

260.12 POSSESSION OF A CONTROLLED SUBSTANCE ON PREMISES OF A [PENAL INSTITUTION] [LOCAL CONFINEMENT FACILITY]. FELONY.

NOTE WELL: Effective December 1, 1997, N.C. Gen. Stat. § 90-95(c)(9) is a Class H felony. For offenses committed before that date, the punishment level is a Class I felony.

The defendant has been charged with possessing (*name substance*), a controlled substance, on the premises of a [penal institution] [local confinement facility].

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 possessed¹ (*name controlled substance*).² (*Name substance*) is a controlled substance. A person possesses (*name substance*) when a 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.³

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, that the defendant was on the premises of a [penal institution] [local confinement facility] at the time of the defendant's possession of (*name controlled substance*).

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant knowingly possessed (*name substance*) and that the defendant was on the premises of a [penal institution] [local confinement facility] at that time, it would be your duty to return a verdict of guilty. If you do not find or have a reasonable doubt as to one or both of these

things, it would be your duty to return a verdict of not guilty.

1. See *State v. Palmer*, 273 N.C. App. 169, 847 S.E.2d 449 (2020) (rejecting defendant's request for a special instruction including "unlawful possession" as an element based on the argument that lawful possession is an element of G.S. 90-95(e)(9) and concluding that lawful possession is an exception or defense for which the burden of proof would have fallen to defendant).

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