

226.85 TAKING AN INDECENT LIBERTY WITH A CHILD. FELONY.

The defendant has been charged with taking an indecent liberty with a child.

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

First, that the defendant willfully

- a. [took (or attempted to take<sup>1</sup>) an indecent liberty with a child for the purpose of arousing or gratifying sexual desire. An indecent liberty is an [immoral, improper, or indecent [touching] [act]<sup>2</sup> by the defendant upon the child] (or) [inducement by the defendant of an immoral or indecent touching by the child].<sup>3</sup>
- b. [committed (or attempted to commit) a lewd or lascivious act upon a child.]

Second, that the child had not reached his sixteenth birthday at the time in question.

And Third, that the defendant was at least five years older than the child and had reached his sixteenth birthday at that time.

If you find from the evidence beyond a reasonable doubt that on or about the alleged date the defendant willfully [took (or attempted to take)] an indecent liberty with a child for the purpose of arousing or gratifying sexual desire] [committed (or attempted to commit) a lewd or lascivious act upon the child], and that at that time the defendant was at least five years older than the child and had reached his sixteenth birthday, but the child had not reached his sixteenth birthday, 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.

Strong: Crime Against Nature

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1. An appropriate instruction on attempt should be given in a case in which there has been some evidence that the defendant attempted to take an indecent liberty.

2. The N.C. Court of Appeals held that it is not necessary that there be a touching of the child by the defendant in order to constitute an indecent liberty within the meaning of G.S. 14-202.1. *State v. Turman*, 52 N.C. App. 376 (1981) (masturbated in front of the child); *State v. Kistle*, 59 N.C. App. 724 (1982) (defendant took a photograph of a nude child).

3. *S .v. Hartness*, 326 N.C. 561 (1990), held that the trial court's instruction that an indecent liberty is an immoral, improper or indecent touching or act by defendant upon the child or an inducement by defendant of an immoral or indecent touching by the child did not violate defendant's right to a unanimous verdict since the crime of indecent liberties is a single offense which may be proved by evidence of the commission of any one of a number of acts, and the requirement of unanimity is met even if some jurors find that one type of sexual conduct occurred and others find that another transpired.