

N.C.P.I.—Crim. 206.72

AGGRAVATED DEATH BY DISTRIBUTION THROUGH UNLAWFUL SALE OF CERTAIN CONTROLLED SUBSTANCES—LESSER INCLUDED OFFENSE. FELONY.

GENERAL CRIMINAL VOLUME

REPLACEMENT MARCH 2024

N.C. Gen. Stat. § 14-18.4(c)

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NOTE WELL: N.C. Gen. Stat. § 14-18.4(f) provides that nothing in this section shall be construed to restrict or interfere with the rights and immunities provided under the Samaritan Protection in N.C. Gen. Stat. 90-96.2. N.C. Gen. Stat. § 14-18.4(g) provides that this section does not apply to lawful distribution pursuant to a valid prescription.

The defendant has been charged with aggravated death by distribution through unlawful sale of certain controlled substances.¹

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

First, that the defendant unlawfully sold² (a) controlled substance(s).³ (*name controlled substance(s)*) [is a] [are] controlled substance(s).

Second, that the ingestion of (that) (these) controlled substance(s) caused the death of the user.

Third, that the defendant's unlawful selling of the controlled substance(s) was the proximate cause of the user's death. A proximate cause is a real cause, a cause without which the user's death would not have occurred, and one that a reasonably careful and prudent person could foresee would probably produce such [injury] [damage] or some similar injurious result. (The defendant's act need not have been the only cause, nor the nearest cause. It is sufficient if it occurred in combination with some other cause, acting at the same time, that caused the death of the user).

Fourth, that on (*name date*) the defendant in (*name court*) [was convicted of] [pled guilty to] the felony of (*name drug related felony*)⁴ that

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was committed on (*name date*) in violation of the law of the [State of North
Carolina] [State of (*name other state*)] [United States].

And Fifth, that the prior conviction occurred within ten years of this
offense, excluding any periods of imprisonment.⁵

If you find from the evidence beyond a reasonable doubt that on or
about the alleged date, the defendant unlawfully sold (a) controlled
substance(s), (*name controlled substance(s)*) [is a] [are] controlled
substance(s), that the ingestion of [that] [these] controlled substance(s)
caused the death of the user, that the defendant's unlawful selling of the
controlled substance was the proximate cause of the user's death, and on
(*name date*) the defendant in (*name court*) [was convicted of] [pled guilty to]
the felony of (*name drug related felony*) in violation of the law of the [State
of North Carolina] [State of (*name other state*)] [United States] and that
conviction occurred within ten years of this offense, excluding any periods of
imprisonment, it would be your duty to return a verdict of guilty of aggravated
death by distribution through unlawful sale of (a) certain controlled
substance(s). If you do not so find, or have a reasonable doubt as to one or
more of these things, you will not return a verdict of guilty of aggravated
death by distribution through unlawful sale of certain controlled
substance(s), but would consider whether the defendant is guilty of death by
distribution through unlawful sale of certain controlled substances. Death by
distribution through unlawful sale of certain controlled substances differs from
the aggravated offense in that it does not require proof of a prior conviction.

If you find from the evidence beyond a reasonable doubt that on or
about the alleged date, the defendant sold (a) controlled substance(s), (*name
controlled substance(s)*) [is a] [are] controlled substance(s), that the

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ingestion of (that) (these) controlled substance(s) caused the death of the user, that the defendant's unlawful selling of the controlled substance(s) was the proximate cause of the user's death, it would be your duty to return a verdict of guilty of death by distribution through unlawful sale of (a) certain controlled substance(s). If you do not so find, or have a reasonable doubt as to one or more of these things, it would be your duty to return a verdict of not guilty.

1. "Certain Controlled Substances" is defined under N.C. Gen. Stat. § 14-18.4 as any opium, opiate, or opioid; any synthetic or natural salt, compound, derivative, or preparation of opium, opiate, or opioid; cocaine or any other substance described in G.S. 90-90(1)(d); methamphetamine; a depressant described in G.S. 90-92(a)(1); or a mixture of one or more of these substances.

2. For purposes of the Controlled Substance Act, a sale is a "transfer of property for a specified price payable in money" or a "transfer[] for other forms of consideration." *State v. Carr*, 145 N.C. App. 335, 344-45, 549 S.E.2d 897, 903 (2001).

3. If the sale of more than one controlled substance is alleged, then edit this element accordingly.

4. N.C. Gen. Stat. § 14-18.4 provides the person has a previous conviction under this section, G.S. 90-95(a)(1), 90-95.1, 90-95.4, 90-95.6, or trafficking in violation of G.S. 90-95(h), or a prior conviction in any federal or state court in the United States that is substantially similar to an offense listed, within ten years of the date of the offense. The trial judge should determine whether the previous conviction "under this section, G.S. 90-95(a)(1), 90-95.1, 90-95.4, 90-95.6, or trafficking in violation of G.S. 90-95(h), or a prior conviction in any federal or state court in the United States . . ." is substantially similar to an offense that is a felony in North Carolina. *See State v. Sanders*, 367 N.C. 716 (2014) (concluding "that [d]etermination of whether the out-of-state conviction is substantially similar to a North Carolina offense is a question of law involving comparison of the elements of the out-of-state offense to those of the North Carolina offense.").

5. N.C. Gen. Stat. § 14-18.4 provides that any period of time during which the person was incarcerated in a local, state, or federal detention center, jail or prison shall be excluded in calculating the ten-year period.