

N.C.P.I.—Criminal 208.76
ASSAULT ON AN UNBORN CHILD. MISDEMEANOR.
GENERAL CRIMINAL VOLUME
JUNE 2012
G.S. 14-23.6

ASSAULT ON AN UNBORN CHILD. MISDEMEANOR.

The defendant has been charged with assault on an unborn child.¹

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

That the defendant assaulted the mother² of an unborn child³ by intentionally⁴ (and without justification or excuse)⁵ (*describe assault*).⁶ (An assault is an intentional application of force, however slight, directly or indirectly, to the body of another person without that person's consent.)

NOTE WELL: If self-defense is an issue, use N.C.P.I.—Crim. 308.40 or 308.45, as appropriate.

1 See G.S. 14-23.7 for exceptions from prosecution for this offense.

2 This offense does not require proof that the defendant had knowledge or should have had knowledge that the victim of the underlying offense (the mother) was pregnant.

3 An unborn child means a member of the species homo sapiens at any stage of development, who is carried in the womb.

4 If a definition of intent is required, see N.C.P.I.—Crim. 120.10. This offense does not require proof that the defendant intended to cause the bodily injury to the unborn child. G.S. 14-23.8.

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

6 Because the statute refers to battery on a mother, the term assault as used in this instruction is limited to a battery only. For a fuller definition of an assault and battery, see N.C.P.I.—Crim. 208.41.

N.C.P.I.—Criminal 208.76
ASSAULT ON AN UNBORN CHILD. MISDEMEANOR.
GENERAL CRIMINAL VOLUME
JUNE 2012
G.S. 14-23.6

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant intentionally assaulted the mother of an unborn child by (*describe assault*) (nothing else appearing),⁷ 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.

NOTE WELL: If self-defense is an issue, use mandate from N.C.P.I.—Crim. 308.40 or 308.45, as appropriate.⁷

⁷ Including self-defense in the mandate is required by S. v. Dooley, 285 N.C. 158 (1974).