

N.C.P.I.—CRIM 260.10
POSSESSION OF A CONTROLLED SUBSTANCE. FELONY, MISDEMEANOR.
GENERAL CRIMINAL VOLUME
JUNE 2014
N.C. Gen. Stat. § 90-95(a)(3)(d)

260.10 POSSESSION OF A CONTROLLED SUBSTANCE. N.C. Gen. Stat. § 90-95(a)(3)(d).¹ FELONY, MISDEMEANOR.

The defendant has been charged with possessing (*name substance*), a controlled substance.

For you to find the defendant guilty of this offense, the State must prove beyond a reasonable doubt that the defendant knowingly possessed (*name controlled substance*).² (*Name substance*) is a controlled substance.

A person possesses (a controlled substance) when the person is aware of its presence, and has (either by [*himself*] [*herself*] or together with others) both the power and intent to control the disposition or use of that substance.

NOTE WELL: If constructive possession of the controlled substance 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 knowingly possessed a controlled substance, it would be your duty to return a verdict of guilty. If you do not so find or have a reasonable doubt, it would be your duty to return a verdict of not guilty.

NOTE WELL: N.C. Gen. Stat. § 90-101(c) provides that a person in one of several categories, most notably a law enforcement officer acting within the course and scope of official duties, or an "agent" of a law enforcement agency, may lawfully

¹ N.C. Gen. Stat. § 90-95 sets out alternative punishments according to classification and/or amount of the controlled substance.

² If the defendant contends that ~~he~~ the defendant did not know the true identity of what the defendant possessed, add this language to the first sentence: "and the defendant knew that what the defendant possessed was (*name substance*). *S. v. Boone*, 310 N.C. 284, 291 (1984).

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possess a controlled substance. N.C. Gen. Stat. § 90-113.1 provides that the burden of proof of any such exemption shall be upon the persons claiming its benefits.³ If there is evidence that the defendant is a person exempt under N.C. Gen. Stat. § 90-101(c)⁴, instruct as follows:

If the defendant was [a law enforcement officer] [acting as (or reasonably believed that the defendant was acting as) an agent of [a law enforcement agency] [an agency charged with enforcing the controlled substances act]] and if, in possessing the (*name controlled substance*) the defendant was acting (or reasonably believed that the defendant was acting) within the course and scope of official duties, the defendant's possession was lawful and the defendant is not guilty. [A (*name defendant's claimed status, e.g., member of a vice squad, paid undercover agent*) is [a law enforcement officer] [an agent (*name agency, e.g., the State Bureau of Investigation*) is an agency charged with enforcement of the controlled substances act.]]⁵

³ This instruction assumes that the phrase "burden of proof" in N.C. Gen. Stat. § 90-113.1 means burden of persuasion and not just burden of production, although cases construing identical language of the Uniform Controlled Substances Act in other jurisdictions are in conflict on this point. It further assumes that N.C. Gen. Stat. § 90-113.1 may constitutionally place on the defendant the burden of persuasion with respect to statutory exemptions. *See, Patterson v. New York*, 432 U.S. 197 (1977).

⁴ Prior to searching a person, a person's premises, or a person's vehicle, an officer may ask the person whether the person is in possession of a hypodermic needle or other sharp object that may cut or puncture the officer or whether such a hypodermic needle or other sharp object is on the premises or in the vehicle to be searched. If there is a hypodermic needle or other sharp object on the person, on the person's premises, or in the person's vehicle and the person alerts the officer of that fact prior to the search, the person shall not be charged with or prosecuted for possession of drug paraphernalia for the needle or sharp object. The exemption under this subsection does not apply to any other drug paraphernalia that may be present and found during the search. For purposes of this subsection, the term "officer" includes "criminal justice officers" as defined in N.C. Gen. Stat. § 17C-2(3) and "justice officer" as defined in N.C. Gen. Stat. § 17E-2(3).

⁵ The two bracketed options deal with the exemption provided for in N.C. Gen. Stat. § 90-101(c)(5). Other parts of this section provide similar exemptions for: (1) An agent, or an employee thereof, of any registered manufacturer, distributor, or dispenser of any controlled substance if such agent is acting in the usual course of his business or employment; (2) a common or contract carrier, or public warehouseman, or an employee

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thereof, whose possession of any controlled substance is in the usual course of his business or employment; (3) an ultimate user or a person in possession of any controlled substance pursuant to a lawful order of a practitioner; and (4) a practitioner licensed in North Carolina by a relevant licensing board. In a case involving any of those exemptions, this instruction should be adapted accordingly.

