

N.C.P.I.—CRIM 240.40

WILLFUL NEGLECT OR REFUSAL TO ADEQUATELY SUPPORT AND MAINTAIN
A CHILD BORN OUT OF WEDLOCK. MISDEMEANOR.

GENERAL CRIMINAL VOLUME

JUNE 2014

N.C. Gen. Stat. § 49-2

240.40 WILLFUL NEGLECT OR REFUSAL TO ADEQUATELY SUPPORT AND
MAINTAIN A CHILD BORN OUT OF WEDLOCK. MISDEMEANOR.

The defendant has been charged with willful neglect or refusal to maintain and provide adequate support for the defendant's child born out of wedlock.

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

First, that the defendant is the father¹ of (*name child*) born of the body of (*name mother*) on (*name date*).²

Second, that after (*name child*) was born, [the child's mother] [the director of public welfare] [(*name other appropriate party*)] gave notice to the defendant demanding that the defendant maintain and provide adequate support for (*name child*).³

And Third, that the defendant willfully neglected or refused to maintain and provide adequate support for (*name child*). Willfully means intentionally and without justification or excuse.⁴

1 Where, if ever, the defendant is a female, substitute "mother" for "father," and adjust the remainder of the instruction accordingly.

2 This element may be omitted if the defendant has been determined to be the father (or mother) in a prior prosecution. In the event this element is omitted, only three issues will be submitted to the jury.

3 In the event that adequacy of support is put in issue, the following sentence should be added: "To maintain and provide adequate support for a child requires more than merely providing food. Clothing and other necessities such as medical assistance reasonably required to preserve the child's health are also required." Where the defendant's failure to pay medical expenses incurred incidental to birth is in evidence, the jury should be instructed that such failure does not constitute failure to maintain and provide adequate support for a child. The written issues to be submitted to the jury may be amended similarly. What was adequate support depends upon the property, if any, the defendant owned, his earnings (and other income), if any, and his ability to earn.

4 N.C. Gen. Stat. § 49-4 provides that a prosecution under Chapter 49 may not be instituted after

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You will return your verdict by answering the four written issues supplied to you by the court. The State has the burden of proof on each issue.

The first issue reads: "Is the defendant, (*name defendant*), the father of (*name child*) born of the body of (*name mother*) on (*name date*)?" If the State has satisfied you from the evidence beyond a reasonable doubt that (*name defendant*), is the father of (*name child*) born of the body of (*name mother*) on (*name date*), it would be your duty to answer the first question "yes." However, if the State has failed to so satisfy you, or you have a reasonable doubt as to this issue, it would be your duty to answer this issue "no." If you answer this issue "no," you will not consider the second and third issues, and you will answer the fourth issue "no."

The second issue reads: "After the birth of (*name child*) did [the child's mother] [the director of public welfare] [(*name other appropriate*

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- three years after the birth of the child, or
 - three years after the date of the last payment of child support by the reputed father, or
 - three years after a judicial determination of paternity made within three years after the birth of the child, and
 - in any event, not after the child attains the age of 18 years.

Cogdell v. Johnson, 46 N.C. App. 182 (1980), held that a similar limitation in N.C. Gen. Stat. § 49-14(c) on the time for bringing a civil action to establish the paternity of a child born out of wedlock denies the child equal protection of the laws, since no similar limit is provided for a support action instituted on behalf of a legitimate child. The three-year limit was held to create an impenetrable barrier against the enforcement of the support obligations of the father of the child born out of wedlock, since no support would be awarded without a judicial determination (or acknowledgment) of paternity.

When the court determines that the prosecution was not instituted within three years after the child's birth and that there has been no prior judicial determination of the defendant's paternity, and there is conflicting evidence as to whether the defendant made a support payment within the three years before the prosecution was instituted, give the following fourth element:

"And fourth, that the defendant acknowledged his paternity of (*name child*) by making one or more payments for the support of (*name child*), and that at least one of those payments was made after (*give date three years before institution of prosecution*)."

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party)] give notice to (*name defendant*), the defendant, demanding that the defendant support (*name child*)?" If the State has satisfied you from the evidence beyond a reasonable doubt that after the birth of (*name child*), [the child's mother] [the director of public welfare] [(*name other appropriate party*)] gave notice to the defendant demanding that the defendant provide adequate support for (*name child*), it would be your duty to answer the second question "yes." However, if the State has failed to so satisfy you, or you have a reasonable doubt as to this issue, it would be your duty to answer this issue "no." If you answer this issue "no," you will not consider the third issue, and you will answer the fourth issue "no."

The third issue reads: "Did the defendant willfully neglect or refuse to maintain or provide adequate support for (*name child*)?" If the State has satisfied you from the evidence beyond a reasonable doubt that the defendant willfully neglected or refused to maintain or provide adequate support for (*name child*), it would be your duty to answer the third question "yes." However, if the State has failed to so satisfy you, or you have a reasonable doubt as to this issue, it would be your duty to answer this issue "no." If you answer this issue "no," you will also answer the fourth issue "no."

The fourth issue reads: "Is the defendant, (*name defendant*), guilty of willful neglect or refusal to maintain and provide adequate support for the defendant's child born out of wedlock?" If you find from the evidence beyond a reasonable doubt that (*name child*) was born on (*name date*) of the body of (*name mother*) and is the natural [son] [daughter] born out of wedlock of (*name defendant*); and that thereafter [the mother] [the director of public welfare] [(*name other appropriate party*)] made demand upon (*name defendant*) to provide adequate support and maintenance for (*name*

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child), and after such demand was made, (*name defendant*) willfully,
intentionally, and without justification or excuse, neglected or refused to do
so, it would be your duty to answer the fourth issue "yes." If you do not so
find or have reasonable doubt as to one or more of these issues, it would be
your duty to answer the fourth issue "no."

Issues and Verdict Form found in attached PDF