

SUMMARY OF NORTH CAROLINA CRIMINAL STATUTES: SEXUAL VIOLENCE CRIMES

The statutes below have been summarized and arranged in general categories to provide a better understanding of how North Carolina's criminal justice system addresses sexual violence between persons. Many more statutory and common law crimes exist than appear on these pages. This information does not provide legal advice. Individual cases will require a review of the case law and statutory provisions in their exact language (see www.ncga.state.nc.us or www.findlaw.com or visit the legal reference section of your public library). For individual cases, the assistance of legal counsel is recommended.

Key:

- "NCGS" refers to North Carolina General Statutes, a series of books containing North Carolina's laws enacted by the legislature (not the courts).
- Case law created by the judges in courts of appeal is also listed in citations in this summary (e.g., State v. Smith, etc.).
- Where "SOR" appears next to the crime, it is a crime requiring registration on the NC Sex Offender and Public Protection Registry. To view offenders currently on this list see <http://sexoffender.ncdoj.gov/>. For detailed information about the program as of January 2011 see <http://ncdoj.gov/Protect-Yourself/Find-Sex-Offenders/SexOffenderRegPrograms.aspx>.
- In North Carolina, there is no statute of limitations (deadline to file charges for a crime) for felonies.¹ There is a two year statute of limitations for misdemeanors, with some exceptions.²

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Legal Definitions

- "Vaginal intercourse" is defined by case law as the slightest penetration of the female sex organ by the male sex organ.³
- "Sexual act" does not include vaginal intercourse, but instead is defined by statute as "cunnilingus, fellatio, anilingus, or anal intercourse," as well as "penetration, however slight, by any object into the genital or anal opening of another person's body."⁴
- "Sexual contact" is defined by statute as touching the sexual organ, anus, breast, groin, or buttocks of another directly or through clothing, or placing semen, urine, or feces upon any part of another person.⁵

¹ See State v. Johnson, 275 N.C. 264, 279 (1969).

² NCNCGS 15-1.

³ See State v. Summers, 92 NC App. 453, 374 SE2d 631 (1988), cert. den., 324 NC 341, 378 SE2d 806 (1989). See also NCGS 14-27.10.

⁴ NCGS 14-27.1(4). Note that anilingus and cunnilingus only requires the slightest contact between the anus or female genitalia, respectively, and the tongue or lips. Neither requires penetration by the tongue to meet the legal definition. State v. Ludlum, 303 NC 666 (1981); State v. White, 101 NC App. 593, 401 (1991). However, anal intercourse does require penetration of the anal opening by the penis. State v. Griffin, 319 NC 429, 355 (1987).

⁵ NCGS 14-27.1(5) and (6).

Crimes involving Attempt, Aiding and Abetting, Solicitation and Conspiracy: Attempted rape and sexual offenses, and other attempt crimes may be punished to the same extent as if the crime had been committed. Also note that an attempt to commit, or a conspiracy or solicitation to commit, an offense against a minor or a sexually violent offense is a reportable conviction for placement on the Sexual Offender and Public Protection Registry.⁶ Some convictions for aiding and abetting these crimes may be reportable convictions.⁷

I. FORCIBLE SEX CRIMES⁸

First Degree Rape [NCGS 14-27.2(2), Class B1 felony] (SOR)⁹

Vaginal intercourse by force and without consent, and proof of at least one of the following: (a) use or display of a dangerous or deadly weapon or an article which the other person reasonably believes to be a dangerous or deadly weapon, (b) infliction of serious personal injury on the victim or another; or (c) commission of the rape aided and abetted by others.

Second Degree Rape [NCGS 14-27.3(a), Class C felony] (SOR)¹⁰

Vaginal intercourse by force and without consent [note: no injury required].

First Degree Sexual Offense [NCGS 14-27.4(a)(2), Class B1 felony] (SOR)

Sexual acts (not vaginal intercourse) by force and without consent and proof of at least one of the following: (a) use or display of a weapon or an article which the other person reasonably believes to be a dangerous or deadly weapon, (b) infliction of serious injury, or (c) commission of the sexual offense aided or abetted by others.

Second Degree Sexual Offense [NCGS 14-27.5, Class C felony] (SOR)

Sexual acts (not vaginal intercourse) by force and without consent [note: no injury required].

Sexual Battery [NCGS 14-27.5(A)(a)(1), Class A1 misdemeanor] (i.e., “forced fondling”) (SOR)

Sexual contact (a) by force and without consent [note: no injury required].

