

239.55 FELONIOUS CHILD ABUSE. FELONY; MISDEMEANOR.

The defendant has been charged with felonious child abuse.

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

First, that the defendant was [the parent of] [a person providing [care to] [supervision of]]¹ the child.

Second, that at that time the child had not yet reached the child's sixteenth birthday.

And Third, that the defendant (without justification or excuse)² [intentionally³ inflicted serious physical injury upon the child] (or) [intentionally assaulted the child which proximately resulted in serious physical injury to the child]. A serious physical injury⁴ is such physical injury as causes great pain and suffering (including serious mental injury⁵).

If you find from the evidence beyond a reasonable doubt that on or about the alleged date the defendant was [the parent of] [a person providing [care for] [supervision of]] the child and that the child had not reached the child's sixteenth birthday, and that the defendant (without justification or excuse) [intentionally inflicted a serious physical injury upon the child] [intentionally assaulted the child which proximately resulted in a serious physical injury to the child], it would be your duty to return a verdict of guilty of felonious child abuse. If you do not so find or have a reasonable doubt as to one or more of these things, you will not return a verdict of guilty of felonious child abuse, but will consider whether the defendant is guilty of misdemeanor child abuse. Misdemeanor child abuse differs from felonious child abuse in that it is not necessary that the defendant intentionally caused the child to suffer serious physical injury, only that the defendant inflicted physical injury to the child other than by accidental means.⁶

If you find from the evidence beyond a reasonable doubt that on or about the alleged date the defendant was [the parent of] [a person providing [care for] [supervision of]] the child, that the child had not reached the child's sixteenth birthday, and that the defendant inflicted physical injury to the child (other than by accidental means), it would be your duty to return a verdict of guilty of misdemeanor child abuse.⁷ 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. See *State v. Carrilo*, 149 N.C. App. 543, 562 S.E.2d 47 (2002) (concluding that man who lived with the child's mother, who shared a bedroom with mother and child, and who cared for the child for short periods of time over a two month period provided supervision to the child under G.S. 14-318.4).

2. This parenthetical phrase should be given only where there is evidence of justification or excuse, such as self-defense (see N.C.P.I.—Crim. 308.45).

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

4. "Serious physical injury" is defined by G.S. 14-318.4(d)(2).

5. Use the parenthetical phrase where there is evidence of serious mental injury.

6. See N.C.P.I.—Crim. 307.11 for an instruction on accident if the defendant raises the issue of accident.

7. *S. v. Young*, 67 N.C. App. 139 (1985).