

226.10A CRIME AGAINST NATURE—PERSONS. FELONY.

NOTE WELL: The U.S. Supreme Court's ruling in Lawrence v. Texas, 539 U.S. 558, 123 S. Ct. 2472, 156 L.Ed.2d 508, 73 Crim. L.Rep. 396 (2003) bars the state from prosecuting crime against nature when adults of the same or opposite sex consensually commit one of the sex acts covered in N.C. Gen. Stat. § 14-177 in private.

However, based on statements in the Court's opinion, the ruling does not bar the prosecution of crime against nature when (1) one of the parties is a minor; (2) one of the parties is an adult who had a mental disability or was incapacitated or physically helpless so as to be incapable of properly consenting; (3) one of the parties offers to commit or commits the sex act for money or other valuable consideration; (4) the sex act is not committed in a private residence or other private place; or (5) one of the parties to the sex act is coerced into committing the act. See Farb, 2002-2003 Supreme Court Term: Cases Affecting Criminal Law & Procedure, Institute of Government. See also State v. Whiteley, 172 N.C. App. 772, 616 S.E.2d 576 (2005).

The defendant has been charged with crime against nature, which is an unnatural sex act.

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

First, that the defendant committed an unnatural sex act with a person. An unnatural sex act is (describe act).¹

And Second, that

a. [one of the parties engaged in the sex act was a minor, that is under 18 years of age]

b. [one of the parties engaged in the sex act was an adult who had a mental disability or was incapacitated or physically helpless so as to be incapable of properly consenting]

c. [one of the parties engaged in the sex act offered to commit or committed the sex act for money or other valuable consideration]

d. [the sex act was committed in a public place, or in other words, was not committed in a private residence or other private place]

e. [one of the parties engaged in the sex act was coerced into committing the act].

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant committed an unnatural sex act,² and

a. [one of the parties engaged in the sex act was a minor, that is under 18 years of age]

b. [one of the parties engaged in the sex act was an adult who had a mental disability or was incapacitated or physically helpless so as to be incapable of properly consenting]

c. [one of the parties engaged in the sex act offered to commit or committed the sex act for money or other valuable consideration]

d. [the sex act was committed in a public place, or in other words, was not committed in a private residence or other private place]

e. [one of the parties engaged in the sex act was coerced into committing the act],

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.

¹ The crime against nature has been defined to include all forms of oral and anal sex, as well as unnatural acts with animals. The following definition has also been approved: "An unnatural sexual act would include cunnilingus, which is any touching, however slight, by the lips or tongue of one person to any part of the female sex organ of another; fellatio which is any touching by the lips or tongue of one person to the male sex organ of another and any penetration, however slight, by an object, into the genital opening of a person's body." *State v. Stiller*, 162 N.C. App. 138 (2004).

² In *S. v. Ludlum*, 303 N.C. 666 (1981), the North Carolina Supreme Court held that penetration of the female sex organ is not required to complete the act of cunnilingus under the Sexual Offense Statutes set out in N.C. Gen. Stat. § 14-27.4 *et seq.* See N.C.P.I.—Crim. 207.40. However, the court did specifically adhere to the rule of earlier cases that penetration is required to complete the Crime Against Nature. *S. v. Joyner*, 295 N.C. 55 (1978).