipment differs from felonious larceny of law enforcement equipment worth more than $1,000 in that the law enforcement equipment need not be worth more than $1,000.

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant took and carried away another person's law enforcement equipment without the alleged victim's consent, knowing that

the defendant was not entitled to take it, intending at that time to deprive the alleged victim of its use permanently, which the defendant knew or reasonably should have known was law enforcement equipment, and that the law enforcement equipment was taken from a law enforcement vehicle, which the defendant knew or reasonably should have known was a law enforcement vehicle, and that the law enforcement equipment was not worth more than $1,000, it would be your duty to return a verdict of guilty of felonious larceny of law enforcement equipment. 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]

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1. If there is evidence of conduct that would constitute "taking," but there is also evidence that the defendant's conduct fell short of what would constitute "taking," add the following to this element: "(*Describe conduct that would constitute a taking*) would be a taking." *See State v. Carswell*, 296 N.C. 101 (1978).

2. N.C.G.S. § 14-72.9(a)(1) describes certain instruments which would be considered law enforcement equipment, including firearms and any other type of weapon, ammunition, radios, computers, handcuffs and other restraints, phones, cell site simulators, light bars, and sirens. In analogous cases regarding larceny of certain property, appellate courts have explained that in some circumstances the better practice may be to designate the specific property taken as alleged in the indictment, rather than generally referring to the property. *State v. Wright*, 273 N.C. App. 188, 848 S.E.2d 252 (2020), *aff'd per curiam*, 2021-NCSC-126.

3. In the event that there is some dispute as to asportation, the jury should be told that the slightest movement is sufficient.

4. In the event that there is some dispute as to permanent deprivation, the jury should be told that a temporary deprivation will not suffice. *But cf. State v. Smith*, 268 N.C. 167 (1966).

5. N.C.G.S. § 14-72.9(a)(2).

6. If there is a discrepancy as to whether the property stolen was law enforcement equipment or the equipment was stolen from a law enforcement vehicle, then either felony or misdemeanor larceny pursuant to N.C.G.S. § 14-72(a) may be submitted as lesser-included offenses, depending on the alleged value of the items. *See* N.C.P.I.—Crim. 216.10 (Felonious Larceny—Goods Worth More Than $1,000) and/or 216.05 (Misdemeanor Larceny).