

270A.27A MANIPULATING [WATER SKIS] [A SURFBOARD] [NONMOTORIZED
VESSEL] [SIMILAR DEVICE] WHILE UNDER THE INFLUENCE OF AN
IMPAIRING SUBSTANCE. MISDEMEANOR.

The defendant has been charged with manipulating [water skis] [a surfboard] [nonmotorized vessel] [(*describe similar 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 manipulating [water skis] [a surfboard] [nonmotorized vessel] [(*describe similar device*)].

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

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

If you find from the evidence beyond a reasonable doubt that on or about the alleged date the defendant was manipulating [water skis] [a surfboard] [nonmotorized vessel] [(*describe similar device*)] on the waters of this State and that the defendant was under the influence of an impairing substance, then 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.

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).