

N.C.P.I.-Crim. 207.90
SEXUAL BATTERY. (OFFENSES OCCURRING PRIOR TO DEC. 1, 2015)
MISDEMEANOR.
GENERAL CRIMINAL VOLUME
REPLACEMENT JUNE 2020
N.C. Gen. Stat. § 14-27.5A

207.90 SEXUAL BATTERY. (OFFENSES OCCURRING PRIOR TO DEC. 1, 2015) MISDEMEANOR.

NOTE WELL: Use this instruction for offenses committed prior to December 1, 2015. For offenses committed on or after December 1, 2015 use N.C.P.I. Crim.—207.90A.

The defendant has been charged with sexual battery. For you to find the defendant guilty of this offense, the State must prove three things beyond a reasonable doubt.

First, that the defendant engaged in sexual contact with another person. Sexual contact means

- (a) [touching the [sexual organ] [anus] [breast] [groin] [buttocks] of any person]
- (b) [a person touching another person with their own [sexual organ] [anus] [breast] [groin] [buttocks]]
- (c) [a person [[ejaculating] [emitting] [placing]] [semen] [urine] [feces] upon any part of another person]

Second, that

- (a) [the contact was by force without the other person's consent and against the will of the other person (Consent induced by fear is not consent at law).]
- (b) [the other person was [mentally disabled] [mentally incapacitated] [physically helpless] and the defendant [knew] [should reasonably have known] that the victim was [mentally disabled] [mentally incapacitated] [physically helpless],

And Third, that the defendant acted for the purpose of [sexual arousal] [sexual gratification] [sexual abuse].

If you find from the evidence beyond a reasonable doubt that on or about the alleged date the defendant engaged in sexual contact with another person, that

- (a) [the contact was by force without the other person's consent and it was against the will of the other person (Consent induced by fear is not consent at law).]
- (b) [the other person was [mentally disabled] [mentally incapacitated] [physically helpless]] and the defendant [knew] [should reasonably have known] that the other person was [mentally disabled] [mentally incapacitated] [physically helpless], and

the defendant acted for the purpose of [sexual arousal] [sexual gratification] [sexual abuse], it would be your duty to return a verdict of guilty. 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.

NOTE WELL: If a party requests an instruction on Assault on a Female, see State v. Martin, 222 N.C. App. 213 (2012), where the defendant was convicted of two counts of first-degree sexual offense, and the North Carolina Court of Appeals held that assault on a female is not a lesser included offense of first-degree sexual offense, because to convict for first-degree sexual offense, it need not be shown that the victim is a female, that the defendant is a male, or that the defendant is at least 18 years of age.

See also State v. Corbett, 196 N.C. App. 508 (2009), holding the crime of assault is not a lesser included offense of sexual battery because all the essential elements of assault are not essential elements of sexual battery.

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