

## NORTH CAROLINA CRIMES: REVIEW QUESTIONS ON SEXUAL ASSAULTS

Which sexual assault offense would be the proper charge under these facts?

1. A 21 year-old man forces a 19 year-old woman to have sexual intercourse with him by holding a knife to her face and threatening to cut her.

*First-degree forcible rape. Nonconsensual vaginal intercourse is rape. In addition, the perpetrator threatened the use of a deadly weapon. See Crimes Book, 2020 Supp. p. 75.*

2. A 21 year-old man forces a 19 year-old woman to have sexual intercourse with him by driving her into the woods and threatening to abandon her.

*Second-degree forcible rape. Nonconsensual vaginal intercourse is rape. A motor vehicle could constitute a deadly weapon depending on its use, but this scenario still does not exhibit any of the factors necessary for first-degree rape. See Crimes Book, 2020 Supp. p.*

3. A 21 year-old man holds a 19 year-old woman down to make her submit to sexual intercourse. Although he says nothing about it, a large knife strapped to his waist is plainly visible.

*First-degree forcible rape. Nonconsensual vaginal intercourse is rape. In addition, the perpetrator displayed a deadly weapon. See Crimes Book, 2020 Supp. p. 75.*

4. A 21 year-old man holds a 19 year-old woman down and makes her submit to sexual intercourse. When she fights, he twists her arm and breaks it.

*First-degree forcible rape. Nonconsensual vaginal intercourse is rape. In addition, the perpetrator inflicted serious injury. See Crimes Book, 2020 Supp. p. 75.*

5. A 19 year-old woman is pulled off the street by a 21 year-old man and shoved into a car driven by another man. The 21 year-old holds her down and has sexual intercourse with her on the back seat while the other man drives through a wooded area.

*First-degree forcible rape. Nonconsensual vaginal intercourse is rape. In addition, the perpetrator was aided and abetted by another. Both men would be guilty of rape, though only one had vaginal intercourse with the victim. See Crimes Book, 2020 Supp. p. 75.*

6. A 21 year-old woman holds a 25 year-old woman down while her boyfriend has sexual intercourse with her.

*First-degree forcible rape. Nonconsensual vaginal intercourse is rape. In addition, the perpetrator was aided and abetted by another. Both the 21 year-old woman and her boyfriend would be guilty of rape. See Crimes Book, 2020 Supp. p. 75.*

7. On August 1, a 17 year-old male (whose birthday is on July 15) has sexual intercourse with a 13 year-old female (whose birthday is on August 21) with her consent.

*No charge. The intercourse was consensual, so the crime cannot be forcible. The age differential is about three years and one month. The perpetrator is not yet eighteen, so it cannot be statutory rape of a child by an adult. First-degree statutory and statutory rape of a person under the age of fifteen require an age differential of more than four years, which is not satisfied here. See Crimes Book, 2020 Supp. p. 81-82. Similarly, indecent liberties requires an age differential of more than five years. See Crimes Book p. 246. Crime against nature does not include vaginal intercourse. See Crimes Book p. 282.*

8. On April 22, a 16 year-old male (whose birthday is on January 2) makes a 12 year-old female (whose birthday is on March 15) have sexual intercourse with him by holding a knife to her throat and threatening to kill her.

*First-degree forcible rape. Nonconsensual vaginal intercourse is rape. In addition, the perpetrator threatened the use of a deadly weapon. See Crimes Book, 2020 Supp. p. 75.*

*Also first-degree statutory rape. The age differential is about four years and two months. The perpetrator is at least twelve; the victim is under thirteen; and the perpetrator is more than four years older than the victim. See Crimes Book p. 225, 2020 Supp. p. 80.*

*Whether a defendant may be sentenced for both is unsettled. The Crimes Book (p. 222) cites State v. Ridgeway, 185 N.C. App. 423 (2007), for the proposition that forcible rape and statutory rape are two alternative theories for first-degree rape. That was true until 2015, when the statutes were reorganized to recognize two separate offenses, first-degree forcible rape and first-degree statutory rape. See Supp. p. 78. The logic of State v. Banks, 367 N.C. 652 (2014), regarding second-degree rape and statutory rape of a 13-, 14- or 15-year old, would seem to allow punishment for both first-degree forcible and statutory rape.*

9. A 17 year-old male holds a 12 year-old female down and has sexual intercourse with her against her will.

*First-degree statutory rape. The age differential is more than four years. The perpetrator is at least twelve; the victim is under thirteen; and the perpetrator is more than four years older than the victim. See Crimes Book p. 225, 2020 Supp. p. 80.*

*Also second-degree forcible rape. Nonconsensual vaginal intercourse is rape. There are no additional factors that would elevate the offense to first-degree forcible rape. See Crimes Book p. 223, 2020 Supp. p. 79.*

