

N.C.P.I.-Crim. 206.12
FIRST DEGREE MURDER BY MEANS OF POISON (INCLUDING ALL LESSER INCLUDED OFFENSES). CLASS A FELONY (DEATH OR LIFE IMPRISONMENT).
GENERAL CRIMINAL VOLUME
JUNE 2014
N.C. Gen. Stat. § 14-17

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NOTE WELL: N.C. Gen. Stat. §§ 15-176.4; 15A-2000(a): When the defendant is indicted for first degree murder the court shall, upon request by either party, instruct the jury as follows:

"In the event that the defendant is convicted of murder in the first degree, the court will conduct a separate sentencing proceeding to determine whether the defendant should be sentenced to death or life imprisonment (without parole).¹ If that time comes, you will receive separate sentencing instructions. However, at this time your only concern is to determine whether the defendant is guilty of the crime charged or any lesser included offenses about which you are instructed."²

The defendant has been charged with first degree murder by means of poison.

Now I charge that for you to find the defendant guilty of first degree murder by means of poison, the State must prove two things beyond a reasonable doubt:

First, that the defendant intentionally caused a substance known to defendant to be poison to be placed into or to enter the body of the victim. Poison is a substance which is likely to cause death (by a chemical reaction) when placed into or caused to enter the body of a human being.³

Intent is a mental attitude which is seldom provable by direct evidence. It must ordinarily be proved by circumstances from which it may be inferred. You arrive at the intent of a person by such just and reasonable deductions from the circumstances proven as a reasonably prudent person would ordinarily draw therefrom.⁴

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And Second, the State must prove that the poisoning was a proximate cause of the victim's death. A proximate cause is a real cause, a cause without which the victim's death would not have occurred.⁵

If you find from the evidence beyond a reasonable doubt that on or about the alleged date the defendant intentionally administered a substance known to defendant to be poison to the victim, thereby proximately causing the victim's death, it would be your duty to return a verdict of guilty of first degree murder by means of poison. If you do not so find or have a reasonable doubt as to one or more of these things, you will not return a verdict of guilty of first degree murder by means of poison, but must determine whether the defendant is guilty of involuntary manslaughter.⁶

Involuntary manslaughter is the unintentional killing of a human being by an unlawful act not amounting to a felony, or by an act done in a criminally negligent way.

For you to find the defendant guilty of involuntary manslaughter, the State must prove two things beyond a reasonable doubt:

First, that the defendant acted a. [unlawfully] (or) b. [in a criminally negligent way] in administering poison to the victim. a. [The defendant's act was unlawful if (*describe alleged violation*).] b. [Criminal negligence is more than mere carelessness. The defendant's act was criminally negligent, if, judging by reasonable foresight, it was done with such gross recklessness or carelessness as to amount to a heedless indifference to the safety and rights of others.]

And Second, the State must prove that this [unlawful] (or) [criminally negligent] act proximately caused the victim's death. A proximate cause is a real cause, a cause without which the victim's death would not have occurred, and one that a reasonably careful and prudent

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person could foresee would probably produce such [injury] [damage] or some similar injurious result. (The defendant's act need not have been the only cause, nor the last or nearest cause. It is sufficient if it occurred with some other cause acting at the same time, which in combination with, caused the death of the victim.) (A child has been killed if the child was born alive, but died as a result of injuries inflicted prior to being born alive.)⁷

(If the victim died by accident or misadventure, that is, without wrongful purpose or criminal negligence on the part of the defendant, the defendant would not be guilty. The burden of proving accident is not on the defendant. The defendant's assertion of accident is merely a denial that the defendant has committed any crime. The burden remains on the State to prove the defendant's guilt beyond a reasonable doubt.)

If you find from the evidence beyond a reasonable doubt that on or about the alleged date the defendant [unlawfully] (or) [in a criminally negligent way] administered poison to the victim, thereby proximately causing the victim's death, it would be your duty to return a verdict of guilty of involuntary manslaughter. 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. The parenthetical phrase, without parole, must be used for offenses occurring on or after October 1, 1994.

2. N.C. Gen. Stat. § 14-5.2 abolished all distinctions between accessories before the fact and principals to felonies as to both trial and punishment, except that if a person who would have been guilty and punishable as an accessory before the fact is convicted of a capital felony, and the jury finds that his conviction was based solely on the uncorroborated testimony of one or more principals, co-conspirators or accessories to the crime, he shall be guilty of a Class B felony. The act applies to all offenses committed on or after July 1, 1981. See N.C.P.I.-Crim. 202.20A.

As to felonies allegedly committed before that date, accessories before the fact

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should be tried (and punished) according to previously existing law. See N.C.P.I.-Crim. 202.20, 202.30, and *S v. Small*, 301 N.C. 407, 272 S.E.2d 128 (1980).

See N.C.P.I.-Crim. 206.10A for the suggested procedure and instruction where an accessory before the fact is convicted of first degree murder.

3. If the substance used to cause death of the victim was unusual or not commonly known or thought to be poisonous, use the following statement: "It is not necessary that a substance be widely known as a poison for the purposes of this crime; just as arsenic and cyanide are poisonous substances which will cause death to a human being, so also is sugar to the acute diabetic, or dust to the acute asthmatic. In determining the poisonous nature of a substance, you must look to the peculiar weakness or sensibility of the victim to that particular substance."

4. *S v. Johnson*, 317 N.C. 193 (1986) held that it is not necessary to prove that the defendant acted with premeditation and deliberation, or that he intended to kill the victim-only that he intentionally administered the poison.

5. Where there is a serious issue as to proximate cause, further instructions may be helpful, e.g., "The defendant's act need not have been the last cause or the nearest cause. It is sufficient if it concurred with some other cause acting at the same time, which in combination with it, proximately caused the death of the victim."

6. Under the rationale of *S v. Johnson*, 317 N.C. 193 (1986), an instruction on second degree murder or voluntary manslaughter is not appropriate. Involuntary manslaughter would be extremely rare.

7. This sentence is only to be provided if the offense involved the killing of a child.