

204.35 AGGRAVATING FACTORS FOR SEXUAL OFFENSE WITH A CHILD.

NOTE WELL: In a 2005 decision, the North Carolina Supreme Court concluded that any fact that increases the penalty for a crime beyond the prescribed presumptive range, other than the fact of a prior conviction, must be submitted to a jury and proved beyond a reasonable doubt. See State v. Speight, 359 N.C. 602 (1 July 2005), modifying and affirming, 602 S.E.2d 4 (N.C. Ct. App. 2004). The court has several options on how to proceed, including adding the aggravating factor as an element of the offense, bifurcating the proceeding, or in the absence of the jury arraighing the defendant upon the special indictment or information and advising him that he may admit the aggravating factor alleged, deny it, or remain silent. For procedural guidance, see, e.g., G.S. § 15A-928. In the event the defendant admits the aggravating factor(s), a record of the plea should be made and preserved. See G.S. § 15A-1026. While this statute says the court will find these factors, these factual determinations must be submitted to the jury.

In the event you find (have found) the defendant guilty of sexual offense with a child, you must then consider and answer the following question:

Do you find from the evidence beyond a reasonable doubt the existence of the following egregious aggravating factor(s)?

NOTE WELL: Submit to the jury the aggravating factors supported by the evidence.

- (1) The nature of the offense and the harm inflicted are of such brutality, duration, severity, degree or scope beyond that normally committed in such crimes or considered in basic aggravation of such crimes.
- (2) The extraordinarily young age of the victim.
- (3) The depraved torture of the victim.
- (4) The depraved mutilation of the victim.

- (5) Extraordinary physical pain inflicted on the victim.

NOTE WELL: If alleged in the indictment and supported by the evidence G.S. § 14-27.4A(c) provides for the allegation of additional factors where the conduct of the defendant falls outside the heartland of cases even the aggravating factors were designed to cover.

If you find from the evidence beyond a reasonable doubt that (insert aggravating factor(s) supported by the evidence), then you will write "yes" in the space after the(se) aggravating factor(s) on the verdict sheet. If you have found the existence of (one or more of) the aggravating factor(s) and have written "yes" in the space after the(se) aggravating factor(s), then you will also answer Issue One "yes" and write "yes" in the space after Issue One on the verdict sheet. If you do not so find, then you will leave blank the space(s) after the aggravating factor(s).

STATE OF NORTH CAROLINA
IN THE GENERAL COURT OF JUSTICE
COUNTY OF _____
SUPERIOR COURT DIVISION

FILE NO. Verdict Sheet STATE OF NORTH CAROLINA
VS.

Defendant

Issue One:

Do you find from the evidence beyond a reasonable doubt the existence of the following aggravating factor(s)?

Answer: _____

Before you answer the question above, consider (each of) the following aggravating factor(s). If you find beyond a reasonable doubt that a (the) factor exists, you would write "yes" in the space after that factor. If you write "yes" in (one or more of) the following space(s), then you would write "yes" in the space after the question above.

NOTE WELL: Modify verdict sheet and submit to the jury only the aggravating factors supported by the evidence.

(1) The nature of the offense and the harm inflicted are of such brutality, duration, severity, degree or scope beyond that normally committed in such crimes or considered in basic aggravation of such crimes.

Answer: _____

(2) The extraordinarily young age of the victim.

Answer: _____

(3) The depraved torture of the victim.

Answer: _____

(4) The depraved mutilation of the victim.

Answer: _____

(5) Extraordinary physical pain inflicted on the victim.

Answer: _____

(6) (List any other factor alleged in the indictment and supported by the evidence where the conduct of the defendant falls outside the heartland of cases even the aggravating factors were designed to cover.)

Answer: _____

This the _____ day of _____.

Foreperson