

N.C.P.I.-Crim. 208.65
ASSAULT BY A PRISONER WITH A DEADLY WEAPON INFLICTING BODILY
INJURY. FELONY.
GENERAL CRIMINAL VOLUME
MARCH 2002
N.C. Gen. Stat. § 14-258.2

208.65 ASSAULT BY A PRISONER WITH A DEADLY WEAPON INFLICTING
BODILY INJURY. FELONY.

The defendant has been charged with assault with a weapon capable of inflicting serious bodily injuries or death, thereby inflicting bodily injury, while *he* was a prisoner.¹

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 intentionally (and without justification or excuse) (*describe assault*).

Second, that the defendant used a weapon capable of inflicting serious bodily injuries or death. In determining whether (*name object*) was capable of inflicting serious bodily injuries or death, you should consider the nature of (*name object*) and the manner in which it could be used.

Third, that the defendant thereby inflicted bodily injury upon the victim.

And Fourth, at that time the defendant was [In the custody of the Division of Prisons.]²

[Under the custody of a local confinement facility.³ (*Name detention facility*) is a local confinement facility.]

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, while the defendant was in the custody of (*name*

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local confinement facility e.g., Tyrrell County jail), the defendant assaulted the victim with a weapon capable of inflicting serious bodily injuries or death, and that the defendant did inflict bodily injury upon the victim, 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.⁴

NOTE WELL: If self-defense is an issue, use mandate from N.C.P.I.-Crim. 308.45.⁵

1. This instruction varies somewhat from the terminology normally used in "deadly weapon" instructions, because of the language employed in N.C. Gen. Stat. § 14-258.2. In this charge the weapon must be capable of inflicting serious bodily injuries, but the injury thereby inflicted need not be serious.

2. See N.C. Gen. Stat. § 148-4.

3. See N.C. Gen. Stat. § 153A-217(5) for a definition of "local confinement facility."

4. 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 while a prisoner with a weapon capable of inflicting serious bodily injuries or death, thereby inflicting bodily injury.

5. Including self-defense in the mandate is required by *S. v. Dooley*, 285 N.C. 158 (1974).