

N.C.P.I.—CRIM 240.07

FELONIOUS ABANDONMENT AND LESSER INCLUDED OFFENSE OF FAILURE TO SUPPORT BY PARENT. FELONY, MISDEMEANOR
GENERAL CRIMINAL VOLUME
JUNE 2014

N.C. Gen. Stat. § 14-322.1, Felony; 14-322(d), Misdemeanor.

240.07 FELONIOUS ABANDONMENT AND LESSER INCLUDED OFFENSE OF FAILURE TO SUPPORT BY PARENT. FELONY; MISDEMEANOR.

The defendant has been charged with felonious abandonment of the defendant's child.¹

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

First, that the defendant was the parent of (*name child*).

Second, that the defendant abandoned (*name child*) without just cause or provocation. Abandonment means more than mere separation, it means desertion.

Third, that the defendant failed to provide (*name child*) with adequate support. Adequate support means such things as food, clothing, a place to live, and medical attention reasonably required for the preservation of the child's health. What was adequate support depends on the property, if any, the defendant owned, the defendant's earnings (and other income), if any, and the defendant's ability to earn.

Fourth, that both the abandonment and failure to support were willful, that is, intentional and without justification or excuse.

Fifth, that both the abandonment and the failure to support occurred together for a period of at least six months.

And Sixth, the defendant attempted to conceal the defendant's whereabouts from (*name child*) with the intent of escaping the defendant's lawful obligation of support.

¹ "Child" within the meaning of this statute is defined to mean a minor natural or adopted child under the age of 18 years. N.C. Gen. Stat. § 14-322(d). The statute does not apply to children born out of wedlock. *Allen v. Hunnicutt*, 230 N.C. 49 (1949); *S. v. Gardner*, 219 N.C. 331 (1941).

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If you find from the evidence beyond a reasonable doubt that on or about the alleged date the defendant was the parent of (*name child*) and that for at least six months before said date, the defendant had willfully abandoned without just cause or provocation and had willfully failed to provide adequate support for (*name child*), and that the defendant attempted to conceal the defendant's whereabouts from (*name child*) with the intent of escaping the defendant's lawful obligation of support, it would be your duty to return a verdict of guilty of felonious abandonment of the defendant's child. 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 abandonment of the defendant's child,² but will consider whether the defendant is guilty of failure to support the defendant's child.

Failure to support the defendant's child differs from felonious abandonment in that neither the six months time period, the attempt to conceal the defendant's whereabouts, nor the actual act of abandonment as I have defined it are necessary. All that is necessary for failure to support the defendant's child is for the defendant to have willfully failed to provide adequate support for the defendant's child.

If you find from the evidence beyond a reasonable doubt, that on or about the alleged date, the defendant was the parent of (*name child*) and that the defendant had willfully failed to provide adequate support for (*name child*), it would be your duty to return a verdict of guilty of failure to support the defendant's child. 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.

² If lesser included instructions are not to be given, the last phrase should be "It would be your duty to return a verdict of not guilty."