

208.04 THREATENING TO KILL OR INFLICT SERIOUS BODILY INJURY UPON
A(N) [LEGISLATIVE] [EXECUTIVE] [COURT] OFFICER. FELONY.

The defendant has been charged with threatening to [kill] (or) [inflict serious bodily injury upon] a(n) [legislative] [executive] [court] officer.

For you to find the defendant guilty of this offense, the State must prove three things beyond a reasonable doubt:¹

First, that the defendant knowingly and willfully² made a threat³ to [inflict serious bodily injury upon] [kill] the victim. (In cases where the defendant contends that the alleged threat was not a “true threat” and was rather protected First Amendment political speech, the jury should be instructed as follows: “Such a threat must be a ‘true threat,’ that is, it must be a threat that is unequivocal, that would lead a reasonable person to believe that it will likely be followed by unlawful acts, and that instills in the recipient a fear of serious personal violence from the speaker.”)³

Second, that the alleged victim was a(n) [legislative]⁴ [executive]⁵ [court]⁶ officer.⁷ [(Name victim's title) is a(n) [legislative] [executive] [court] officer.]

And Third, that the defendant knew or had reasonable grounds to know that the alleged victim was a(n) [legislative] [executive] [court] officer.

If you find from the evidence beyond a reasonable doubt that on or about the alleged date the defendant knowingly and willfully made a (true) threat to [inflict serious bodily injury upon] [kill], the victim, that the victim was a(n) [legislative] [executive] [court] officer, and that the defendant knew or had reasonable grounds to know that the victim was a(n) [legislative] [executive] [court] officer, 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.⁸

1. It is not necessary to prove that the legislative, executive, or court officer actually received or believed the threat. N.C. Gen. Stat. § 14-16.8.

2. A person acts "knowingly" when the person is aware or conscious of what he or she is doing. A person acts "willfully" when the act was done intentionally and without an honest belief that there is an excuse or justification for it. *North Carolina Crimes: A Guidebook on the Elements of Crime*, Thornburg, 4th edition, 1995, *Institute of Government, The University of North Carolina at Chapel Hill*.

3. The North Carolina Court of Appeals has explained that "establishing that an alleged threat was a 'true threat' must be treated as an essential element of the offense to be proved by the state." *State v. Taylor*, 841 S.E. 2d 776 (N.C. Ct. App.) (explaining that a true threat occurs when, based on the context, the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals), temp. stay allowed, 374 N.C. 428, 839 S.E. 2d 856 (2020). See also *United States v. White*, 670 F.3d 498, 507 (4th Cir. 2012) ("*White I*").

4. N.C. Gen. Stat. § 147-2 The legislative officers are: the fifty Senators; One hundred and twenty members of the House of Representatives; a Speaker of the House of Representatives; a clerk and assistants in each house; a Sergeant-at-arms and assistants in each house; and as many subordinates in each house as may be deemed necessary.

5. N.C. Gen. Stat. § 147-3(c) The general civil executive officers of this State are as follows: a Governor; a Lieutenant Governor; Private secretary for the Governor; a Secretary of State; an Auditor; a Treasurer; an Attorney General; a Superintendent of Public Instruction; the members of the Governor's Council; a Commissioner of Agriculture; a Commissioner of Labor; a Commissioner of Insurance.

6. N.C. Gen. Stat. § 14-16.10(1) defines a court officer as Magistrate, clerk of superior court, acting clerk, assistant or deputy clerk, judge, or justice of the General court of Justice; district attorney, assistant district attorney, or any other attorney designated by the district attorney to act for the State or on behalf of the district attorney; public defender or assistant defender; court reporter; juvenile court counselor as defined in N.C. Gen. Stat. § 7B-1501(5). Effective December 1, 2003, the term "court officer" includes any attorney or other individual employed by or acting on behalf of the department of social services in proceedings pursuant to Subchapter I of Chapter 7B of the General Statutes; any attorney or other individual appointed pursuant to N.C. Gen. Stat. § 7B-601 or N.C. Gen. Stat. § 7B-1108 or employed by the Guardian *ad Litem* Services Division of the Administrative Office of the Courts.

7. N.C. Gen. Stat. § 14-16.9 provides that any person who has been elected to any of the above-mentioned offices, but has not yet taken the oath of office, shall be considered to hold the office for the purpose of this offense.

8. In a proper case, a further instruction as to any lesser included offense may be necessary.