

N.C.P.I.-Crim. 208.81A
ASSAULT ON AN OFFICER-ARREST SITUATIONS (ONLY OFFICER'S AND
DEFENDANT'S FORCE IN DISPUTE). MISDEMEANOR.
GENERAL CRIMINAL VOLUME
JUNE 2015
N.C. Gen. Stat. § 14-33(c)(4)

208.81A ASSAULT ON AN OFFICER - ARREST SITUATIONS (ONLY
OFFICER'S AND DEFENDANT'S FORCE IN DISPUTE).

*NOTE WELL: See N.C.P.I. 208.80 for an index to other
factual situations involving assaults on arresting
officers.*

*NOTE WELL: N.C.P.I. 208.81 provides a model
instruction for the offense of assault on a law
enforcement officer in arrest situations. The instruction
incorporates all of the various scenarios presented in
the index set forth in N.C.P.I. 208.80 into one
instruction.*

*An assault on an officer can involve a variety of issues
depending on whether or not the officer is in uniform, acted
with or without a warrant, the lawfulness of the arrest, the
force used by the officer, or the force used by the defendant.*

*Use this instruction when it is undisputed that the officer in
uniform, making an arrest, [had a warrant in the officer's
possession] [the arrest was a lawful arrest without a
warrant] and the issues are:*

- (1) Whether the officer used reasonable or excessive force
to effect the arrest, and*
- (2) If the officer used excessive force, whether the
defendant acted consistently with his right of self-defense.*

The defendant is charged with assault on a law enforcement officer
while the officer was performing or attempting to perform a duty of the
officer's office.

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 (*name officer*) by intentionally¹ and without justification or excuse (*describe assault, e.g., striking*) (*name officer*).

Second, that (*name officer*) was a law enforcement officer and the defendant knew or had reasonable grounds to know that (*name officer*) was a law enforcement officer. A (*state alleged victim's position, e.g., a city police officer*) is a law enforcement officer.²

Third, that the defendant (*describe conduct, e.g., struck*) (*name officer*) while (*name officer*) was making or attempting to make an arrest.

And Fourth, that (*name officer*) [had in the officer's possession a [warrant] [order] for arrest [[naming] [describing]] [the defendant] [name other person being arrested]] [made a lawful arrest without a warrant].

If (*name officer*) [had a warrant in the officer's possession naming or describing [the defendant] [name other person being arrested]]³ [was making a lawful arrest without a warrant] then [the defendant] [(*name arrestee*)] had a duty to submit to the arrest.⁴ If the defendant (*describe conduct, e.g., struck*) the alleged victim (*name officer*) while the alleged victim (*name officer*) was making the arrest, the defendant would be guilty of an assault upon a law enforcement officer while the officer was discharging or attempting to discharge a duty of the officer's office.

A law enforcement officer is justified in using the force the officer reasonably believes necessary to arrest a person the officer reasonably believes has committed a criminal offense.⁵ If the officer uses more force than reasonably appears necessary at the time to effect the arrest, that is excessive force, the defendant has a right to defend [*himself*] [*herself*].⁶ You, the jury, determine the reasonableness of (*name*

officer's) force from the circumstances then appearing to (*name officer*).

The defendant would be justified in using force to defend [*himself*] [*herself*] if when the defendant acted the circumstances would have created in the mind of a person of ordinary firmness a reasonable belief that the defendant's action was necessary or apparently necessary to protect [*himself*] [*herself*] from the officer's excessive force, and if the circumstances did create such a belief in the defendant's mind.

Nevertheless, the defendant cannot have used excessive force. The defendant had the right to use only such force as reasonably appeared necessary to the defendant under the circumstances to protect [*himself*] [*herself*] from the officer's excessive force. In making this determination, you should consider the circumstances as you find them to have existed from the evidence. You should also include in your consideration (the size, age and strength of the defendant as compared to (*name officer*) (the fierceness of the assault, if any, upon the defendant), (the number of officers involved), (whether or not (*name officer*) had a weapon in (*name officer's*) possession), (and the reputation, if any, of (*name officer*) for danger and violence)). You, the jury, determine the reasonableness of the defendant's belief from the circumstances then appearing to the defendant.

