

N.C.P.I.—Crim 226.86B

TAKING INDECENT LIBERTIES WITH A STUDENT (BY MEMBER OF SCHOOL PERSONNEL OTHER THAN TEACHER, SCHOOL ADMINISTRATOR, STUDENT TEACHER, SCHOOL SAFETY OFFICER, COACH). FELONY; MISDEMEANOR.

CRIMINAL VOLUME

REPLACEMENT JUNE 2016

N.C. Gen. Stat. § 14-202.4

226.86B TAKING INDECENT LIBERTIES WITH A STUDENT (BY MEMBER OF SCHOOL PERSONNEL OTHER THAN TEACHER, SCHOOL ADMINISTRATOR, STUDENT TEACHER, SCHOOL SAFETY OFFICER,¹ COACH). FELONY; MISDEMEANOR.²

NOTE WELL: School safety officers were added to the statute effective December 1, 2003, and applies to offenses committed on or after that date.

The defendant has been charged with taking indecent liberties with a student.

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

First, that the victim was a student.³

Second, that the defendant was a member of the school personnel⁴ at the same school as the victim.⁵ [(Name position) is a member of the school personnel.]

Third, that the defendant was at least four years older than the victim.

Fourth, that the defendant willfully:

- a) [took] [attempted to take]⁶ any immoral, improper, or indecent liberties with the victim for the purpose of arousing or gratifying sexual desire.⁷
- b) [committed] [attempted to commit] a lewd or lascivious act upon or with the body or any part or member of the body of the victim.

And Fifth, that this act occurred [during] [after] the time the defendant and the victim were present together in the same school.

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

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about the alleged date the victim was a student, that the defendant was a member of the school personnel at the same school as the victim, that the defendant was at least four years older than the victim, that the defendant willfully [took] [attempted to take] indecent liberties with the victim, and that this act occurred [during] [after] the time the defendant and the victim were present together in the same school, 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, you would not return a verdict of guilty of felonious taking of indecent liberties with a student, but will consider whether the defendant is guilty of misdemeanor taking of indecent liberties with a student. The misdemeanor differs from the felony in that the state need not prove that the defendant was at least four years older than the victim.

If you find from the evidence beyond a reasonable doubt that on or about the alleged date the victim was a student, that the defendant was a member of the school personnel at the same school as the victim, that the defendant willfully [took] [attempted to take] indecent liberties with the victim, and that this act occurred [during] [after] the time the defendant and the victim were present together in the same school, it would be your duty to return a verdict of guilty of misdemeanor taking indecent liberties with a student. 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.

1 "School safety officer" means any other person who is regularly present in a school for the purpose of promoting and maintaining safe and orderly schools and includes a school resource officer.

2 If the defendant is a member of the school personnel (any person included in the definition contained in N.C. Gen. Stat. § 115C-332(a)(2), and any person who volunteers at

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a school or school sponsored activity) other than a teacher, school administrator, student teacher, school safety officer, or coach and is at least four years older than the victim, this is a Class I felony. If the defendant is a member of the school personnel, other than a teacher, school administrator, student teacher, or coach, and is less than four years older than the student, then this is a Class A1 misdemeanor.

3 "Student" means a person enrolled in kindergarten, or in grade one through grade 12 in any school. N.C. Gen. Stat. § 14-202.4(d)(4).

4 "School Personnel" means any employee of a local board of education whether full-time or part-time, or independent contractor or employee of an independent contractor of a local board of education, if the independent contractor carries out duties customarily performed by school personnel, whether paid with federal, State, local or other funds, who has significant access to students. School personnel also include substitute teachers, driver training teachers, bus drivers, clerical staff, and custodians. In addition, N.C. Gen. Stat. § 14-202.4 includes any person who volunteers at a school or school sponsored activity.

5 "Same school" means a school at which the student is enrolled or is present for a school-sponsored or school-related activity and the school personnel is employed, volunteers, or is present for a school-sponsored or school-related activity. N.C. Gen. Stat. § 14-202.4(d)(1a). "School personell" includes those employed by nonpublic, charter or regional schools.

6 An appropriate instruction on attempt should be given in a case in which there has been some evidence that the defendant attempted to take an indecent liberty.

7 It is not necessary that there be a touching of the child by the defendant in order to constitute an indecent liberty within the meaning of N.C. Gen. Stat. § 14-202.1. *State v. Turman*, 52 N.C App. 376 (1981) (masturbated in front of the child); *State v. Kistle*, 59 N.C App. 724 (1982) (defendant took a photograph of a nude child). *S. v. Hartness*, 326 N.C. 561 (1990), held that the trial court's instruction that an indecent liberty is an immoral, improper or indecent touching or act by defendant upon the child or an inducement by defendant of an immoral or indecent touching by the child did not violate the defendant's right to a unanimous verdict since the crime of indecent liberties is a single offense which may be proved by evidence of the commission of any one of a number of acts, and the requirement of unanimity is met even if some jurors find that one type of sexual conduct occurred and others find that another transpired.

For the purpose of this section, the term "indecent liberty" does not include vaginal intercourse or a sexual act as defined in N.C. Gen. Stat. § 14-27.1.