Sexual Servitude (adult victims) [NCGS 14-43.13, Class F felony] (SOR)

Knowingly subjects or maintains a person age 18 or older in sexual servitude.¹¹

⁶ NCGS 14-208.6(4)(a).

⁷ NCGS 14-208.6.

⁸ Defenses: Marriage is not a defense to forcible sexual acts (NCGS 14-27.8), nor is intoxication (see State v. Boone, 307 NC 198, 297 SE2d 585 (1982)). Evidence of physical resistance is not necessary to prove lack of consent in a rape case; if the evidence shows victim is too afraid to resist, then this is sufficient to show lack of consent.. State v. Hall, 293 NC 559 (1977). By “force” does not require physical force; fear, fright, or duress may take the place of force. State v. Overman, 269 NC 453 (1967).

⁹ A person convicted of first degree rape has no rights to custody of or rights of inheritance from any child born as a result of the rape. NCGS 14-27.2(c).

¹⁰ A person convicted of second degree rape has no rights to custody of or rights of inheritance from any child born as a result of the rape. NCGS 14-27.3(c).

¹¹ Sexual servitude includes conduct induced or obtained by coercion or deception, whether or not something of value is given or promised in return (NCGS 14-43.10(5)). The conduct itself is defined to include: masturbation, vaginal, anal, or oral intercourse, sexual touching, physical restraint or torture, excretory functions, sexual contact with objects, or lascivious exhibition of the genitals or pubic area (NCGS 14-190.13(5)).

II. STATUTORY RAPE CRIMES

Note on statutory rape and related sex crimes: Proof of force is generally not required.¹² Consent is no defense, nor is mistake of age a defense in NC. However, marriage is generally a defense. The “age of consent” to have sexual intercourse in North Carolina is 16. The age of marriage in North Carolina is 18, although parental or judicial consent to marry may be given for minors ages 14-17.¹³

Rape of a Child by an Adult [NCGS 14-27.2A, Class B1 felony with additional punitive restrictions] (SOR)¹⁴

Vaginal intercourse with victim under age 13 by defendant at least age 18.

First Degree Rape [NCGS 14-27.2(1), Class B1 felony] (SOR)¹⁵

Vaginal intercourse with victim under age 13 by defendant at least age 12 and 4 years older than the victim.

Sexual Offense of a Child by an Adult [NCGS 14-27.4A, Class B1 felony with additional punitive restrictions] (SOR)

Sexual acts (not vaginal intercourse) with victim under age 13 by defendant at least age 18.

First Degree Sexual Offense [NCGS 14-27.4(a)(1), Class B1 felony] (SOR)

Sexual acts (not vaginal intercourse) with victim under age 13 by defendant at least age 12 and 4 years older.

Second Degree Rape [NCGS 14-27.3(a), Class C felony] (SOR)¹⁶

Vaginal intercourse with a victim whom the perpetrator knows or should reasonably know is mentally disabled, mentally incapacitated or physically helpless.

Second Degree Sexual Offense [NCGS 14-27.5, Class C felony] (SOR)

Sexual acts (not vaginal intercourse) with a victim who the perpetrator knows or should reasonably know is mentally disabled, mentally incapacitated or physically helpless.¹⁷

Sexual Battery [NCGS 14-27.5(A)(a)(1), Class A1 misdemeanor] (i.e., “forced fondling”) (SOR)

Sexual contact with a victim whom the perpetrator knows is mentally disabled, mentally incapacitated, or physically helpless.¹⁸

Sexual Servitude (minor victims) [NCGS 14-43.13, Class C felony] (SOR)

Knowingly subjects or maintains a minor under age 18 in sexual servitude.¹⁹

¹² Although today the statutory language makes clear that sex crimes against young minors do not include the element of force, early case law interpretations instead held that force is conclusively presumed when young minors are involved in sexual acts. See, e.g., *State v. Dancy*, 83 NC 608 (1880).

¹³ The minimum age of marriage in North Carolina was raised from 13 to 14 in 2001 [SL 2001-62].

¹⁴ A person convicted of this offense has no rights to custody of or rights of inheritance from any child born as a result of the rape.

¹⁵ A person convicted of first degree rape has no rights to custody of or rights of inheritance from any child born as a result of the rape. NCGS 14-27.2(c).

¹⁶ A person convicted of second degree rape has no rights to custody of or rights of inheritance from any child born as a result of the rape. NCGS 14-27.3(c).

¹⁷ No force required.

¹⁸ No force required.

