

N.C.P.I. - - Crim. 237.70 UNLAWFUL [OPERATION] [POSSESSION] OF VIDEO GAMING MACHINES – G.S. §14-306.1; 14-306.1A. Felony; Misdemeanor.

The defendant has been charged with [operating] [allowing to be operated] [placing into operation] [keeping in his possession for the purpose of operating] (a) video gaming machine(s).¹

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

First, that the defendant [[operated] [allowed to be operated] [placed in operation] [kept in his possession for the purpose of operating]] [[one or more] [more than one] [more than two] [five or more]]² video gaming machine(s).³

And Second, that the defendant did so at one location.

¹ The statute excepts gaming by federally-recognized Indian tribes. Prohibition by the State of North Carolina against the operation of video gaming machines does not apply to gaming activities undertaken by a federally recognized Indian Tribe under the Indian Gaming Regulatory Act, 25 U.S.C. § 2710 et seq. *Hatcher v. Harrah's NC Casino Co., LLC*, 169 N.C. App. 151 610 S.E.2d 306 (1994).

² The choice of the appropriate bracketed quantity will depend on the date of the offense. The version of this statute effective from October 1, 2006 to February 28, 2007, prohibits the operation or possession of more than two existing video gaming machines at one location. The version of the statute effective from March 1, 2007 to June 30, 2007, prohibits the operation or possession of more than one such machine. Effective July 1, 2007, the operation or possession of even one such machine is prohibited. While a single conviction of these offenses is punishable as a Class I misdemeanor, second or subsequent offenses are punishable as felonies. See Notewell below. Effective July 1, 2007 a single conviction involving the operation of five or more machines is also punishable as a felony.

³ As used in this section, a video gaming machine means a slot machine as defined in G.S. 14-306(a) and other forms of electrical, mechanical, or computer games such as, by way of illustration:

- (1) A video poker game or any other kind of video playing card game.
- (2) A video bingo game.
- (3) A video craps game.
- (4) A video keno game.
- (5) A video lotto game.
- (6) Eight liner.
- (7) Pot-of-gold.
- (8) A video game based on or involving the random or chance matching of different pictures, words, numbers, or symbols not dependent on the skill or dexterity of the player.

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If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant [[operated] [allowed to be operated] [placed in operation] [kept in his possession for the purpose of operating]] [[one or more] [more than one] [more than two] [five or more]] video gaming machine(s) at one location, 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.

NOTEWELL: For a first conviction under this section, the defendant shall be guilty of a Class 1 misdemeanor. A second offense will be punished as a Class H felony. A third or subsequent offense will be punished as a Class G felony. See G.S. 14-309(a).

If there is evidence to support a charge on a previous conviction and the defendant denies a previous conviction or remains silent, then this instruction should be amended to add the third element that follows. If the defendant admits the previous convictions, this element would not be added. See G.S. 15A-928 for provisions regarding indictment, bifurcated trial, verdict and judgment. The mandate should be amended in keeping with this addition.

And Third, that at the time the defendant [operated] [allowed to be operated] [placed in operation] [kept in his possession for the purpose of operating] the video gaming machine(s), the defendant had been convicted of the following [one] [two or more] offenses:

- (1) On (name date), the defendant in (name court) [was convicted of] [plead guilty to] the offense of [operating] [allowing to be operated] [placing in operation] [keeping in his possession for the purpose of operating] [[one or more] [more than one] [more than two]] video gaming machines, that was committed on (name date); and*
- (2) On (name date), the defendant in (name court) [was convicted of] [plead guilty to] the offense of [operating] [allowing to be operated] [placing in operation] [keeping in his possession for the purpose of operating] [[one or more] [more than one] [more than two]] video gaming machines, that was committed on (name date); and*
- (3) On (name date), the defendant in (name court) [was convicted of] [plead guilty to] the offense of [operating] [allowing to be operated] [placing in operation] [keeping in his possession for the purpose of operating] [[one or more] [more than one] [more than two]] video gaming machines, that was committed on (name date).*