

34.1 Instructions to the Jury about Reaching a Verdict

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G.S. 15A-1235 sets out mandatory and discretionary instructions to give to the jury on how to reach a verdict. The mandatory instruction is set out in G.S. 15A-1235(a), and it states: “Before the jury retires for deliberation, the judge must give an instruction which informs the jury that in order to return a verdict, all 12 jurors must agree to a verdict of guilty or not guilty.”

G.S. 15A-1235(b) provides that before the jury retires to deliberate, the judge also may give an instruction that:

- jurors have a duty to consult with one another and to deliberate with a view to reaching an agreement, if it can be done without violence to individual judgment;
- each juror must decide the case for himself, but only after an impartial consideration of the evidence with his fellow jurors;
- in the course of deliberations, a juror should not hesitate to reexamine his own views and change his opinion if convinced it is erroneous; and
- no juror should surrender his or her honest conviction as to the weight or effect of the evidence solely because of the opinion of his fellow jurors or for the mere purpose of returning a verdict.

A trial judge is not required, even on request, to give the instructions set out in G.S. 15A-1235(b), but he or she may give them in his or her discretion. *See State v. Beasley*, 118 N.C. App. 508 (1995). However, if the judge decides to give the jury any of the instructions authorized by that subsection, whether given before the jury initially retires for deliberation or after the trial judge concludes that the jury is deadlocked, he or she must give all of them. *State v. Williams*, 315 N.C. 310 (1986). The judge does not have to read the statute verbatim as long as he or she gives the substance of the four instructions. *State v. Fernandez*, 346 N.C. 1 (1997).

Practice note: If the trial judge gives some, but not all, of the instructions found in G.S. 15A-1235(b), you must specifically object to preserve the issue for appeal. Otherwise, the appellate court will review the omission using the rigorous “plain error” standard of review.

For a further discussion of instructions to the jury, see *supra* Chapter 32, Instructions to the Jury.