
102.13A NEGLIGENCE OF A MINOR BETWEEN FOURTEEN AND SIXTEEN YEARS OF AGE. (ISSUE OF NON-ADULT STANDARD).

> *NOTE WELL: This instruction should be used only where the defendant is between the ages of fourteen and sixteen, including a child fourteen years and zero days to fifteen years, 364 days, and is contending that* his *conduct should be judged by a non-adult standard.*
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> *NOTE WELL: Motor vehicle instruction N.C.P.I.-Civil 220.10, Operation of Vehicle Without a License- Under Age, states that the minor shall be judged in the same manner as a reasonably careful and prudent person would have done under all the circumstances then existing.*

This issue reads:

"Was the plaintiff (*name plaintiff*) injured or damaged by the negligence of the minor defendant (*name minor defendant*)?"

On this issue the burden of proof is on the plaintiff. This means that the plaintiff must prove, by the greater weight of the evidence, that the minor defendant (*name defendant*) was negligent and that the plaintiff suffered [personal injury] [property damage] [either personal injury or property damage, or both] as a proximate result of the negligence of the minor defendant.

Negligence refers to a party's conduct. In most cases, negligence is a lack of ordinary care. The law imposes a duty upon every person to use ordinary care to protect *himself* and others from injury. A breach of that duty is called negligence, and such a breach occurs when a person fails to use ordinary care to protect *himself* and others from injury. Ordinary care means that degree of care which a reasonable and prudent person would use under the same or similar circumstances.

N.C.P.I.-Motor Vehicle 102.13A
NEGLIGENCE OF A MINOR BETWEEN FOURTEEN AND SIXTEEN YEARS OF AGE. (ISSUE OF NON-ADULT STANDARD).
MOTOR VEHICLE VOLUME
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Negligence is not to be presumed from the mere fact of [personal injury] [property damage] [either personal injury or property damage, or both].

At the time of the [accident] [*state other event giving rise to claim*], (*name defendant*) was (*state age*) years old. The law presumes that a child between fourteen and sixteen years of age possesses the capacity of an adult and is responsible for using the same standard of ordinary care which is expected of an adult.[1] Thus, even though the child is (*state age*), *his* failure to use that degree of care which a reasonably careful and prudent person would use under the same or similar circumstances would be negligence.

In this case, however, the defendant contends, and the plaintiff denies, that *he* should be held to a different standard of care than that which I have just stated. I instruct you that while the law presumes that a child of (*state number*) years possesses the capacity of an adult, this presumption may be rebutted. The burden of rebutting this presumption is upon the minor defendant, (*name defendant*), who must satisfy you, by the greater weight of the evidence, that *he* lacks the ability, capacity or intelligence of an ordinary child *his* age.[2]

If you find, by the greater weight of the evidence, that the defendant lacked the ability, capacity or intelligence of an ordinary child *his* age at the time of the [accident] [*state other evidence giving rise to claim*], then it would be your duty to apply a different standard of care in determining whether the defendant was negligent. The test of such child's negligence is whether the child exercised the same care for the safety of others that a reasonably careful child of the same age, discretion, knowledge and experience ordinarily would have exercised under the same or similar circumstances. In other words, a child of this

age is only required to exercise that degree of care which a reasonably careful child of *his* same age, discretion, knowledge and experience may be expected to possess. The standard of care varies with the child's age, learning, experience and capacity.[3] The failure of such child to exercise that degree of care for the safety of others which a reasonably careful child of *his* same age and with *his* same discretion, knowledge and experience would ordinarily exercise under the same or similar circumstances would be negligence.

On the other hand, if, considering all the evidence, you fail to find that the defendant lacks the ability, capacity or intelligence of an ordinary child *his* age, or you are unable to say, then it would be your duty to apply the ordinary standard of care applicable to adults as I have previously explained to you.

Additionally, a party seeking damages as a result of negligence has the burden of proving not only negligence, but also that such negligence was a proximate cause of the [injury] [damage].

Proximate cause is a real cause- a cause without which the claimed [injury] [damage] would have not occurred, and one which a reasonably careful and prudent person could foresee would probably produce such [injury] [damage] or some similar injurious result.

There may be more than one proximate cause of [an injury] [damage]. Therefore, the party seeking damages need not prove that the other party's negligence was the sole proximate cause of the [injury] [damage]. *He* must prove by the greater weight of the evidence, only that the other party's negligence was a proximate cause.

Thus, on this issue, the burden of proof is on the plaintiff to satisfy

you by the greater weight of the evidence that the minor defendant was negligent, and that such negligence was a proximate cause of the plaintiff's [injury] [damage].

In this case, members of the jury, the plaintiff contends, and the defendant denies, that the minor defendant, (*name minor defendant*), was negligent in one or more of the following ways:

> *(Here read all contentions of negligence supported by the evidence).*

The plaintiff further contends, and the defendant denies, that the negligence of the defendant was a proximate cause of [injury] [damage] to the plaintiff.

Finally, as to this issue, on which the plaintiff has the burden of proof, if you find, by the greater weight of the evidence, that at the time of the [accident] [*state other event giving rise to claim*] the minor defendant (*name minor defendant*) was negligent, and that such negligence was a proximate cause of the plaintiff's [injury] [damage], then it would be your duty to answer this issue "Yes" in favor of the plaintiff.

On the other hand, if, considering all the evidence, you fail to so find, or you are unable to say, then it would be your duty to answer this issue "No" in favor of the defendant.

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1. A child who has reached his fourteenth birthday is "presumed to have sufficient capacity to be sensible of danger and to have power to avoid it." *Welch v. Jenkins*, 271 N.C. 138, 142 155 S.E.2d 763 (1967).

2. *Welch v. Jenkins*, 271 N.C. 138, 155 S.E.2d 763 (1967); *Sadler v. Purser*, 12 N.C. App. 206, 182 S.E.2d 850 (1971).

3. *Boykin v. Atlantic Coast Line Railroad Co.*, 211 N.C. 113, 115 (1937).