

230.36 RESISTING, DELAYING, OR OBSTRUCTING A PUBLIC OFFICER—  
SERIOUS INJURY. FELONY.<sup>1</sup>

The defendant has been charged with willfully and unlawfully [resisting] [delaying] [obstructing] a public officer in [discharging] [attempting to discharge] an official duty, proximately causing serious injury to the public officer.

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

First, that the alleged victim was a public officer. (A *(state alleged victim's title, e.g., highway patrolman, building inspector, probation officer)* is a public officer.)

Second, that the defendant knew or had reasonable grounds to believe that the alleged victim was a public officer.

Third, that the alleged victim was [discharging] [attempting to discharge] an official duty. (*Describe what alleged victim was doing, e.g., directing traffic, inspecting wiring, making a home visit*), is an official duty of a *(state alleged victim's title, e.g., highway patrolman, building inspector, probation officer)*.<sup>2</sup>

Fourth, that the defendant [resisted] [delayed] [obstructed] the alleged victim in [discharging] [attempting to discharge] an official duty.

Fifth, that the defendant acted willfully and unlawfully, that is intentionally<sup>3</sup> (and without justification or excuse).<sup>4</sup>

And Sixth, that the defendant's [resistance] [delay] [obstruction] proximately caused serious injury to the alleged victim. Serious injury is injury that causes great pain and suffering.<sup>5</sup> Proximate cause is a real cause, a cause without which the alleged victim's serious bodily injury would not have

occurred, and one that a reasonably careful and prudent person could foresee would probably produce such injury or some similar injurious result. (The defendant's act need not have been the only cause, nor the last or nearest cause. It is sufficient if it occurred with some other cause acting at the same time, which, in combination with, caused the serious bodily injury to the alleged victim.)<sup>6</sup>

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the alleged victim was a public officer, that the defendant knew or had reasonable grounds to believe the alleged victim was a public officer, that the alleged victim was [discharging] [attempting to discharge] an official duty, that the defendant willfully and unlawfully [resisted] [delayed] [obstructed] the alleged victim in [discharging] [attempting to discharge] an official duty, and the [resistance] [delay] [obstruction] was the proximate cause of the alleged victim's serious injury, it would be your duty to return a verdict of guilty. However, if you do not so find or have a reasonable doubt as to one or more of these things, you will not return a verdict guilty of willfully and unlawfully [resisting] [delaying] [obstructing] a public officer in [discharging] [attempting to discharge] an official duty, proximately causing serious injury to the public officer, but you must determine whether the defendant is guilty of willfully and unlawfully [resisting] [delaying] [obstructing] a public officer in [discharging] [attempting to discharge] an official duty.<sup>7</sup>

This charge differs from willfully and unlawfully [resisting] [delaying] [obstructing] a public officer in [discharging] [attempting to discharge] an official duty, proximately causing serious injury to the public officer in that for you to find the defendant guilty of this offense, the State need only prove that the defendant [resisted] [delayed] [obstructed] a public officer in [discharging] [attempting to discharge] an official duty. If you find from the

evidence beyond a reasonable doubt that on or about the alleged date the alleged victim was a public officer, that the defendant knew or had reasonable grounds to believe the alleged victim was a public officer, that the alleged victim was [discharging] [attempting to discharge] an official duty, and that the defendant willfully and unlawfully [resisted] [delayed] [obstructed] the alleged victim in [discharging] [attempting to discharge] an official duty, it would be your duty to return a verdict of guilty of willfully and unlawfully [resisting] [delaying] [obstructing] a public officer in [discharging] [attempting to discharge] an official duty. However, 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. Effective December 1, 2021 applying to offenses committed on or after that date. S.L. 2021-138 amended N.C.G.S. § 14-223 to include additional protections for law enforcement officers who either suffered “serious injury” or “serious bodily injury” as a proximate cause of the defendant’s willful and unlawful resist, delay, or obstruction of a public officer who is discharging or attempting to discharge an official duty.

2. Where the State contends that the victim was doing one thing, which would be an official duty, but there is evidence that he may have been doing something else, which would not be an official duty, state what would and what would not be an official duty.

3. If a definition of intent is required, see N.C.P.I.—Crim. 120.10.

4. The parenthetical phrase should be used only where there is evidence of justification or excuse. If justification is resisting an unlawful arrest, or the use of excessive force by the officer, use N.C.P.I.—Crim. 230.31 or 230.32 and not this instruction.

5. See N.C.P.I.—Crim. 120.12 for the definition of serious injury. Serious injury may be physical or mental. *State v. Everhardt*, 326 N.C. 777, 781 (1990). Whether an injury is serious is a question of fact. *Id.* at 781. Relevant factors in determining whether an injury is serious include, but are not limited to, pain and suffering, loss of blood, hospitalization, and time lost at work. *State v. Tice*, 191 N.C. App. 506, 509 (2008); *State v. Morgan*, 164 N.C. App. 298, 303 (2004). For mental injury constituting serious injury see *State v. Boone*, 307 N.C. 198 (1982).

6. Where there is a serious issue as to proximate cause, the parenthetical phrase may be helpful. This language was approved in *State v. Messick*, 159 N.C. App. 232 (2003), *aff’d per curiam*, 358 N.C. 145 (2004).

7. If there is to be a lesser included offense of misdemeanor resisting, delaying, or obstructing a public officer, which is a lesser-included offense of felony resisting, delaying, or obstructing a public officer—serious injury, see N.C.P.I.—Crim. 230.30. N.C.G.S. § 14-223(a).

