

206.72 AGGRAVATED DEATH BY DISTRIBUTION OF CERTAIN CONTROLLED  
SUBSTANCES—LESSER INCLUDED OFFENSE. FELONY.

*NOTE WELL:* N.C. Gen. Stat. § 14-18.4(f) provides that nothing in this section shall be construed to restrict or interfere with the rights and immunities provided under the Samaritan Protection in N.C. Gen. Stat. 90-96.2. N.C. Gen. Stat. § 14-18.4(g) provides that this section does not apply to lawful distribution pursuant to a valid prescription.

The defendant has been charged with aggravated death by distribution of certain controlled substances.

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

First, that the defendant unlawfully sold<sup>1</sup> (a) controlled substance(s),<sup>2</sup> (name certain<sup>3</sup> controlled substance(s)).

Second, that the ingestion of (that) (these) controlled substance(s) caused the death of the user.

Third, that the defendant's action of selling the controlled substance(s) was the proximate cause of the user's death. A proximate cause is a real cause, a cause without which the user's death would not have occurred, and one that a reasonably careful and prudent person could foresee would probably produce such [injury] [damage] or some similar injurious result. (The defendant's act need not have been the only cause, nor the nearest cause. It is sufficient if it occurred in combination with some other cause, acting at the same time, that caused the death of the user).

Fourth, that the defendant did not act with malice, that is, it is not necessary to find that the defendant acted with hatred, ill will, or spite. Even

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in the absence of the condition of mind which prompts a person to intentionally inflict death, the defendant may still be found guilty.

Fifth, on (name date) the defendant in (name court) [was convicted of] [pled guilty to] the felony of (name felony)<sup>4</sup> that was committed on (name date) in violation of the law of the [State of North Carolina] [State of (name other state)] [United States].

And Sixth, that the prior conviction occurred within seven years of this offense, excluding any periods of imprisonment.<sup>5</sup>

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant unlawfully sold (a) certain controlled substance(s), that the ingestion of [that] [these] controlled substance(s) caused the death of the user, that the defendant's action of unlawfully selling the controlled substance was the proximate cause of the user's death, even though the defendant did not act with malice, and on (name date) the defendant in (name court) [was convicted of] [pled guilty to] the felony of (name felony) in violation of the law of the [State of North Carolina] [State of (name other state)] [United States] and that conviction occurred within seven years of this offense, excluding any periods of imprisonment, it would be your duty to return a verdict of guilty of aggravated death by distribution of certain (a) controlled substance(s). 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 aggravated death by distribution of certain controlled substance(s), but would consider whether the defendant is guilty of death by distribution of certain controlled substances. Death by distribution of certain controlled substances

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differs from the aggravated offense in that it does not require proof of a prior conviction.

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant sold (a) certain controlled substance(s), that the ingestion of (that) (these) controlled substance(s) caused the death of the user, that the defendant's action of unlawfully selling the controlled substance(s) was the proximate cause of the user's death, even though the defendant did not act with malice, it would be your duty to return a verdict of guilty of death by distribution of (a) certain controlled substance(s). 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.

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1. For purposes of the Controlled Substance Act, a sale is a "transfer of property for a specified price payable in money" or a "transfer[]" for other forms of consideration." State v. Carr, 145 N.C.App 335, 344-45 549 S.E.2d 897, 903 (2001).

2. If the sale of more than one controlled substance is alleged, then edit this element accordingly.

3. "Certain Controlled Substances" is defined under N.C. Gen. Stat. § 14-18.4 as any opium, opiate, or opioid; any synthetic or natural salt, compound, derivative, or preparation of opium, opiate, or opioid; cocaine or any other substance described in G.S. 90-90(1)(d); methamphetamine; a depressant described in G.S. 90-92(a)(1); or a mixture of one or more of these substances.

4. N.C. Gen. Stat. § 14-18.4 provides the person has a previous conviction under this section, G.S. 90-95(a)(1), 90-95.1, 90-95.4, 90-95.6, or trafficking in violation of G.S. 90-95(h), or a prior conviction in any federal or state court in the United States that is substantially similar to an offense listed, within seven years of the date of the offense. The pattern jury committee believes it is for the trial judge to determine whether an offense UNDER THE LAWS OF ANOTHER STATE is substantially similar to an offense that is a felony in North Carolina.

5. N.C. Gen. Stat. § 14-18.4 provides that any period of time during which the person was incarcerated in a local, state, or federal detention center, jail or prison shall be excluded in calculating the seven-year period.