Statutory Rape by 13, 14 or 15 year old [NCGS 14-27.7A]²⁰

Vaginal intercourse or sexual act with 13, 14 or 15 year old by defendant 5 years older than the victim (Class C felony); or with 13, 14 or 15 year old by defendant at least 6 years older than the victim (Class B1 felony) (SOR).

Child Abuse [NCGS 14-318.4(a2), Class E felony]

Commission by a parent or legal guardian of any sexual act or allowing the commission of any sexual act upon a child less than 16 years of age.

Indecent Liberties with a Child (adult perpetrator) [NCGS 14-202.1, Class F felony] (SOR)

Willfully taking any immoral, improper, or indecent liberties with a child under age 16, by a defendant at least 16 years of age and at least 5 years older than the victim, for the purpose of arousing or gratifying sexual desire; or willfully committing any lewd or lascivious act on any part of the body of any child under age 16.²¹

Indecent Liberties with a Child (juvenile perpetrator) [NCGS 14-202.2, Class 1 misdemeanor]

Willfully taking any immoral, improper, or indecent liberties with a child 3 years younger than the defendant, by a defendant under age 16, for the purpose of arousing or gratifying sexual desire; or willfully committing any lewd or lascivious act on any part of the body of any child under age 16, but a defendant under age 16, for the purpose of arousing or gratifying sexual desire.

Indecent Liberties with a Student [NCGS 14-202.4, Class I felony or A1 misdemeanor] (SOR)

Indecent and lewd acts by a teacher, administrator, coach, school safety officer or other school personnel with a student at the same school, when the perpetrator is 4 or more years older than the victim (Class I felony) or less than 4 years older (Class A1 misdemeanor).

Intercourse and Sexual Offense with Certain Victims (parents) [NCGS 14-27.7(a), Class E felony] (SOR)

Vaginal intercourse or sexual act by caretaker with a minor residing in the home, or by an agent of an institution or person having custody of a victim of any age.

Intercourse and Sexual Offense with Certain Victims (schools) [NCGS 14-27.7(b)] (SOR)

Vaginal intercourse or sexual act by a teacher, administrator, coach, school safety officer or other school personnel with a student at the same school, when the perpetrator is 4 or more years older than the victim (Class G felony) or less than 4 years older (Class A1 misdemeanor).

¹⁹ Sexual servitude includes conduct which is induced or obtained from a person under age 18, whether or not something of value is given or promised in return (NCGS 14-43.10(5)). The conduct itself is defined to include: masturbation, vaginal, anal, or oral intercourse, sexual touching, physical restraint or torture, excretory functions, sexual contact with objects, or lascivious exhibition of the genitals or pubic area (NCGS 14-190.13(5)).

²⁰ Marriage is a complete defense according to the statute. Mistake of age is not a defense. *State v. Anthony*, 133 NC App. 573 (1999), cert. granted, 351 NC 109 (1999), aff'd, 528 SE2d 321 (2000).

²¹ Although the language of this statute is not well defined, case law interpretations have defined indecent liberties broadly to include such acts as defendant exposing his nude body to a child through a window (*State v. Nesbitt*, 133 NC App 420 (1999)); taking photographs of children in sexually suggestive poses (*State v. Kistle*, 59 NC App. 724 (1982)); holding his penis in front of a child (*State v. Hicks*, 79 NC App. 599 (1986); "french kissing" children (*State v. Banks*, 322 NC 753 (1988); and engaging in intercourse in front of a child (*State v. Ainsworth*, 109 NC App. 136 (1993)).

Crime Against Nature [NCGS 14-177, Class I felony]

Oral sex, anal sex, sex with objects by unmarried persons, and bestiality.²²

Incest (SOR)²³

“Carnal” intercourse with grandparent, grandchild, parent, aunt, uncle, nephew, niece, or sibling (half or whole blood) [NCGS 14-178(b)(3), Class F felony]; or with child under age 13 by offender 4 or more years older, or with child aged 13, 14 or 15 by offender 6 or more years older [NCGS 14-178(b)(1), Class B1 felony]; or with child aged 13, 14 or 15 by offender 5 years older [NCGS 14-178(b)(2), Class C felony].

Bigamy [NCGS 14-183, Class I felony]

Any person being married who marries another.

Indecent Exposure²⁴ [NCGS 14-190.9]

Willfully exposing one’s private parts in a public place in the presence of another or procures or permits another to perform such acts [Class 2 misdemeanor]; by a person 18 or older in the presence of a person under 16 years of age for the purpose of arousing or gratifying sexual desire [Class H felony (SOR)].