NOTE WELL: Give the following paragraph only when the evidence suggests that the defendant used or threatened to use force before the officer attempted to arrest the defendant, or before the officer used any force to effect the arrest:

(Finally, the defendant's actions would be justified only if the defendant was not the aggressor. If the defendant used or threatened to use force against the officer before the officer [attempted to arrest the

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defendant] [used any force to effect the arrest], the defendant would be the aggressor. The defendant's force or threat of force would itself constitute an unjustified assault upon the officer. Additionally, if the defendant's initial use or threat of force provoked the officer to use excessive force, the defendant would still be the aggressor. As the aggressor, the defendant would not be justified in defending [himself] [herself], even against excessive force, unless the defendant first withdrew and gave notice that the defendant would submit to the arrest. If the defendant did not withdraw, the defendant's resistance to the officer's excessive force would constitute a continuing assault. If the defendant did withdraw, and the officer continued to use excessive force, the defendant would be entitled to defend [himself] [herself] against that excessive force.)

If the state proves beyond a reasonable doubt that (*name officer*) used only reasonable force to effect the arrest, the defendant would be guilty of an assault upon a law enforcement officer while the officer was discharging or attempting to discharge a duty of the officer's office. If the state proves beyond a reasonable doubt that the defendant was not reasonable in the defendant's belief that the defendant's action was necessary or apparently necessary to protect [himself] [herself] from the officer's excessive force, or that the defendant used excessive force (or was the aggressor), the defendant would be guilty of assault upon a law enforcement officer while the officer was discharging or attempting to discharge a duty of the officer's office. If the State fails to prove at least one of these elements, the defendant would not be guilty.

MANDATE

If you find from the evidence beyond a reasonable doubt that on or about the alleged date the defendant intentionally (*describe assault,*

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e.g., struck) (*name officer*) and that (*name officer*) was a (*describe officer's position, e.g., a city police officer*) and that the defendant knew or had reasonable grounds to know that (*name officer*) was a (*describe officer's position*), and that (*name officer*) was making or attempting to make an arrest when the defendant (*describe conduct, e.g., struck*) (*name officer*), and that (*name officer*) [had in (*name officer's*) possession a [warrant] [order] for arrest [naming] [describing] (*name defendant or other person being arrested*),⁷] [made a lawful arrest without a warrant] and that the defendant acted without justification or excuse, your duty would be 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.

If the State has satisfied you beyond a reasonable doubt that (*name officer*) used reasonable force to effect the arrest, you would find that the defendant acted without justification or excuse. Even if the State has not satisfied you that the officer used reasonable force, you would find that the defendant acted without justification or excuse if the State has satisfied you beyond a reasonable doubt

(1) that the defendant did not reasonably believe that (*describe assault, e.g., striking*) (*name officer*) was necessary to protect [*himself*] [*herself*] from (*name officer*)'s (*describe force, e.g. hitting him with a nightstick*), or

(2) that the defendant used excessive force (,or

(3) that the defendant was the aggressor).

If you do not so find or have a reasonable doubt that the State has proved any of these things, then the defendant's action would be

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justified by self-defense and it would be your duty to return a verdict of not guilty.

1 If there is an issue as to whether the defendant intended the assault itself, incorporate N.C.P.I.-Crim. 120.10 at this point.

2 The officer was in uniform, which is evidence that the person is a law enforcement officer.

3 See note 2.

4 See, N.C.P.I.-Crim. 208.81.

5 N.C. Gen. Stat. § 15A-401(d)(1) provides: "A law enforcement officer is justified in using force upon another person when and to the extent that he reasonably believes it necessary: (a) to prevent the escape from custody or to effect an arrest of a person who he reasonably believes has committed a criminal offense, unless he knows that the arrest is unauthorized; or (b) to defend himself or a third person from what he reasonably believes to be the use or imminent use of physical force while effecting or attempting to prevent an escape." N.C. Gen. Stat. § 15A-401(d)(2) further provides: "A law enforcement officer is justified in using deadly force upon another person for a purpose specified in subdivision (1) of this subsection only when it is or appears to be reasonably necessary thereby: (a) to defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly force; (b) to effect an arrest or to prevent the escape from custody of a person who he reasonably believes is attempting to escape by means of a deadly weapon, or who by his conduct or any other means indicates that he presents an imminent threat of death or serious physical injury to others unless apprehended without delay; or (c) to prevent the escape of a person from custody imposed upon him as a result of conviction for a felony." Subsection (d) provides that "[n]othing in this subdivision constitutes justification for willful, malicious or criminally negligent conduct by any person which injures or endangers any person or property, nor shall it be construed to excuse or justify the use of unreasonable or excessive force."

6 See, N.C.P.I.-Crim. 208.81.

7 See note 2.