
239.55B FELONIOUS CHILD ABUSE BY A SEXUAL ACT BY A [PARENT] [LEGAL GUARDIAN]. FELONY.

The defendant has been charged with felonious child abuse by a sexual act by a [parent] [legal guardian].

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

First, that the defendant was the [parent of] [legal guardian of] the child.¹

Second, that at the time that child had not yet reached *his or her* sixteenth birthday.

And Third, that the defendant [committed] [allowed the commission of] a sexual act upon that child. A sexual act means cunnilingus, fellatio, anilingus, or anal intercourse, but does not include vaginal intercourse. Sexual act also means the penetration, however slight, by any object into the genital or anal opening of another person's body.² [It shall be an affirmative defense that the penetration was for accepted medical purposes.³]

If you find from the evidence beyond a reasonable doubt that on or about the alleged date the defendant was [the parent of] [the legal guardian of] the child and that child had not reached *his or her* sixteenth birthday and that the defendant [committed] [allowed the commission of] a sexual act upon the child, 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 Where a legal guardian is involved, the State must prove legal guardianship, that is defendant was a legally appointed guardian. See N.C. Gen. Stat. § 35A.

2 *State v. Lark*, 198 N.C. App. 82, 88 (2009).

3 See *State v. Stepp*, 367 N.C. 772 (2015), *rev'g per curiam*, 232 N.C. App. 132 (2014) adopting the dissent of Bryant, J., and holding that defendant's act of cleaning feces from the infant did not constitute an act performed for an accepted medical purpose and, thus, the trial court was not required to instruct on the requested alternative defense.