

208.50A AGGRAVATED ASSAULT ON AN INDIVIDUAL WITH A DISABILITY.
FELONY.

The defendant has been charged with aggravated assault¹ on an individual with a disability.

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 alleged victim by intentionally² (and without justification or excuse)³ (*describe assault*).

Second, that the alleged victim was an individual with a disability. An individual with a disability is a person who has a [physical] (or) [mental] disability, such as [decreased use of arms or legs] [blindness] [deafness] [intellectual disability] (or) [mental illness], or an infirmity which would substantially impair that person's ability to defend [himself] [herself].

Third, that the defendant knew or had reasonable grounds to know that the alleged victim was an individual with a disability.

And Fourth,

- a) [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*), the manner in which it was used, and the size and strength of the defendant as compared to the alleged victim.]⁴

- b) [that the defendant used a means of force likely to inflict serious injury or serious damage to an individual with a

disability. In determining whether (*name force*) is a force likely to inflict serious injury or serious damage to an individual with a disability, you should consider the nature of (*name force*), the manner in which it was used, and the size and strength of the defendant as compared to (*name alleged victim*).]

- c) [that the defendant inflicted serious injury or serious damage upon the alleged victim.]⁵
- d) [that the defendant had the intent to kill the alleged victim.]

NOTE WELL: If self-defense is an issue, use N.C.P.I.—Crim. 308.45.

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant intentionally assaulted the alleged victim, that the alleged victim was an individual with a disability, that the defendant knew or had reasonable grounds to know that the alleged victim was an individual with a disability, and that

- a) [the defendant used a deadly weapon,]
- b) [the defendant used a means of force likely to inflict serious injury or serious damage to an individual with a disability,]
- c) [the defendant inflicted serious injury or serious damage upon the alleged victim,]
- d) [the defendant intended to kill the alleged victim,]

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(nothing else appearing)⁶ 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.⁷

NOTE WELL: If self-defense is an issue, use mandate from N.C.P.I.—Crim. 308.40.⁸

¹ If a definition of assault is needed, see N.C.P.I.—Crim. 120.20.

² If a definition of intent is required, see N.C.P.I.—Crim. 120.10.

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

⁴ 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.

⁵ Serious injury may be defined as such physical injury as causes great pain and suffering. See *S. v. Jones*, 258 N.C. 89 (1962), or *S. v. Ferguson*, 261, N.C. 558 (1964). If there is evidence as to injuries which could not conceivably be considered anything but serious, the trial judge may instruct the jury as follows: "*(Describe injury)* would be a serious injury." *S. v. Davis*, 33 N.C. App. 262 (1977); *S. v. Springs*, 33 N.C. App. 61 (1977).

⁶ The parenthetical phrase should be used only where there is some evidence of justification or excuse, such as self-defense.

⁷ If there is to be instruction on lesser included offenses, the last phrase should be: ". . . you will not return a verdict of guilty of simple assault on a handicapped person."

⁸ Including self-defense in the mandate is required by *S. v. Woodsen*, 31 N.C. App. 400 (1976). *Cf. S. v. Dooley*, 285 N.C. 158 (1974).