

## 239.60 CHILD ABUSE BY A PARENT. MISDEMEANOR.

The defendant has been charged with child abuse.

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

First, that the defendant was the parent of a child.

Second, that at that time the child had not yet reached the child's sixteenth birthday.

And Third, that the defendant [inflicted physical injury<sup>1</sup> upon] [allowed physical injury to be inflicted upon] [created or allowed to be created a substantial risk of physical injury to] the child other than by accidental means.<sup>2</sup> Intent to cause physical injury is not required.

If you find from the evidence beyond a reasonable doubt that on or about the alleged date the defendant was the parent of a child, that the child had not reached the child's sixteenth birthday, and that the defendant [inflicted physical injury upon] [allowed physical injury to be inflicted upon] [created or allowed to be created a substantial risk of physical injury to] the child other than by accidental means, you must then determine if the defendant, in inflicting physical injury, was acting within the defendant's rights as a parent lawfully administering corporal punishment.

A defendant shall be found guilty of child abuse when administering punishment only if at least one or more of three circumstances is met<sup>3</sup>:

1. where the parent administers punishment which may seriously endanger life, limb, or health, or shall disfigure the child, or cause any other permanent injury,
2. where the parent does not administer the punishment "honestly," but rather to gratify his own evil passions, irrespective of the degree of the physical injury inflicted, or

3. where the parent uses cruel or grossly inappropriate procedures or devices to modify a child’s behavior.

If you find both that the three elements of child abuse have been met beyond a reasonable doubt AND at least one of the three circumstances to the charge of child abuse applies, it would be your duty to return a verdict of guilty. If you do not so find or have a reasonable doubt that one or more of the elements of child abuse has been met OR if you find that none of the three circumstances to the charge of child abuse apply, it would be your duty to return a verdict of not guilty.

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1. “Physical injury” includes cuts, scrapes, bruises, abrasions, or other physical injury which does not constitute serious injury. See N.C. Gen. Stat. § 14-34.7.

2. See N.C.P.I.—Crim. 307.11 for an instruction on accident if the defendant raises the issue of accident.

3. See *State v. Varner*, 252 N.C. App. 226, 796 S.E.2d 834 (2017).