

N.C.P.I.—Crim 270A.27C  
AGGRAVATED [DEATH] [SERIOUS INJURY] BY IMPAIRED BOATING.  
FELONY  
JUNE 2017  
N.C. Gen. Stat. § 75A-10.3(c),(d),(f)  
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270A.27C AGGRAVATED [DEATH] [SERIOUS INJURY] BY IMPAIRED  
BOATING. FELONY.

*NOTE WELL: This instruction is to be used for offenses occurring on or after December 1, 2016. See N.C. Gen. Stat. § 75A-10.3. Use N.C.P.I.—Crim 270A.25 if defendant was operating a vessel while underway on the waters of this State while under the influence of an impairing substance, and did not cause death or serious injury to another.*

*If the defendant admits to a previous conviction of impaired boating<sup>1</sup> within seven (7) years of the current violation, those elements of the offense are established and no evidence in support thereof may be adduced by the State. In such case, a transcript of plea is required for the admission of the previous conviction.*

*If the defendant denies a previous conviction of impaired boating occurring within seven (7) years of the current violation or remains silent, the State must prove the previous conviction in the fourth and fifth elements of the offense below. See N.C. Gen. Stat. § 15A-928.*

The defendant has been charged with aggravated [death]  
[serious injury] by impaired boating.

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

First, that on or about the alleged date, the defendant unintentionally caused [the death of] [serious injury to] the alleged victim.

Second, that the defendant was engaged in the offense of impaired boating; that is that the defendant was [operating a [motorboat] [vessel]] [manipulating [water skis] [a surfboard]

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[nonmotorized vessel] [(describe similar device)] while underway on  
the waters of this State

- (a) [was under the influence of an impairing substance.]  
(name substance involved) is an impairing substance.<sup>2</sup> The  
defendant is under the influence of an impairing substance  
when the defendant has [taken] [consumed] a sufficient  
quantity of that impairing substance to cause the  
defendant to lose the normal control of the defendant's  
[bodily] [mental faculties] [both], to such an extent that  
there is an appreciable impairment of [either] [both of  
these faculties.<sup>3</sup>]]
- (b) [after having consumed sufficient alcohol that at any  
relevant time after the boating, the defendant had an  
alcohol concentration <sup>4</sup> of [0.08] [more than 0.08] of  
alcohol [per 210 liters of breath] [per 100 milliliters of  
blood].<sup>5</sup> A relevant time is any time after the boating that  
the driver still has in the body alcohol consumed [before]  
[during] the boating]<sup>6</sup> the results of a chemical analysis  
are deemed sufficient evidence to prove a person's alcohol  
concentration.<sup>7</sup>

Third, that the defendant's impaired boating was the proximate  
cause of [the death of] [serious injury to] the alleged victim.

Fourth, that the defendant had a previous conviction of impaired  
boating; that is, the defendant on (name date) in (name court) [was

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convicted of] [pled guilty to] impaired boating, in violation of the law  
of the state of North Carolina.

And Fifth, that the previous conviction of impaired boating  
occurred within seven (7) years of the current offense (*name date of  
current offense*).

If you find from the evidence beyond a reasonable doubt that on  
or about the alleged date, the defendant unintentionally caused [the  
death of] [serious injury to] the alleged victim, that the defendant was  
engaged in the offense of impaired boating, that is the defendant  
[operated a [motorboat] [vessel]] [manipulated [water skis] [a  
surfboard] [nonmotorized vessel] [(*describe similar device*)]] while  
underway on the waters of this State [while under the influence of an  
impairing substance] [after having consumed sufficient alcohol that  
the defendant has, at any relevant time after the boating, an alcohol  
concentration of [0.08] [more than 0.08] of alcohol [per 210 liters of  
breath] [per 100 milliliters of blood]], that defendant's impaired  
boating was the proximate cause of [death] [serious injury] to the  
alleged victim, and that the defendant has a previous conviction of  
impaired boating occurring within seven (7) years of the current  
offense, 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.

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1 See N.C. Gen. Stat. §75A-10(b1).

2 An impairing substance includes alcohol, controlled substance under  
Chapter 90 of the General Statutes, or any other drug or psychoactive substance

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capable of impairing a person's physical or mental faculties, or any combination of these substances. N.C. Gen. Stat. § 20-4.01(14a).

3 N.C. Gen. Stat. § 20-4.01(48a).

4 N.C. Gen. Stat. § 20-4.01(0.2) defines alcohol concentration as "the concentration of alcohol in a person, expressed either as (a) grams of alcohol per 100 milliliters of blood; or (b) grams of alcohol per 210 liters of breath."

5 The fact that a person charged with this violation is or has been legally entitled to use alcohol or a drug is not a defense. See N.C. Gen. Stat. §75A-10(b1).

6 N.C. Gen. Stat. § 20-4.01(33a).

7 The term "deemed sufficient" is not defined in N.C. Gen. Stat. § 20.138.1 or N.C. Gen. Stat. § 20-141.4, other statutes or any appellate court decisions. Absent a specific definition, it can be presumed that the legislature intended the words to be given their ordinary meaning.