N.C.P.I.—Crim 207.45 SEXUAL OFFENSE WITH A CHILD. (OFFENSES PRIOR TO DEC. 1, 2015) FELONY. CRIMINAL VOLUME REPLACEMENT JUNE 2016 N.C. Gen. Stat. § 14-27.4A

207.45 SEXUAL OFFENSE WITH A CHILD. (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. 207.45A.

The defendant has been charged with sexual offense with a child.

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

<u>First</u>, that the defendant engaged in a sexual act with the alleged victim. A sexual act means

- (A) [cunnilingus, which is any touching, however slight, by the lips or tongue of one person to any part of the female sex organ of another.]¹
- (B) [fellatio, which is any touching by the lips or tongue of one person and the male sex organ of another.]²
- (C) [analingus, which is any touching by the lips or tongue of one person and the anus of another.]
- (D) [anal intercourse, which is any penetration, however slight, of the anus of any person by the male sexual organ of another.]
- (E) [any penetration, however slight, by an object into the [genital][anal] opening of a person's body.]

<u>Second</u>, that at the time of the act[s], the alleged victim was a child under the age of thirteen years.

<u>And Third</u>, that at the time of the act[s], the defendant was at least eighteen years of age.

If you find from the evidence beyond a reasonable doubt that on or

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about the alleged date the defendant engaged in a sexual act with the alleged victim who was a child under the age of thirteen years, and that the defendant was at least eighteen years of age, 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.³

¹ State v. Ludlum, 303 N.C. 666 (1981), held that penetration of the female sex organ is not required to complete the act of cunnilingus under Sexual Offense Statutes, N.C. Gen. Stat. § 14-27.4 *et seq*. However, the court did specifically adhere to the rule of earlier cases that penetration is required to complete the offense of crime against nature (N.C.P.I.-Crim. 226.10).

² State v. Warren, 309 N.C. 224 (1983) held that crime against nature is not a lesser included offense of first or second degree sexual offense, but when the bill charges anal intercourse *Warren* infers that crime against nature is a lesser included offense.

³ N.C. Gen. Stat. § 14-27.4A provides that N.C. Gen. Stat. § 14-27.4(a)(1) is a lesser included offense. Caution should be used in considering whether a lesser included offense instruction is warranted. For example, N.C. Gen. Stat. § 14-27.4(a)(1) differs from this offense in that the State need not prove that the defendant is 18 or older. If there are lesser included offenses, change the last phrase to ". . . you would not return a verdict of guilty of sexual offense with a child, but would consider whether the defendant is guilty of"