

270A.27B [DEATH] [SERIOUS INJURY] BY IMPAIRED BOATING. FELONY.

NOTE WELL: This instruction is to be used for offenses occurring on or after December 1, 2016. See N.C. Gen. Stat. § 75A-10.3. Use N.C.P.I.—Crim 270A.25 if the defendant was operating a vessel while under the influence of an impairing substance and did not cause death or serious injury to another.

The defendant has been charged with [death] [serious injury] by impaired boating.

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

First, that on or about the alleged date, the defendant unintentionally caused [the death of] [serious injury to] the alleged victim.

Second, that the defendant was engaged in the offense of impaired boating¹, that is that the defendant was [operating a [motorboat] [vessel]] [manipulating [water skis] [a surfboard] [nonmotorized vessel] [(describe similar device)]]].

(a) [while 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] [both], to such an extent that there is an appreciable impairment³ of [either] [both of these faculties].⁴]]

(b) [after having consumed sufficient alcohol that at any relevant time after the boating, 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

boating that the driver still has in the body alcohol consumed [before] [during] the boating⁷ the results of a chemical analysis are deemed sufficient evidence to prove a person’s alcohol concentration.⁸

Third, 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.⁹

Fourth, that the defendant’s impaired boating was the proximate cause of [the death of] [serious injury to] the alleged victim.

And Fifth, that the defendant did so knowingly.

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant unintentionally caused [the death of] [serious injury to] the alleged victim, that the defendant was engaged in the offense of impaired boating, that is the defendant [operated a [motorboat] [vessel]] [manipulated [water skis] [a surfboard] [nonmotorized vessel] [similar device (*describe device*)]] while underway on the waters of this State,

- (a) [while under the influence of an impairing substance]
- (b) [after having consumed sufficient alcohol that at any relevant time after the boating, the defendant had an alcohol concentration of [0.08] [more than 0.08] of alcohol [per 210 liters of breath] [per 100 milliliters of blood],

that defendant’s impaired boating was the proximate cause of [the death of] [serious injury to] to the alleged victim, and that the defendant did so knowingly, 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-10(b1).

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.

9. 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.

