

208.75 ASSAULT ON A CHILD UNDER THE AGE OF TWELVE YEARS.  
MISDEMEANOR.

The defendant has been charged with assault<sup>1</sup> on a child under the age of twelve years.

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

First, that the defendant intentionally<sup>2</sup> (and without justification or excuse<sup>3</sup>)<sup>4</sup> assaulted the victim by (*describe assault*).

And Second, that the victim had not reached *his* twelfth birthday at the time the assault was committed.

*NOTE WELL: If self-defense is an issue, use N.C.P.I.-Crim. 308.40.*

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant intentionally (*describe assault*) and that at that time the victim had not yet reached *his* twelfth birthday, (nothing else appearing)<sup>5</sup> 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.<sup>6</sup>

*NOTE WELL: If self-defense is an issue, use mandate from N.C.P.I.-Crim. 308.40.<sup>7</sup>*

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

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

3. A school teacher is not guilty of assault for inflicting corporal punishment on a

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pupil for the breaking of a reasonable rule, where the punishment was inflicted in a reasonable manner. *S. v. Stafford*, 113 N.C. 635 (1893). The presumption is that a school teacher has properly exercised his judgment in administering corporal punishment to a pupil. *S. v. Thornton*, 136 N.C. 610 (1904).

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

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

6. If there is to be instruction on lesser included offenses, the last phrase should be: ". . . you will not return a verdict of guilty of assault on a child under the age of twelve."

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