N.C.P.I.—Crim. 207.80B.1
FELONIOUS SEXUAL ACTIVITY WITH A STUDENT (BY MEMBER OF SCHOOL PERSONNEL OTHER THAN TEACHER, SCHOOL ADMINISTRATOR, STUDENT TEACHER, SCHOOL SAFETY OFFICER, COACH). (OFFENSES ON OR AFTER DEC. 1, 2015) FELONY; MISDEMEANOR.
REPLACEMENT JANUARY 2024
N.C. Gen. Stat. § 14-27.32

207.80B.1 FELONIOUS SEXUAL ACTIVITY WITH A STUDENT (BY MEMBER OF SCHOOL PERSONNEL OTHER THAN TEACHER, SCHOOL ADMINISTRATOR, STUDENT TEACHER, SCHOOL SAFETY OFFICER,[1] COACH). (OFFENSES ON OR AFTER DEC. 1, 2015) FELONY; MISDEMEANOR.[2]

NOTE WELL: School safety officers were added to the statute effective December 1, 2003, and applies to offenses committed on or after that date.

This instruction is valid for offenses committed on or after December 1, 2015. For offenses committed before December 1, 2015, use N.C.P.I.-Crim. 207.80B.

The defendant has been charged with felonious sexual activity with a student.

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

First, that the alleged victim was a student.[3]

Second, that the defendant was a member of the school personnel[4] at the same school[5] as the alleged victim. [(*Name position*) is a member of the school personnel.]

Third, that the defendant was at least four years older than the alleged victim.

Fourth, that the defendant:

a) Engaged in vaginal intercourse with the alleged victim. Vaginal intercourse is penetration, however slight, of the female sex organ by the male sex organ. (The actual emission of semen is not necessary.)

b) Engaged in a sexual act with the alleged victim. A sexual act means:

1. [cunnilingus, which is any touching, however slight, by the lips or tongue of one person to any part of the female sex organ of another.][6]

2. [fellatio, which is any touching, by the lips or tongue of one person and the male sex organ of another.][7]

3. [analingus, which is any contact between the tongue or lips of one person and the anus of another.]

4. [anal intercourse, which is any penetration, however slight, of the anus of one person by the male sex organ of another.]

5. [any penetration, however slight, by an object into the [genital] [anal] opening of a person's body.][8]

And Fifth, that this act occurred at some time [during] [after] the time the defendant and the alleged victim were present together in the same school.[9]

(Consent is no defense to this charge.)

If you find from the evidence beyond a reasonable doubt that on or about the alleged date the alleged victim was a student, that the defendant was a member of the school personnel at the same school as the alleged victim, that the defendant was at least four years older than the alleged victim, that the defendant engaged in [vaginal intercourse] [a sexual act] with the alleged victim, and that this act occurred at some time [during] [after] the time the defendant and the alleged victim were present together in the same school, it would be your duty to return a verdict of guilty of felonious sexual activity with a student. If you do not so find or have a reasonable doubt as to one or more of these things, you would not return a verdict of guilty of

felonious sexual activity with a student,[10] but will consider whether the defendant is guilty of misdemeanor sexual activity with a student. The misdemeanor differs from the felony in that the State need not prove that the defendant was at least four years older than the alleged victim.

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the alleged victim was a student, that the defendant was a member of the school personnel at the same school as the alleged victim, that the defendant engaged in [vaginal intercourse] [a sexual act] with the alleged victim, and that this act occurred at some time [during] [after] the time the defendant and the alleged victim were present together in the same school, it would be your duty to return a verdict of guilty of misdemeanor sexual activity with a student. 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. "School safety officer" means a school resource officer or any other person who is regularly present in a school for the purpose of promoting and maintaining safe and orderly schools. N.C. Gen. Stat. § 14-27.32(e)(3).

2. A defendant who is school personnel, other than a teacher, school administrator, student teacher, school safety officer, or coach, and is less than four years older than the alleged victim and engages in vaginal intercourse or a sexual act with an alleged victim who is a student, is guilty of a Class A1 misdemeanor.

3. "Student" means a person enrolled in kindergarten, or in grade one through grade 12 in any school within six months of any violation of this section. N.C. Gen. Stat. § 14-27.32(e)(4).

4. "School Personnel" means any employee of a local board of education whether full-time or part-time, or independent contractor or employee of an independent contractor of a local board of education, if the independent contractor carries out duties customarily performed by school personnel, whether paid with federal, State, local or other funds, who has significant access to students. School personnel also include substitute teachers, driver training teachers, bus drivers, clerical staff, and custodians. N.C. Gen. Stat. § 115C-332(a)(2). In addition, N.C. Gen. Stat. § 14-202.4(d)(3) includes "those employed by a nonpublic, charter, or regional school, and any person who volunteers at a school or a school-sponsored activity."

5. "School" "means any public school, charter school, or nonpublic school under Parts 1 and 2 of Article 39 of Chapter 115C of the General Statutes." N.C. Gen. Stat. § 14-202.4(d)(2). "Same school" means a school at which the student is enrolled and the school personnel is employed or volunteers.

6. *State v. Ludlum*, 303 N.C. 666 (1981), held that penetration of the female sex organ is not required to complete the act of cunnilingus under the Sexual Offense Statutes set out in N.C. Gen. Stat. § 14-27.4 *et seq*. However, the Court did specifically adhere to the rule of earlier cases that penetration is required to complete the offense of Crime Against Nature. (N.C. Gen. Stat. § 14-177; N.C.P.I.—Crim. 226.10).

7. *State v. Warren*, 309 N.C. 224 (1983), held that Crime Against Nature is not a lesser included offense of First or Second Degree Sexual Offense (fellatio), but when the bill of indictment charges anal intercourse, *Warren* infers that crime against nature is a lesser included offense of anal intercourse.

8. N.C. Gen. Stat. § 14-27.1(d) provides that it shall be an affirmative defense to the fifth type of sexual act, that the penetration was for accepted medical purposes. If there is evidence of such a purpose, instruct accordingly at the end of the charge.

9. *See* note 5, *supra*.

10. If there is to be no instruction on lesser included offenses, the last phrase should be: ". . .it would be your duty to return a verdict of not guilty."