

208.04B THREATENING TO KILL OR INFLICT SERIOUS BODILY INJURY UPON A PERSON AS RETALIATION AGAINST A [LEGISLATIVE] [EXECUTIVE] [COURT] OFFICER. FELONY.

NOTE WELL: For mailing a threat to kill or inflict serious bodily injury upon a person as retaliation against an officer, use N.C.P.I. Crim.—208.04C, for direct threats against the officers themselves, use N.C.P.I. Crim.—208.04, for mailing a direct threat to an officer, use N.C.P.I. Crim.—208.04A.

The defendant has been charged with threatening to [kill] (or) [inflict serious bodily injury upon] a person in retaliation against a [legislative] [executive] [court] officer because of the exercise of that officer’s duties.

For you to find the defendant guilty of this offense, the State must prove two things beyond a reasonable doubt:¹

First, that the defendant knowingly and willfully² made a true threat³ to [inflict serious bodily injury upon] [kill] the alleged victim. A true threat is defined as an objectively threatening statement communicated by a party who possesses the subjective intent to threaten a listener or identifiable group.⁴ An objectively threatening statement is one that would be understood by a reasonably prudent person perceiving it within its proper context as a serious expression of an intent to [inflict serious bodily injury] [kill] by the speaker. Subjective intent requires that the speaker intended the statement to be understood as a threat.⁵ (Intent is a mental attitude 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.)⁶

And Second, that the defendant made this true threat as a retaliation against a(n) [legislative]⁷ [executive]⁸ [court]⁹ officer because of the exercise of the officer’s duties. [(Name officer’s title) is a(n) [legislative] [executive]

[court] officer.]¹⁰

If you find from the evidence beyond a reasonable doubt that on or about the alleged date the defendant knowingly and willfully made a true threat to [inflict serious bodily injury upon] [kill] the alleged victim, and that the defendant made this true threat as a retaliation against a(n) [legislative] [executive] [court] officer because of the exercise of the officer’s duties, 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.¹¹

1. It is not necessary to prove that the legislative, executive, or court officer actually received or believed the threat.

2. A person acts "knowingly" when the person is aware or conscious of what he or she is doing. A person acts "willfully" when the act was done intentionally and without an honest belief that there is an excuse or justification for it. *North Carolina Crimes: A Guidebook on the Elements of Crime*, Smith, 7th edition, 2012, *School of Government, The University of North Carolina at Chapel Hill*.

3. The Supreme Court of North Carolina has noted that, under the Free Speech Clause of the First Amendment of the United States Constitution, as incorporated to apply to the states through the Due Process Clause of the Fourteenth Amendment, "the State may not punish an individual for speaking based upon the contents of the message communicated." *State v. Taylor*, 2021-NCSC-164, ¶ 34. In recognizing limited exceptions to this principle, the State may "criminalize certain categories of expression which, by their very nature, lack constitutional value." *Id.* Therefore, in order to overcome the constitutional protections provided by the First Amendment, the State must prove that the defendant communicated a "true threat" against the alleged victim(s), necessitating sufficient proof of both an objective and subjective element in order to convict a defendant under N.C. Gen. Stat. § 14-16.7(a). *Id.* at ¶ 42.

4. *State v. Taylor*, 2021-NCSC-164, ¶ 34.

5. In adopting the North Carolina Court of Appeals’ interpretation that the State is required to establish both an objective and subjective component to qualify as a "true threat," the Supreme Court of North Carolina does not explicitly define either "objective" or "subjective" intent. However, in remanding the case for a jury’s proper consideration of a true threat, the Court expressly quotes the lower court’s diction of objective and subjective intent. *State v. Taylor*, 2021-NCSC-164, ¶ 14 (quoting *State v. Taylor*, 270 N.C. App. 514, 557, 841 S.E.2d 776, 814 (2020)).

6. Where there is a serious issue as to subjective intent, the parenthetical phrase may be useful. See N.C.P.I.—Crim 120.10 (Definition of Intent). Footnote 1 of N.C.P.I. —Crim 120.10 provides supplemental language on general and specific intent. However, due to the specificity of the requirements of a "true threat" pursuant to *State v. Taylor*, 2021-NCSC-164,

the preceding definitions before the parenthetical should be relied on solely as to not confuse the jury with conflicting definitions.

7. 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.

8. 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.

9. 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 public 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; 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.

10. 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.

11. In a proper case, a further instruction as to any lesser included offense may be necessary.

