

208.77 ASSAULT INFLICTING SERIOUS BODILY INJURY - UNBORN CHILD.
FELONY.

The defendant has been charged with assault inflicting serious bodily injury on an unborn child.¹

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

First, that the defendant assaulted the mother² of an unborn child³ by intentionally⁴ (and without justification or excuse)⁵ (*describe assault*)⁶. (An assault is an intentional application of force, however slight, directly or indirectly, to the body of another person without that person's consent.)

And Second, that the unborn child was born alive and suffered serious bodily injury as a result of the assault on the mother. "Serious bodily injury"⁷ is defined as bodily injury that creates a substantial risk of death, or that causes serious permanent disfigurement, coma, a permanent or protracted condition that causes extreme pain, or permanent or protracted loss or impairment of the function of any bodily member or organ, or that results in prolonged hospitalization, or causes the birth of the unborn child prior to 37-weeks gestation, if the child weighs 2,500 grams or less at the time of birth.

NOTE WELL: If self-defense is an issue, use N.C.P.I.-Crim. 308.40 or 308.45, as appropriate.

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant intentionally assaulted the mother of an unborn child by (*describe assault*) and that, as a result of the assault on the mother, the unborn child was born alive and suffered serious bodily injury, (nothing else appearing)² 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.⁸

*NOTE WELL: If self-defense is an issue, use mandate from N.C.P.I.-Crim. 308.40 or 308.45, as appropriate.*⁹

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1. See N.C. Gen. Stat. § 14-23.7 for exceptions from prosecution for this offense.
 2. This offense does not require proof that the defendant had knowledge or should have had knowledge that the victim of the underlying offense (the mother) was pregnant.
 3. An unborn child means a member of the species *homo sapiens* at any stage of development, who is carried in the womb.
 4. If a definition of intent is required, see N.C.P.I.-Crim. 120.10. This offense does not require proof that the defendant intended to cause the bodily injury to the unborn child. N.C. Gen. Stat. § 14-23.8.
 5. The parenthetical phrase should be used only where there is some evidence of justification or excuse, such as self-defense.
 6. Because the statute refers to battery on a mother, the term assault as used in this instruction is limited to a battery only. For a fuller definition of an assault and battery, see N.C.P.I.-Crim. 208.41.
 7. The statute uses both the term "serious bodily injury" and the term "seriously bodily harm." This instruction utilizes "serious bodily injury" throughout.
 8. 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 inflicting serious bodily injury on an unborn child." N.C. Gen. Stat. § 14-23.6 provides that battery upon an unborn child is a lesser included offense of this offense.
 9. Including self-defense in the mandate is required by *S. v. Dooley*, 285 N.C. 158 (1974).