

N.C.P.I.—CRIM. 260.22B SALE OR DELIVERY OF A CONTROLLED SUBSTANCE ON OR WITHIN 1,000 FEET OF A PUBLIC PARK. G.S. 90-95(e)(10). FELONY.

NOTE WELL: This charge may be used for the manufacture of a controlled substance and for the possession with intent to sell, manufacture or deliver a controlled substance.

The defendant has been charged with [selling] [delivering] (*name substance*), a controlled substance, [on property that is a public park¹] [within 1,000 feet of the boundary of property that is a public park].

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

First, that the defendant knowingly [sold] [delivered]² (*name substance*) to (*name buyer or distributee*)³. (*Describe conduct*) would be [sale] [delivery] of a controlled substance⁴.)

Second, that the defendant was [on property that is a public park] [within 1,000 feet of the boundary of property of a public park].

And Third, that at the time of [sale] [delivery], the defendant was 21 years of age or older.

If you find from the evidence beyond a reasonable doubt that on or about the alleged date the defendant knowingly [sold] [delivered] (*name substance*), a controlled substance, to (*name distributee or buyer*), that the defendant was [on property that is a public park] [within 1,000 feet of the boundary of the property that is a public park] and that at the time

¹ "Public park" is not defined in G.S. 90-95. Absent a specific definition, it can be presumed the legislature intended that the phrase be afforded its ordinary meaning.

² "Delivery" is defined in G.S. 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 G.S. 90-95(e)(8).

³ Bill of Indictment must state the name of purchaser or that his name is unknown. *State v. Bennet*, 280 N.C. 167 (1971); *S. v. Wall*, 96 N.C. App. 45 (1989).

⁴ If the defendant contends that he didn't know the true identity of what he [sold] [delivered], add this language to the first sentence: "and the defendant knew that what he [sold] [delivered] was (*name substance*)."
S.v. Boone, 310 N.C. 284, 291 (1984).

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of the [sale] [delivery], the defendant was 21 years of age or older, it would be your duty to return a verdict of guilty. If you do not so find or if you have a reasonable doubt as to one or more of these things, it would be your duty to return a verdict of not guilty.⁵

⁵ If the defendant is not guilty of sale or delivery of a controlled substance on school property then instructions on a lesser included offense such as a violation of 90-95(a)(1) (see N.C.P.I.—Crim. 260.21) may be appropriate.