
235.69 FELONIOUS DISCLOSURE OF PRIVATE IMAGES BY OFFENDER UNDER THE AGE OF 18. FELONY.

NOTE WELL: This instruction should be used for a second or subsequent offense committed by a person who is under the age of 18 at the time of the offense.

NOTE WELL: Use this instruction only if the defendant denies a previous conviction under N.C. Gen. Stat. § 14-190.5(c)(2) or remains silent. If the defendant admits previous conviction, use N.C.P.I. 235.65, the misdemeanor offense. See N.C. Gen. Stat. § 15A-928 for provisions regarding indictment, bifurcated trial, verdict, and judgment. See also N.C.P.I. Crim. 204.05 for a model instruction for bifurcated proceedings.

NOTE WELL: This instruction applies for offenses committed before December 1, 2017. For offenses committed on or after December 1, 2017 use N.C.P.I.—Crim. 235.69A.

The defendant has been charged with the felonious disclosure of private images.

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

First, that on or about the alleged date the defendant on (name date) intentionally¹ disclosed an image² of another person with the intent to [coerce] [harass] [intimidate] [demean] [humiliate] [cause financial loss to] the depicted person.

Second, that the defendant on (name date of offense) was under the age of 18.

Third, that the depicted person is identifiable from the [disclosed image] [information offered in connection with the image].

Fourth, the disclosed image shows the [depicted person’s intimate parts³ exposed] [depicted person engaged in sexual conduct³]

Fifth, that the defendant disclosed the image without the affirmative consent of the depicted person.

Sixth, that the defendant disclosed the image under circumstances such that the defendant [knew] [should have known] that the depicted person had a reasonable expectation of privacy⁴.

And Seventh, that the defendant has a prior conviction for misdemeanor disclosure of private images; that is:

On (name date) in (name court) the defendant [was convicted of] [pled guilty to] misdemeanor disclosure of private images, that was committed on (name date), in violation of the law of the State of North Carolina.⁵

If you find from the evidence beyond a reasonable doubt, that on or about the alleged date the defendant intentionally disclosed an image of another person with the intent to [coerce] [harass] [intimidate] [demean] [humiliate] [cause financial loss to] the depicted person, that defendant on (name date of offense) was under the age of 18, that the depicted person is identifiable from the [disclosed image] [information offered in connection with the image], that the disclosed image shows the [depicted person’s intimate parts exposed] [depicted person engaged in sexual conduct], that the defendant disclosed the image without the affirmative consent of the depicted person, that the defendant disclosed the image under circumstances such that the defendant [knew] [should have known] that the

depicted person had a reasonable expectation of privacy, and that defendant had previously been convicted of misdemeanor disclosure of private images, then 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.

1 For a definition of intentionally, see N.C.P.I.—Crim. 120.10

2 "Image" is defined as photo, film, video, recording, digital, or other reproduction.

3 "Sexual conduct" is defined as vaginal, anal, oral intercourse; masturbation, excretory functions, or lewd exhibition of uncovered genitals.

4 "Reasonable expectation of privacy" is defined, in N.C. Gen. Stat § 14.190.5A(a)(5), as when a depicted person has consented to the disclosure of an image within the context of a personal relationship as defined in N.C. Gen. Stat § 50B-1(b) and the depicted person reasonably believes the disclosure will not go beyond that relationship.

5 This offense applies to a second or subsequent offense and additional prior offenses can be added as additional elements.