Computer Solicitation of a Child [NCGS 14-202.3]²⁵ (SOR)

Computer (electronic device) solicitation of a child under age 16 or a person the perpetrator believes to be a child under age 16 for purposes of committing an unlawful sexual act by a perpetrator at least age 16 and at least 5 years older than the victim [Class H felony]; and if the defendant or any other person for whom the defendant was arranging the meeting actually appears at the meeting location [Class G felony].

Employing or Permitting a Minor to Assist in an Obscenity Offense [NCGS 14-190.6, Class I felony] (SOR)

Intentionally hiring, employing or permitting a minor under age 16 to assist in or commit an obscenity offense under Article 26.²⁶

²² The sexual acts comprising “crimes against nature” and the limitation to unmarried persons are defined by case law, and date back to early common law during the time of King Henry VIII. See *State v. Poe*, 40 N.C. App. 385, 252 S.E.2d 843, cert. den. 298 N.C. 303, 259 S.E.2d 304 (1979), appeal dismissed 445 U.S. 947, 100 S.Ct. 1593, 63 L. Ed. 2d 782 (1980). Although the statute is still valid, following the 2003 decision by the US Supreme Court in *Lawrence v. Texas*, certain acts that previously were included as crimes against nature are no longer illegal or criminal, including consenting sexual conduct between persons of the same sex or different sexes in a private place (excluding prostitution and sexual conduct involving minors or public places). See *State v. Pope*, 168 NC App 592 (2005); and *State v. Whiteley*, 172 NC App. 772 (2005).

²³ Children under age 16 are not liable for incest if the offender is 4 or more years older at the time of the offense [NCGS 14-178(c)]. This crime was significantly expanded in 2002 and made gender neutral [SL 2002-119]. Incest between an “uncle and niece” or “aunt and nephew” was formerly a Class 1 misdemeanor [formerly NCGS 14-179].

²⁴ It is a defense if the conduct is “incidental to a permitted activity,” or if a mother is breastfeeding a child in public [NCGS 14-190.9(a) and (b)]. This section was revised to become gender neutral and add protections for children in 2005 [SL 2005-226].

²⁵ Consent is not a defense [NCGS 14-202.3].

²⁶ Article 26 refers to “Offenses Against Public Morality and Decency” (see G.S. 14-177 through 14-202.4). Obscenity is generally defined as sexual acts conducted in a patently offensive way (see G.S. 14-190.1).

First Degree Sexual Exploitation of a Minor²⁷ [NCGS 14-190.16, Class C felony] (SOR)

Knowingly uses, coerces or facilitates a minor to engage in sexual activity for a live performance or visual representation, or records or duplicates such representation for sale.

Second Degree Sexual Exploitation of a Minor [NCGS 14-190.17, Class E felony] (SOR)

Knowingly distribute, record or duplicate material showing a minor engaging in sexual activity [no sale required].

Third Degree Sexual Exploitation of a Minor [NCGS 14-190.17A, Class H felony] (SOR)

Knowingly possessing material showing a minor engaging in sexual activity.

Prostitution (Adult) [NCGS 14-204 and GS 14-204.1, Class 1 misdemeanor]²⁸

To engage in, procure, or facilitate the offering or receiving of the body for sexual intercourse for hire, or to loiter in a public place for the purpose of prostitution.

Promoting Prostitution of a Minor²⁹ [NCGS 14-190.18, Class C felony] (SOR)

Knowingly entice, force, facilitate, support or supervise a minor to engage in prostitution.

Participating in the Prostitution of a Minor [NCGS 14-190.19, Class F felony] (SOR)

An adult who solicits or pays for a minor to participate in prostitution.

Contributing to the Delinquency of a Minor [NCGS 14-316.1, Class 1 misdemeanor]

Any person 16 years of age or older who knowingly or willingly causes, aids or encourages a minor to become delinquent, undisciplined, abused or neglected.³⁰

²⁷ Mistake of age is not a defense to sexual exploitation of a minor crimes according to the respective statute(s).

²⁸ This section defines prostitution as an act of vaginal intercourse and nothing else. See *State v. Richardson* (1983) 307 N.C. 692, 300 S.E.2d 379.

²⁹ Mistake of age is not a defense to prostitution of a minor crimes according to the respective statute(s).

³⁰ Delinquency, abuse, and neglect are defined by NCGS 7B-101 and 7B-1501.