

N.C.P.I.—Crim 207.45A

STATUTORY SEXUAL OFFENSE WITH A CHILD BY AN ADULT. (OFFENSES ON OR AFTER DEC. 1, 2015) FELONY.

CRIMINAL VOLUME

JUNE 2016

N.C. Gen. Stat. §14-27.28

207.45A STATUTORY SEXUAL OFFENSE WITH A CHILD BY AN ADULT.
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NOTE WELL: This instruction is valid for offenses committed on or after December 1, 2015. For offenses committed before December 1, 2015, use N.C.P.I.—Crim. 207-45.

The defendant has been charged with statutory sexual offense with a child by an adult.

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 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.]

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

And Third, that at the time of the act[s], the defendant was at least

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eighteen years of age.

If you find from the evidence beyond a reasonable doubt that on or 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. § 14-27.28 provides that N.C. Gen. Stat. § 14-27.29 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. § 14-27.29 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."