

270A.15 OPERATION OF AIRCRAFT WHILE IMPAIRED. (FLYING HIGH).
MISDEMEANOR.¹

The defendant has been charged with operating an aircraft while impaired.

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

First, that the defendant operated an aircraft.² A person operates an aircraft when he/she uses it for the purpose of air navigation,³ whether as pilot or navigator, and whether on the ground or in the air or on water.

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

[A. Was under the influence of an impairing substance.⁴ A person is under the influence of an impairing substance (within the meaning and intent of the statute), when he/she has taken (or consumed) a sufficient quantity of that impairing substance to cause him/her to lose the normal control of his/her bodily or mental faculties, or both, to such an extent that there is an appreciable impairment⁵ of either or both of these faculties.⁶]

(or)

[B. Had consumed sufficient alcohol that at any relevant time after the operation of the aircraft the defendant had an alcohol concentration⁷ of 0.04 or more grams of alcohol [per 210 liters of breath] [per 100 millimeters of blood]. A relevant time is any time after operating the aircraft in which the operator still has in his/her body alcohol consumed before or during the operation of the aircraft].⁸

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, it would be your duty to return a verdict of guilty. If you do not so find, or have a reasonable doubt about one or more of these things, it would be your duty to return a verdict of not guilty.

1. A second conviction of this offense is punishable as a Class I Felony. See N.C. Gen. Stat. § 15A-928 and charge accordingly.

2. 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).

3. See N.C. Gen. Stat. § 63-1(a)(6).

4. 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).

5. 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.

6. N.C. Gen. Stat. § 20-4.01(48b).

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

8. N.C. Gen. Stat. § 20-4.01(33a).