

207.90 SEXUAL BATTERY. (OFFENSES OCCURRING PRIOR TO DEC. 1, 2015)  
MISDEMEANOR.

*NOTE WELL: Use this instruction for offenses committed prior to December 1, 2015. For offenses committed on or after December 1, 2015 use N.C.P.I. Crim.—207.90A.*

The defendant has been charged with sexual battery. For you to find the defendant guilty of this offense, the State must prove three things beyond a reasonable doubt.

First, that the defendant engaged in sexual contact with another person. Sexual contact means

- (a) [touching the [sexual organ] [anus] [breast] [groin] [buttocks] of any person]
- (b) [a person touching another person with their own [sexual organ] [anus] [breast] [groin] [buttocks]]
- (c) [a person [[ejaculating] [emitting] [placing]] [semen] [urine] [feces] upon any part of another person]

Second, that

- (a) [the contact was by force without the other person's consent and against the will of the other person (Consent induced by fear is not consent at law).]
- (b) [the other person was [mentally disabled] [mentally incapacitated] [physically helpless] and the defendant [knew] [should reasonably have known] that the victim was [mentally disabled] [mentally incapacitated] [physically helpless],

And Third, that the defendant acted for the purpose of [sexual arousal] [sexual gratification] [sexual abuse].

If you find from the evidence beyond a reasonable doubt that on or about the alleged date the defendant engaged in sexual contact with another person, that

- (a) [the contact was by force without the other person’s consent and it was against the will of the other person (Consent induced by fear is not consent at law).]
- (b) [the other person was [mentally disabled] [mentally incapacitated] [physically helpless]] and the defendant [knew] [should reasonably have known] that the other person was [mentally disabled] [mentally incapacitated] [physically helpless], and

the defendant acted for the purpose of [sexual arousal] [sexual gratification] [sexual abuse], 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.

*NOTE WELL: If a party requests an instruction on Assault on a Female, see State v. Martin, 222 N.C. App. 213 (2012), where the defendant was convicted of two counts of first-degree sexual offense, and the North Carolina Court of Appeals held that assault on a female is not a lesser included offense of first-degree sexual offense, because to convict for first-degree sexual offense, it need not be shown that the victim is a female, that the defendant is a male, or that the defendant is at least 18 years of age.*

*See also State v. Corbett, 196 N.C. App. 508 (2009), holding the crime of assault is not a lesser included offense of sexual battery because all the essential elements of assault are not essential elements of sexual battery.*