

260.21 [SELLING] [DELIVERING]<sup>1</sup> A CONTROLLED SUBSTANCE. FELONY.

*NOTE WELL: Use this instruction only when the defendant is a "street trafficker" and not a "practitioner" or a "registrant." Use N.C.P.I.—Crim. 260.80 when the defendant is a "practitioner" or a "registrant." See the notes to that instruction for further explanation.*

*Effective December 1, 1997 the sale of Schedule I or II drugs is a Class G felony and the sale of Schedule III, IV, V, or VI drugs is a Class H felony. For offenses occurring before December 1, 1997 the sale of Schedule I or II drugs is a Class H felony and the sale of Schedule III, IV, V, or VI is a Class I felony.*

The defendant has been charged with [selling] [delivering] (*name controlled substance*), a controlled substance.

For you to find the defendant guilty of this offense, the State must prove beyond a reasonable doubt that the defendant knowingly<sup>2</sup> [sold] [delivered] (*name substance*) to (*name buyer or distributee*).<sup>3</sup>

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant knowingly [sold] [delivered] (*name substance*) to (*name buyer or distributee*), it would be your duty to return a verdict of guilty. 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.

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1. See *S. v. Moore*, 327 N.C. 378 (1990), construing G.S. 90-95(a)(1) as creating an offense of "transfer" of a controlled substance by either sale or delivery, and discussion of indictments, convictions, and double jeopardy.

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

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