*First-degree statutory rape is the better answer here because it is the greater offense. First-degree statutory is a Class B1 felony, whereas second-degree forcible is a Class C felony.*

10. A 22 year-old man commits fellatio with a 15 year-old female with her consent.

*Statutory sexual offense with a person who is fifteen years old or younger. Fellatio is a "sexual act" sufficient to constitute a sexual offense. The sexual act was consensual, so the crime, if any, cannot be forcible. The age differential is at least six years. The defendant*

*was at least twelve; the victim was fifteen (until her next birthday); and the defendant was at least six years older than the victim. Hence, a Class B1 felony. See Crimes Book p. 229; 2020 Supp. p. 81.*

11. A 26 year-old man gives his date, a 25 year-old woman, a great deal to drink during the evening. After she passes out, he has sexual intercourse with her.

*Second-degree forcible rape. Nonconsensual vaginal intercourse is rape. (Where the victim is unconscious, the rape satisfies both: (1) by force and against the will, and (2) with a person who is physically helpless.) There are no additional factors that would elevate the offense to first-degree forcible rape. See Crimes Book p. 223, 2020 Supp. p. 79.*

12. Same facts as #11 except that he has cunnilingus with her instead of intercourse.

*Second-degree forcible sexual offense. Cunnilingus is a sexual act sufficient to constitute a sexual offense. See Crimes Book p. 234, 2020 Supp. p. 84.*

13. A man and woman are husband and wife, but they have been separated for a year and a half without a written agreement. One night the man comes over to his wife's apartment and forces her to have sexual intercourse with him.

*Second-degree forcible rape. Nonconsensual vaginal intercourse is rape. There are no other factors to elevate the offense to first-degree forcible rape. See Crimes Book p. 223, 2020 Supp. p. 79. There is no spousal defense. See Crimes Book p. 218 Note Element (2).*

14. A 28 year-old woman has consensual sexual intercourse with a 12 year-old male.

*Statutory rape of a child by an adult. Vaginal intercourse is sufficient for rape. The vaginal intercourse was consensual, so it cannot be forcible. The perpetrator is at least eighteen, and the victim is under thirteen. See Crimes Book p. 227, 2020 Supp. p. 81.*

*Also indecent liberties. The perpetrator is over sixteen; the victim was under sixteen; and the perpetrator was at least five years older than the victim. See Crimes Book p. 246. Statutory rape child by adult is the better answer because it is the greater offense: statutory rape child by adult is a Class B1 felony whereas indecent liberties is a Class F felony.*

15. Three 30 year-old men pick up a 16 year-old woman who is hitchhiking, drive her to a wooded area and make her perform fellatio on each by threatening to beat her and abandon her.

*First-degree forcible sexual offense. Fellatio is sufficient to constitute a sexual offense. The victim was above the age of consent, so the crime if any must be forcible. And each of the three perpetrators was aided and abetted by his accomplices. See Crimes Book p. 217, 2020 Supp. p. 75.*

16. A 16 year-old male and a 12 year-old female are dating. His birthday is on July 15; hers is on July 1. On August 1, she voluntarily performs fellatio on him.

*Crime against nature. Fellatio could constitute a sexual offense. The victim consented, so the crime if any must be statutory. The age differential is about 3 years and eleven months. First-degree statutory sex offense and statutory sex offense with a person fifteen years old or younger both require an age differential of more than four years, which is not satisfied here. See Crimes Book p. 235, 2020 Supp p. 85. Similarly, indecent liberties requires an age differential of five years, not satisfied here. See Crimes Book p. 246. Crime against nature includes fellatio, and the victim being a minor the conduct is not constitutionally protected. Crimes Book p. 281.*

17. A 15 year-old male and a 15 year-old female voluntarily have sexual intercourse with each other.

*No charge. The conduct was consensual, so the crime if any cannot be forcible. Statutory rape of a child by an adult requires a perpetrator of at least eighteen years old. First-degree statutory rape and statutory rape of a person under the age of fifteen both require an age differential of more than four years. Similarly, indecent liberties requires an age differential of five years. Crime against nature does not include vaginal intercourse. See Crimes Book p. 282 (top of page).*

18. Two 30 year-old men hold down a 24 year-old woman and threaten to beat her, making her perform fellatio on one man. After that, the second man forces a soft drink bottle into her vagina.

*First-degree forcible sexual offense. Fellatio and object penetration are each sufficient to constitute a sexual offense. The victim was above the age of consent, so the crime if any must be forcible. And each of the two perpetrators was aided and abetted by the other. See Crimes Book p. 217, 2020 Supp. p. 75.*