

N.C.P.I.—CRIM 260.15

POSSESSION OF A CONTROLLED SUBSTANCE WITH INTENT TO  
[MANUFACTURE] [SELL] [DELIVER] – LESSER INCLUDED OFFENSE. FELONY,  
MISDEMEANOR.

GENERAL CRIMINAL VOLUME

JUNE 2014

N.C. Gen. Stat. § 90-95(a)(1), (3), (b), (d)

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260.15 POSSESSION OF A CONTROLLED SUBSTANCE WITH INTENT TO  
[MANUFACTURE] [SELL] [DELIVER] - LESSER INCLUDED OFFENSE. N.C.  
Gen. Stat. § 90-95(a)(1),(3),(b),(d).<sup>1</sup> FELONY; MISDEMEANOR.

The defendant has been charged with possessing (*name substance*)  
with the intent to [manufacture] [sell] [deliver] it.

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 alone  
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.*

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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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And Second, that the defendant intended to [manufacture]<sup>4</sup> [sell] [deliver]<sup>5</sup> the (*name substance*). (Intent is seldom, if ever, provable by direct evidence. It must ordinarily be proved by circumstances from which it may be inferred).

If you find from the evidence beyond a reasonable doubt that on or about the alleged date the defendant knowingly possessed (*name substance*), and intended to [manufacture] [sell] [deliver] it, it would be your duty to return a verdict of guilty of possession of (*name substance*) with the intent to [manufacture] [sell] [deliver]. If you do not so find or if you have a reasonable doubt as to one or both of these things, you would not return a verdict of guilty of possessing (*name substance*) with the intent to [manufacture] [sell] [deliver] it, but would consider whether the defendant is guilty of possessing (*name substance*). Possessing (*name substance*) does not require proof that the defendant intended to [manufacture] [sell] [deliver] it.

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 possessing (*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>6</sup>

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<sup>4</sup> "Manufacture" is defined in N.C. Gen. Stat. § 90-87(15). See N.C.P.I.-Crim. 260.19.

<sup>5</sup> "Deliver" is defined in N.C. Gen. Stat. § 90-87(7) (see N.C.P.I.-Crim. 260.21) but the transfer of less than 5 grams of marijuana for no remuneration does not constitute delivery. See N.C. Gen. Stat. § 90-95(b)(2). "The transfer by sale or delivery of a controlled substance is one statutory offense." *S. v. Moore*, 327 N.C. 378 (1990).

<sup>6</sup> 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.

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