

N.C.P.I.—Crim 208.45A
HABITUAL MISDEMEANOR ASSAULT. (DEFENDANT DENIES PRIOR
CONVICTION). FELONY.
REPLACEMENT JUNE 2017
N.C. Gen. Stat. § 14-33.2

208.45A HABITUAL MISDEMEANOR ASSAULT. (DEFENDANT DENIES PRIOR
CONVICTION). FELONY.

NOTE WELL: This offense is activated by a violation of N.C. Gen. Stat. § 14-33 or N.C. Gen. Stat. § 14-34. Here, as an example, N.C. Gen. Stat. § 14-33(c)(2), Assault on a Female, is used as the activating offense.

N.C. Gen. Stat. § 14-33.2 was amended effective December 1, 2004. This instruction should be used for offenses committed on or after that date. For offenses committed on or before December 1, 2004, N.C.P.I.—Crim. 208.45 should be used.

Use N.C.P.I. 208.45A.1 if the defendant admits prior convictions for either misdemeanor or felony assault within 15 years of the current offense.

If the defendant denies two or more prior convictions for either misdemeanor or felony assault within 15 years of the current offense or remains silent, the State must prove these prior convictions in the first and second elements of the offense below. See N.C. Gen. Stat. § 15A-928; State v. Burch, 585 S.E.2d 461 (N.C. App. 2003).

The defendant has been charged with felonious¹ assault.²

For you to find the defendant guilty of this offense the State must prove [five] [six] things beyond a reasonable doubt:

First, that the defendant has two or more prior convictions for assault, that is:

- a) On (*name date*) in (*name court*) the defendant [was convicted of] [pled guilty to] [misdemeanor] [felony] assault, that was committed on (*name date*) in violation of the law of the [state of North Carolina] [state of (*name other state*)] [United States].
- b) On (*name date*) in (*name court*) the defendant [was convicted of] [pled guilty to] [misdemeanor] [felony] assault, that was

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committed on (*name date*) in violation of the law of the [state of
North Carolina] [state of (*name other state*)] [United States].

Second, that both of these prior convictions occurred within 15 years
of (*insert date of current offense*), the date of this alleged offense.

NOTE WELL: This offense is activated by a violation of N.C. Gen. Stat. § 14-33 or N.C. Gen. Stat. § 14-34. Here, as an example, N.C. Gen. Stat. § 14-33(c)(2), Assault on a Female, is used as the activating offense. The appropriate offense from N.C. Gen. Stat. §§ 14-33 or 14-34 should be inserted in the elements below. If the activating offense is a violation of N.C. Gen. Stat. § 14-33, then the offense must cause the alleged victim physical injury and an instruction on that element must be given.

Third, that the defendant on (*name date*) was at least 18 years of age.

Fourth, that the defendant was a male.

(And) Fifth, that the defendant did intentionally (that is, without justification or excuse)³ assault the alleged victim, a female person, by (*describe assault*).

((And) Sixth, that the defendant thereby caused physical injury to the alleged victim.)⁴

If you find from the evidence beyond a reasonable doubt that on or about the alleged date the defendant intentionally assaulted the alleged victim, a female person, by (*describe assault*) (and thereby caused physical injury to the alleged victim), that the defendant had two or more prior convictions for (either) [misdemeanor] (or) [felony] assault and that both of these prior convictions occurred no more than 15 years prior to (*insert date of current offense*), the date of this alleged offense, and the defendant was a male person, at least 18 years of age, (nothing else appearing)⁵ it would be

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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.

1 N.C. Gen. Stat. § 14-33.2 refers to this offense as “habitual,” but to avoid possible error, the Pattern Jury Instruction Criminal Subcommittee has not referred to the offense as “habitual” in the body of the instruction. Because the title and header do refer to “habitual” for indexing purposes, the Committee recommends that the header and title be changed to remove the word “habitual” and refer to the charge simply as “felony assault” if the instruction is printed and provided to the jury.

2 If a definition of assault is needed, see N.C.P.I.—Crim. 120.20.

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

4 This element **must** be given where the activating offense is a violation of N.C. Gen. Stat. § 14-33, which requires that the defendant cause the alleged victim physical injury. N.C. Gen. Stat. § 4-34.7(c) defines “physical injury” for purposes of that subsection to include cuts, scrapes, bruises, or other physical injury which does not constitute serious injury. Because serious physical injury is defined as an injury that causes great pain and suffering, it can be assumed that “physical injury” is an injury that causes any pain and suffering. See *State v. Geddie*, 165 N.C. App. 545, 600 S.E.2d 900 (2004).

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

