

N.C.P.I.—Criminal 208.40A
 SIMPLE ASSAULT ON A HANDICAPPED PERSON. MISDEMEANOR. G.S. 14-32.1(f)
 General Criminal Volume
 Replacement June 2011

The defendant has been charged with simple assault on a handicapped person.¹

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

First, that the defendant assaulted the victim by (*describe assault*).

Second, that the defendant acted intentionally² (and without justification or excuse).³

Third, that the victim was a handicapped person. A handicapped person is a person who has

- a) a [physical] (or) [mental] disability, such as [decreased use of arms or legs] [blindness] [deafness] [mental retardation] (or) [mental illness],
- b) an infirmity, which would substantially impair that person's ability to defend himself.

And Fourth, that the defendant knew or had reasonable grounds to know that the victim was a handicapped person.

NOTE WELL: *If self-defense is an issue, use N.C.P.I.—Crim. 308.40.*

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant intentionally assaulted the victim, that the victim was a handicapped person, and that the defendant knew or had reasonable grounds to know that the victim was a handicapped person, (nothing else appearing)⁴ 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.⁵

NOTE WELL: *If self-defense is an issue, use mandate from N.C.P.I.—Crim. 308.40.*⁶

¹ If a definition of assault is needed, see N.C.P.I.—Crim. 120.20.

² If a definition of intent is needed, see N.C.P.I.—Crim. 120.10.

³ The parenthetical phrase should be used only where there is evidence of justification or excuse, such as self-defense.

⁴ The parenthetical phrase should be used only where there is some evidence of justification of excuse, such as self-defense.

⁵ If there is to be instruction on lesser included offenses, the last phrase should be: ". . . you will not return a verdict of guilty of simple assault on a handicapped person."

⁶ Including self-defense in the mandate is required by *S. v. Woodsen*, 31 N.C. App. 400 (1976). *Cf. S. v. Dooley*, 285 N.C. 158 (1974).

