

270A.10 INFLICTION OF SERIOUS BODILY INJURY BY OPERATION OF  
AIRCRAFT WHILE IMPAIRED (FLYING HIGH). FELONY.

The defendant has been charged with feloniously inflicting serious bodily injury by operating an aircraft while intoxicated.

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

First, that the defendant operated an aircraft.<sup>1</sup> A person operates an aircraft when *he* uses it for the purpose of air navigation, whether as pilot or navigator, and whether on the ground or in the air or on water.<sup>2</sup>

Second, that at the time the defendant was operating the aircraft, the defendant

[A. Was under the influence of an impairing substance.<sup>3</sup> A person is under the influence of an impairing substance (within the meaning and intent of the statute), when *he* has taken (or consumed) a sufficient quantity of that impairing substance to cause *him* to lose the normal control of *his* bodily or mental faculties, or both, to such an extent that there is an appreciable impairment<sup>4</sup> of either or both of these faculties.<sup>5</sup>] (or)

[B. Had consumed sufficient alcohol that at any relevant time after the operation of the aircraft the defendant had an alcohol concentration<sup>6</sup> of 0.04 or more grams of alcohol [per 210 liters of breath] [per 100 milliliters of blood]. A relevant time is any time after operating the aircraft in which the operator still has in *his* body alcohol consumed before or during the operation of the aircraft.<sup>7</sup>]

And Third, that while the defendant was so operating the aircraft, the defendant did serious bodily injury<sup>8</sup> to another person.

If you find from the evidence beyond a reasonable doubt that on or about the alleged date the defendant operated an aircraft while under the influence of an impairing substance, and that while the defendant was so operating the aircraft, *he* did serious bodily injury to another person, it would be your duty to return a verdict 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. Aircraft means “...any contrivance, now known or hereafter invented, used or designed for navigation of or flight in the air.” N.C. Gen. Stat. § 63-1(a)(3).

2. N.C. Gen. Stat. §§ 63-1(a)(16); 63-28.

3. An impairing substance includes alcohol, controlled substance under Chapter 90 of the General Statutes, or any other drug or psychoactive substance capable of impairing a person's physical or mental faculties, or any combination of these substances. N.C. Gen. Stat. § 20-4.01(14a).

4. The phrase “appreciable impairment” is not defined in N.C. Gen. Stat. § 20-4.01 or other subsequent statutes. However, appellate case law has defined appreciable to mean the effect of the impairing substance “must be...sufficient to be recognized and estimated.” *State v. Harrington*, 78 N.C. App. 39, 45, 336 S.E.2d 852, 855 (1985). This additional language may be provided to the jury if requested.

5. N.C. Gen. Stat. § 20-4.01(48b).

6. N.C. Gen. Stat. § 20-4.01(1b) defines alcohol concentration as “the concentration of alcohol in a person, expressed as (a) grams of alcohol per 100 milliliters of blood; or (b) grams of alcohol per 210 liters of breath.”

7. N.C. Gen. Stat. § 20-4.01(33a).

8. “Serious bodily injury” may be defined as “such physical injury as causes great pain and suffering.” *State v. Jones*, 258 N.C. 89 (1962); *State v. Ferguson*, 261 N.C. 558 (1962). If there is evidence as to injuries which could not conceivably be considered anything but serious, the trial judge may instruct the jury as follows, “(*Describe injury*) would be a serious bodily injury.” *State v. Davis*, 33 N.C. App. 262 (1977); *State v. Springs*, 33 N.C. App. 61 (1977).