

235.69A FELONIOUS DISCLOSURE OF PRIVATE IMAGES BY OFFENDER UNDER 18 YEARS OF AGE. FELONY.

NOTE WELL: This instruction should be used for a second or subsequent offense committed by a person who is under the age of 18 at the time of the offense.

NOTE WELL: Use this instruction only if the defendant denies a previous conviction under N.C. Gen. Stat. § 14-190.5(c)(2) or remains silent. If the defendant admits previous conviction, use N.C.P.I. 235.65, the misdemeanor offense. See N.C. Gen. Stat. § 15A-928 for provisions regarding indictment, bifurcated trial, verdict, and judgment. See also N.C.P.I. Crim. 204.05 for a model instruction for bifurcated proceedings.

NOTE WELL: This instruction applies for offenses committed on or after December 1, 2017. For offenses committed before December 1, 2017 use N.C.P.I.– Crim. 235.69.

The defendant has been charged with the felonious disclosure of private images

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

First, that the defendant on (*name date*) knowingly disclosed an image¹ of another person with the intent² to [coerce] [harass] [intimidate] [demean] [humiliate] [cause financial loss to] the depicted person.

Second, that defendant was under the age of 18 at the time of the offense.

Third, that the depicted person was identifiable from the [disclosed image] [information offered in connection with the image].

Fourth, that the [depicted person's intimate parts ³ were exposed] [depicted person was engaged in sexual conduct ⁴] in the disclosed image.

Fifth, that the defendant disclosed the image without the affirmative consent of the depicted person.

Sixth, that the defendant obtained the image [without the consent of the depicted person] [under circumstances such that the defendant [knew] [should have known] that the depicted person expected the image to remain private].

And Seventh, that the defendant has a prior conviction for misdemeanor disclosure of private images, that is:

On (name date) in (name court) the defendant [convicted of] [pled guilty to] misdemeanor disclosure of private images, that was committed on (name date), in violation of the law of the State of North Carolina.

If you find from the evidence beyond a reasonable doubt that on or about the alleged date the defendant knowingly disclosed an image of another person with the intent to [coerce] [harass] [intimidate] [demean] [humiliate] [cause financial loss to] the depicted person, that the defendant was under the age of 18 at the time of the offense, that the depicted person was identifiable from the [disclosed image] [information offered in connection with the image], the disclosed image shows the [depicted person's intimate parts exposed] [depicted person engaged in sexual conduct], that the defendant disclosed the image without the affirmative consent of the depicted person, and that the defendant obtained the image [without consent of the depicted person] [under circumstances such that the

defendant [knew] [should have known] that the depicted person expected the image to remain private], and that defendant had previously been convicted of misdemeanor disclosure of private images, then 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.

1 "Image" is defined as photo, film, video, recording, live transmission, digital, computer-generated visual depiction, or any other reproduction.

2 For a definition of intentionally, see N.C.P.I.-Crim. 120.10

3 "Intimate parts" is defined as the genitals, pubic area, anus, or nipple of a female over 12 years old.

4 "Sexual conduct" is defined as vaginal, anal, oral intercourse; masturbation, excretory functions, or lewd exhibition of uncovered genitals. Oral intercourse is any of following acts: (1) cunnilingus, which is any touching, however slight, by the lips or the tongue of one person to any part of the female sex organ or another; (2) fellatio, which is any touching by the lips or tongue of another and the male sex organ of another; (3) anilingus, which is any touching by the lips of tongue of one person and the anus of another.

