

N.C.P.I.—Crim 207.45A.1

ATTEMPTED FIRST DEGREE SEXUAL OFFENSE—CHILD UNDER THE AGE OF THIRTEEN YEARS. (OFFENSES PRIOR TO DEC. 1, 2015) FELONY.

CRIMINAL VOLUME

REPLACEMENT JUNE 2016

N.C Gen. Stat. §§ 14-27.4, 14-27.8

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NOTE WELL: Use the following instruction only when the alleged crime was committed between April 18, 1983 and July 10, 1983, or on or after October 1, 1983 and before December 1, 2015. For offenses committed on or after December 1, 2015, use N.C.P.I.—Crim. 207.45A.1A. See the Directory of Rape and Sexual Offense Instructions preceding N.C.P.I.—Crim. 207.10 for crimes committed during other periods.

The defendant has been charged with attempted first degree sexual offense.

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

First, that the defendant intended to engage in a sexual act with the alleged victim. A sexual act means

- (A) [cunnilingus, which is any touching, however slight, by the lips or the tongue of one person to any part of the female sex organ of another.]
- (B) [fellatio, which is any touching by the lips or tongue of one person and the male sex organ of another.]
- (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.]¹

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Second, that at the time of the acts alleged, the alleged victim was a child under the age of thirteen years.

Third, that, at the time of the alleged offense the defendant was at least twelve years old and was at least four years older than the alleged victim.

And Fourth, that the defendant performed an act that was calculated and designed to accomplish [cunnilingus] [fellatio] [analingus] [anal intercourse] [penetration by an object into the [genital] [anal] opening of a person's body], which conduct came so close to bringing about that sexual act that in the ordinary course of events the defendant would have completed the act with the alleged victim had *the defendant* not been stopped or prevented.

(Mere preparation or mere planning is not enough to constitute such an act. But, the act need not necessarily be the last act required to complete the offense.)

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant intended to engage in a sexual act with the alleged victim and that at that time the alleged victim was a child under thirteen years, and that the defendant was at least twelve years old and was at least four or more years older than the alleged victim and that defendant performed [an act] [acts] which in the ordinary course of events would have resulted in a sexual act by defendant with the alleged victim had not the defendant been stopped or prevented from completing defendant's apparent course of action, it would be your duty to return a verdict of guilty. If you do not so find or if you have a reasonable doubt as to one or more of these things, it would be your duty to return a verdict of not guilty.

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1 N.C. Gen. Stat. § 14-27.1(d) provides that it shall be an affirmative defense to the final type of sexual act that the penetration was for accepted medical purpose. If there is evidence of such a purpose, instruct accordingly at the end of this charge.

