

N.C.P.I.—Crim 233.90  
POSSESSION OF TOBACCO PRODUCT (INCLUDING VAPOR PRODUCTS) BY  
AN INMATE. MISDEMEANOR.  
CRIMINAL VOLUME  
REPLACEMENT JUNE 2015  
N.C. Gen. Stat. § 14-258.1(e)  
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233.90 POSSESSION OF TOBACCO PRODUCT (INCLUDING VAPOR  
PRODUCTS) BY AN INMATE. MISDEMEANOR.

The defendant has been charged with possession of a tobacco product by an inmate [of the Division of Adult Correction] [in the custody of a local confinement facility]. (Tobacco products include vapor products.)<sup>1</sup>

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

First, that the defendant was an inmate [of the Division of Adult Correction] [in the custody of a local confinement facility]. (*Name facility*) is [within the Division of Adult Correction] [a local confinement facility].

And Second, that while the defendant was an inmate of (*name facility*), the defendant possessed a tobacco product.<sup>2</sup> A person possesses a tobacco product when the person is aware of its presence, and has both the power and intent to control the disposition or use of that substance.

*NOTE WELL: If constructive possession is an issue, or if an amplified definition of actual possession is needed, the trial judge should refer to N.C.P.I.-Crim. 104.41 for further instructions.*

If you find from the evidence beyond a reasonable doubt that on or about the alleged date the defendant was an inmate at (*name facility*) and that the defendant possessed a tobacco product, it would be your duty to return a verdict of guilty. 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 N.C. Gen. Stat. § 148-23.1 defines tobacco product as cigars, cigarettes, snuff, loose tobacco, or similar goods made with any part of the tobacco plant that are prepared or used for smoking, chewing, dipping, or other personal use. The term also includes vapor products. Vapor products are non-lighted, non-combustible products that employ a mechanical heating element, battery or electronic circuit regardless of shape or size and that can be used to heat a liquid nicotine solution contained in a vapor cartridge. The term includes electronic cigarettes, electronic cigars, electronic cigarillos, and electronic pipes. The term does not include any product regulated by the United States Food and Drug Administration under Chapter V of the federal Food, Drug, and Cosmetic Act.

2 N.C. Gen. Stat. § 14-258.1(c) allows tobacco products for authorized religious uses.