

N.C.P.I.—Crim 207.25

SECOND DEGREE FORCIBLE RAPE—ALLEGED VICTIM MENTALLY DISABLED,  
MENTALLY INCAPACITATED OR PHYSICALLY HELPLESS. (OFFENSES PRIOR  
TO DEC 1, 2015) FELONY.

CRIMINAL VOLUME

REPLACEMENT JUNE 2016

N.C. Gen. Stat. § 14-27.3

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207.25 SECOND DEGREE FORCIBLE RAPE—ALLEGED VICTIM MENTALLY  
DISABLED, MENTALLY INCAPACITATED OR PHYSICALLY HELPLESS.  
(OFFENSES PRIOR TO DEC 1, 2015) FELONY.

*NOTE WELL: This instruction is valid for offenses committed  
before December 1, 2015. For offenses committed on or after  
December 1, 2015, use N.C.P.I.—Crim. 207.25A.*

The defendant has been charged with second degree rape.

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

First, that the defendant engaged in vaginal intercourse with the  
alleged victim. [Vaginal intercourse is penetration, however slight, of the  
female sex organ by the male sex organ. The actual emission of semen is  
not necessary.]

Second, that the alleged victim was

a. [mentally disabled. A person is mentally disabled if the person  
suffers from [mental retardation] [mental disorder] and this [mental  
retardation] [mental disorder] temporarily or permanently renders the  
person substantially incapable of [appraising the nature of the person's  
conduct] [resisting the act of vaginal intercourse] [communicating  
unwillingness to submit to the act of vaginal intercourse] [resisting a  
sexual act]<sup>1.</sup>]<sup>2</sup>

b. [mentally incapacitated. A person is mentally incapacitated  
when, due to any act committed upon the person, the person is  
rendered substantially incapable of [appraising the nature of the  
person's conduct] [resisting the act of vaginal intercourse] [resisting a  
sexual act].]<sup>3</sup>

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c. [physically helpless. A person is physically helpless if the person is [unconscious] [physically unable to resist an act of vaginal intercourse] [physically unable to communicate unwillingness to submit to an act of vaginal intercourse] [physically unable to resist a sexual act].]<sup>4</sup>

And Third, that the defendant knew or should reasonably have known that the alleged victim was [mentally disabled] [mentally incapacitated] [physically helpless.]

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant engaged in vaginal intercourse with the alleged victim and at that time

a. [the alleged victim suffered from [mental retardation] [mental disorder] and as a result was [temporarily] [permanently] rendered so substantially incapable of [appraising the nature of the victim's conduct] [resisting an act of vaginal intercourse] [communicating unwillingness to submit to an act of vaginal intercourse] [resisting a sexual act] as to be mentally disabled,]

b. [the alleged victim was so substantially incapable of [appraising the nature of her conduct] [resisting an act of vaginal intercourse] [resisting a sexual act] as to be mentally incapacitated,]

c. [the alleged victim was so physically unable to [resist an act of vaginal intercourse] [communicate unwillingness to submit to an act of vaginal intercourse] [resist a sexual act] as to be physically helpless]

and that the defendant knew or should reasonably have known that the alleged victim was [mentally disabled] [mentally incapacitated]

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[physically helpless], 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>

*NOTE WELL: In an appropriate case the judge should use  
N.C.P.I.—Crim. 201.10 to charge on attempted second degree  
rape as a lesser included offense under this charge, and the  
judge should similarly use N.C.P.I.—Crim. 208.70 (Assault on a  
Female) where appropriate.*

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1 N.C. Gen. Stat. § 14-27.1(4).

2 N.C. Gen. Stat. § 14-27.1(1).

3 N.C. Gen. Stat. § 14-27.1(2).

4 N.C. Gen. Stat. § 14-27.1(3).

5 If there are lesser included offenses, the last phrase should be, “. . . you would not  
return a verdict of second degree rape, but would consider whether the defendant is guilty  
of . . . .”

