

207.90A SEXUAL BATTERY. (OFFENSES ON OR AFTER DEC. 1, 2015)
MISDEMEANOR.

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

NOTE WELL: For offenses committed on or after December 1, 2019, N.C.G.S. § 14-27.20 defines "against the will of the other person" as either: (1) without the consent of the other person or (2) after consent is revoked by the other person, in a manner that would cause a reasonable person to believe consent is revoked. For the period between December 1, 2015 and December 1, 2019, the consent element of these offenses would use the following language: "the contact was by force without the other person's consent and against the will of the other person."

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

NOTE WELL: With regard to element (a) below, for offenses committed before December 1, 2019, delete the italicized language.

- (a) [the contact was by force without the alleged victim’s consent and against the will of the other person, *that is, the intercourse was [without consent of the other person] [after consent was revoked by the other person’s, in a manner that would cause a reasonable person to believe consent was revoked]* (Consent induced by fear is not consent at law).]
- (b) [the other person had a [mental disability] [was mentally incapacitated] [was physically helpless] and the defendant [knew] [should reasonably have known] that the alleged victim [had a mental disability] [was mentally incapacitated] [was 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 the defendant acted for the purpose of [sexual arousal] [sexual gratification] [sexual abuse] and that

NOTE WELL: With regard to element (a) below, for offenses committed before December 1, 2019, delete the italicized language.

- (a) [the contact was by force without the other person’s consent and against the will of the other person *that is, the intercourse was [without consent of the other person] [after consent was revoked by the alleged victim, in a manner that would cause a reasonable person to believe consent was revoked]* (Consent induced by fear is not consent at law).]

(b) [the other person had a [mental disability] [was mentally incapacitated] [was physically helpless]] and the defendant [knew] [should reasonably have known] that the other person [had a mental disability] [was mentally incapacitated] [was 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.

