

270A.25 OPERATING VESSEL WHILE UNDER THE INFLUENCE OF AN IMPAIRING SUBSTANCE. MISDEMEANOR.

The defendant has been charged with [operating a [motorboat] [vessel]] [manipulating [water skis] [a surfboard] [nonmotorized vessel] [similar device (*describe device*)]] while under the influence of an impairing substance.

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

First, that the defendant was [operating a [motorboat] [vessel]] [manipulating [water skis] [a surfboard] [nonmotorized vessel] [similar device (*describe device*)]].

Second, that the defendant was [operating that [motorboat] [vessel]] [manipulating the [water skis] [surfboard] [nonmotorized vessel] [similar device (*describe device*)]] on the waters of this State.¹

And Third, that at the time the defendant was [operating the [motorboat] [vessel]] [manipulating the [water skis] [surfboard] [nonmotorized vessel] [similar device (*describe device*)]], the defendant:

- (a) [was under the influence of an impairing substance.² ((*Name substance involved*) is an impairing substance.) The defendant is under the influence of an impairing substance when the defendant has taken (or consumed) a sufficient quantity of that impairing substance to cause the defendant to lose the normal control of the defendant's bodily or mental faculties, or both, to such an extent that there is an appreciable impairment³ of either or both of these faculties.⁴]

(b) [had consumed sufficient alcohol that a chemical analysis made at any relevant time after [operating the [motorboat] [vessel]] [manipulating the [water skis] [surfboard] [nonmotorized vessel] [similar device (*describe device*)]], the defendant had an alcohol concentration⁵ of [0.08] [more than 0.08] of alcohol [per 210 liters of breath] [per 100 milliliters of blood].⁶ A relevant time is any time after the [operating the [motorboat] [vessel]] [manipulating the [water skis] [surfboard] [nonmotorized vessel] [similar device (*describe device*)]] that the driver still has in the body alcohol consumed [before] [during] the [operation] [manipulation].⁷ the results of a chemical analysis are deemed sufficient evidence to prove a person’s alcohol concentration.⁸

If you find from the evidence beyond a reasonable doubt that on or about the alleged date the defendant was [operating a [motorboat] [vessel]] [manipulating [water skis] [a surfboard] [similar device (*describe device*)] on the waters of this State and that when the defendant did so the defendant [was under the influence of an impairing substance] [had consumed sufficient alcohol that a chemical analysis made at any relevant time after driving showed the defendant to have an alcohol concentration of 0.08 or more grams of alcohol [per 210 liters of breath] [per 100 milliliters of blood]] 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 both of these things, it would be your duty to return a verdict of not guilty.

1. See N.C. Gen. Stat. § 75A-2(6). “Waters of this State” means any waters within the territorial limits of this State, and the marginal sea adjacent to this State and the high seas when navigated as a part of a journey or ride to or from the shore of this State, but does not include private ponds as defined in N.C. Gen. Stat. § 113-129.

2. 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).

3. 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.

4. N.C. Gen. Stat. § 20-4.01(48b).

5. 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."

6. The fact that a person charged with this violation is or has been legally entitled to use alcohol or a drug is not a defense. See N.C. Gen. Stat. §75A-10(b1).

7. N.C. Gen. Stat. § 20-4.01(33a).

8. The term "deemed sufficient" is not defined in N.C. Gen. Stat. § 20.138.1 or N.C. Gen. Stat. § 20-141.4, other statutes or any appellate court decisions. Absent a specific definition, it can be presumed that the legislature intended the words to be given their ordinary meaning.

