

N.C.P.I.-Crim. 206.16  
FIRST DEGREE MURDER BY LYING IN WAIT. DEATH OR LIFE  
IMPRISONMENT. CLASS A FELONY.  
GENERAL CRIMINAL VOLUME  
JUNE 2014  
N.C. Gen. Stat. § 14-17  
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206.16 FIRST DEGREE MURDER BY LYING IN WAIT. DEATH OR LIFE  
IMPRISONMENT. CLASS A FELONY.

*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).<sup>1</sup> 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."*

The defendant has been charged with first degree murder perpetrated while lying in wait.

For you to find the defendant guilty of this offense the State must prove three things beyond a reasonable doubt:

First, that the defendant lay in wait for the victim; that is, waited and watched for the victim in ambush for a private attack on him.<sup>2</sup>

Second, that the defendant intentionally assaulted the victim.<sup>3</sup>

And Third, that the defendant's act 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,<sup>4</sup> and one that a reasonably careful and prudent 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.)<sup>5</sup>

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant assaulted the victim while lying in wait for him and that the defendant's act proximately caused the victim's death, it would be your duty to return a verdict of guilty of first degree murder. If you do not so find or if you have a reasonable doubt as to one or more of these things it would be your duty to return a verdict of not guilty.

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1 The parenthetical phrase, without parole, must be used for offenses occurring on or after October 1, 1994.

2 *S. v. Brown*, 320 N.C. 179 (1987). In a proper case the jury should be instructed that the victim's knowledge of the defendant's presence is not a defense.

3 Intent to kill is not an element of first degree murder by lying in wait. *S. v. Johnson*, 317 N.C. 193 (1986).

4 Where there is a serious issue as to proximate cause, further instruction may be helpful, e.g., "The defendant's act need not have been the last 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 (*name victim*)."

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