

ASSAULT WITH A DEADLY WEAPON INFLICTING BODILY INJURY WHILE ASSISTING A PRISONER TO ESCAPE OR ATTEMPT TO ESCAPE.  
G.S. 14-258.2(b). FELONY.

The defendant has been charged with assault with a deadly weapon inflicting bodily injury while assisting a prisoner to escape or attempt to escape.

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

First, that (*name prisoner*) was:

[A. In the custody of the Division of Prisons. A person sentenced to [any unit of the State prison system] [jail to be assigned to work under the State Department of Correction] is in the custody of the Division of Prisons.]<sup>1</sup>

[B. In the custody of a local confinement facility.<sup>2</sup> (*Name detention facility*) is a local confinement facility.]

Second, that while in such custody (*name prisoner*) [escaped] [attempted to escape.]

Third, that the defendant assisted (*name prisoner*) in the perpetration of the [escape] [attempted escape].

Fourth, that in assisting (*name prisoner*) to [escape] [attempt to escape] the defendant assaulted the victim by intentionally<sup>3</sup> (*describe assault*), thereby inflicting bodily injury.

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<sup>1</sup>See G.S. 148.4.

<sup>2</sup>See 153A-217(5) for a definition of "local confinement facility."

<sup>3</sup>See N.C.P.I.--Crim. 120.10.

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And Fifth, that the defendant used a deadly weapon. A deadly weapon is a weapon which is likely to cause death or serious bodily injury.

[(*Name weapon*) is a deadly weapon.] [In determining whether (*name weapon*) is a deadly weapon, you should consider the nature of (*name weapon*), the manner in which it was used, and the size and strength of the defendant as compared to the victim.]<sup>4</sup>

If you find from the evidence beyond a reasonable doubt, that on or about the alleged date, the prisoner was in the custody of [the division of Prisons] [a local confinement facility] and that (*name prisoner*) [escaped] [attempted to escape], and that while assisting (*name prisoner*) in [escaping] [attempting to escape] the defendant assaulted the victim with a deadly weapon, thereby inflicting bodily injury, 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.<sup>5</sup>

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<sup>4</sup>Use applicable bracketed statement. In the event that there is a dispute as to which weapon was used and one of the weapons is non-deadly as a matter of law, e.g., a real pistol and a toy pistol, state what would not be a deadly weapon.

<sup>5</sup>If there is to be an instruction on lesser included offenses, the last phrase should be " . . . you will not return a verdict of guilty of assault with a deadly weapon inflicting bodily injury which assisting a prisoner to escape or attempt to escape."