

N.C.P.I.-Crim. 208.02
ASSAULT ON A(N) [LEGISLATIVE] [EXECUTIVE] [COURT] OFFICER WITH A
DEADLY WEAPON. FELONY.
GENERAL CRIMINAL VOLUME
APRIL 2004
N.C. Gen. Stat. § 14-16.6(a), (b)

208.02 ASSAULT ON A(N) [LEGISLATIVE] [EXECUTIVE] [COURT] OFFICER
WITH A DEADLY WEAPON. FELONY.

The defendant has been charged with assault on a(n) [legislative]
[executive] [court] officer with a deadly weapon.

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

First, that the defendant assaulted the victim by intentionally¹ (and
without justification or excuse)² (*describe assault*).

Second, that the defendant used a deadly weapon. A deadly
weapon is a weapon which is likely to cause death or serious bodily
injury.

[(*Name weapon*) is a deadly weapon.] [In determining whether
(*name weapon*) is a deadly weapon, you should consider the nature of
(*name weapon*), (and) the manner in which it was used, (and the size
and strength of the defendant as compared to the victim).]³

Third, that the victim was a(n) [legislative]⁴ [executive]⁵ [court]⁶
officer. [(*Name victim's title*) is a(n) [legislative] [executive] [court]
officer.]⁷

And Fourth, that the defendant knew or had reasonable grounds to
know that the victim was a(n) [legislative] [executive] [court] officer.

*NOTE WELL: If self-defense is an issue, use charge
N.C.P.I.-Crim. 308.45 as to the elements of self-
defense.*

If you find from the evidence beyond a reasonable doubt that on or

about the alleged date, the defendant assaulted the victim with a (*name weapon*) (and that (*name weapon*) was a deadly weapon),⁸ that the victim was a(n) [legislative] [executive] [court] officer, and that the defendant knew or had reasonable grounds to know that the victim was a(n) [legislative] [executive] [court] officer, (nothing else appearing)⁹ 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.¹⁰

NOTE WELL: If self-defense is an issue, use the mandate from N.C.P.I.-Crim. 308.45.¹¹

1. If a definition of intent is required, see N.C.P.I.-Crim. 120.10.

2. The parenthetical phrase should only be used where there is evidence of justification or excuse, such as self-defense.

3. Use applicable bracketed statement. In the event that there is a dispute as to which weapon was used and one of the weapons is non-deadly as a matter of law, *e.g.*, a real pistol and a toy pistol, state what would not be a deadly weapon.

4. N.C. Gen. Stat. § 147-2. The legislative officers are: the fifty Senators; One hundred and twenty members of the House of Representatives; a Speaker of the House of Representatives; a clerk and assistants in each house; a Sergeant-at-arms and assistants in each house; and as many subordinates in each house as may be deemed necessary.

5. N.C. Gen. Stat. § 147-3(c). The general civil executive officers of this State are as follows: a Governor; a Lieutenant Governor; Private secretary for the Governor; a Secretary of State; an Auditor; a Treasurer; an Attorney General; a Superintendent of Public Instruction; the members of the Governor's Council; a Commissioner of Agriculture; a Commissioner of Labor; a Commissioner of Insurance.

6. N.C. Gen. Stat. § 14-16.10(1) defines a court officer as: Magistrate, clerk of superior court, acting clerk, assistant or deputy clerk, judge, or justice of the General court of Justice; district attorney, assistant district attorney, or any other attorney designated by the district attorney to act for the State or on behalf of the district attorney; public defender or assistant defender; court reporter; juvenile court counselor as defined in N.C. Gen. Stat. § 7B-1501(5). Effective December 1, 2003, the term "court officer" includes any attorney or other individual employed by or acting on behalf of the department of social services in proceedings pursuant to Subchapter I of Chapter 7B of the General Statutes;

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any attorney or other individual appointed pursuant to N.C. Gen. Stat. § 7B-601 or N.C. Gen. Stat. § 7B-1108 or employed by the Guardian *ad Litem Services* Division of the Administrative Office of the Courts.

7. N.C. Gen. Stat. § 14-16.9 provides that any person who has been elected to any of the above-mentioned offices, but has not yet taken the oath of office shall be considered to hold the office for the purpose of this offense.

8. The parenthetical phrase should only be given where the weapon is not deadly *per se*.

9. The parenthetical phrase should only be used when there is evidence of justification or excuse.

10. If there is to be an instruction on lesser included offenses, the last phrase should be: ". . . you will not return a verdict of guilty of assault on a(n) [legislative] [executive] [court] officer with a deadly weapon."

11. Including self-defense in the mandate is required by *S. v. Woodson*, 31 N.C. App. 400 (1976). *Cf. S. v. Dooley*, 285 N.C. 158 (1974).