

N.C.P.I.—CRIM 260.11  
AGGRAVATED POSSESSION OF A CONTROLLED SUBSTANCE-INCLUDING  
LESSER OFFENSES.  
GENERAL CRIMINAL VOLUME  
JUNE 2014  
N.C. Gen. Stat. § 90-95  
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260.11 AGGRAVATED POSSESSION OF A CONTROLLED SUBSTANCE-  
INCLUDING LESSER OFFENSES. N.C. Gen. Stat. § 90-95.<sup>1</sup>

The defendant has been charged with possessing (*name substance*), a controlled substance (*describe aggravating condition; see N.C.P.I.-Crim. 260.45*).

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

First, that the defendant knowingly possessed (*name substance*).<sup>2</sup> (*Name substance*) is a controlled substance. A person possesses (*name 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.<sup>3</sup>

*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.*

And Second, (*instruct as to aggravating condition; see N.C.P.I.-Crim.*

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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 the defendant did not know the true identity of what the defendant possessed, add this language: "and the defendant knew that what the defendant possessed was

(*name substance*). *State v. Boone*, 310 N.C. 284 (1984).

3 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).

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260.45).

If you find from the evidence beyond a reasonable doubt that on or about the alleged date the defendant knowingly possessed a controlled substance, and that (*describe aggravating condition*), it would be your duty to return a verdict of guilty of possession of (*name substance, describe aggravating condition*). If you do not so find or if you have a reasonable doubt as to one or both of these things, you will not return a verdict of guilty of possession of (*name substance, describe aggravating condition*),<sup>4</sup> but will consider whether the defendant is guilty of possession of (*name substance*).

Possession of (*name substance*), does not require proof that (*describe aggravating condition*).

If you find from the evidence beyond a reasonable doubt that on or about the alleged date the defendant knowingly possessed (*name substance*), it would be your duty to return a verdict of guilty of possession of (*name substance*). If you do not so find or if you have a reasonable doubt, it would be your duty to return a verdict of not guilty.<sup>5</sup>

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4 If all the evidence is that the defendant is guilty of the greater offense, if the defendant is guilty at all, the judge should conclude, ". . . it would be your duty to return a verdict of not guilty."

5 Where the defendant claims that his conduct was excepted from the provisions of N.C. Gen. Stat. § 90-95, the exception should be set forth and the jury should be instructed that the defendant has the burden of proving that his conduct was authorized. N.C. Gen. Stat. § 90-113.1. See *also* N.C.P.I.-Crim. 260.10.