

N.C.P.I.—Crim. 260.21A.1

FELONIOUSLY [MAKING] [DISTRIBUTING] [POSSESSING] A THING
DESIGNED TO PRINT AN IDENTIFYING MARK UPON ANY DRUG OR
CONTAINER TO RENDER IT A COUNTERFEIT CONTROLLED SUBSTANCE—
FELONY.

GENERAL CRIMINAL VOLUME

FEBRUARY 2024

N.C. Gen. Stat. §§ 90-108(a)(12)(b) and 90-108(b)

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The defendant has been charged with feloniously [making] [distributing]
[possessing] a thing designed to print an identifying mark upon any drug or
container to render it a counterfeit controlled substance.

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

First, that the defendant [made] [distributed] [possessed] a [punch]
[die] [plate] [stone] [other thing (describe other thing)] designed to [print]
[imprint] [reproduce] the [trademark] [trade name] [[other identifying
[mark] [imprint] [device] of another]] [any likeness of any of the foregoing]
upon any drug or container or labeling thereof so as to render such drug a
counterfeit controlled substance.

And Second, that the defendant [knew] [intended]¹ [had reasonable
cause to believe] that it would be used to create a counterfeit controlled
substance.²

If you find from the evidence beyond a reasonable doubt that on or
about the alleged date the defendant [made] [distributed] [possessed] a
[punch] [die] [plate] [stone] [other thing (describe other thing)] designed to
[print] [imprint] [reproduce] the [trademark] [trade name] [[other identifying
[mark] [imprint] [device] of another]] [any likeness of any of the foregoing]
upon any drug or container or labeling thereof so as to render such drug a
counterfeit controlled substance, and the defendant [knew] [intended] [had
reasonable cause to believe] that it would be used to create a counterfeit

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controlled substance, 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 both of these
things, it would be your duty to return a verdict of not guilty.³

1. For a definition of intent see N.C.P.I.—Crim. 120.10.

2. See N.C. Gen. Stat. 90-108(b).

3. If there is evidence to support the submission of a lesser included offense, this last phrase would be amended as follows "If you do not so find or have a reasonable doubt as to one or both of these things, you would not return a verdict of guilty of feloniously [making] [distributing] [possessing] a thing designed to print an identifying mark upon any drug or container to render it a counterfeit controlled substance, but would consider whether the defendant is guilty of" *But see S v. Church*, 73 N.C. App. 645, 646, 327 S.E.2d 33, 34 (1985). Because any commission of the offense set out in N.C. Gen. Stat. § 90-108(a)(12)(b) is by definition intentional, and because N.C. Gen. Stat. § 90-108(b) provides that intentional violations of N.C. Gen. Stat. § 90-108 are felonies, a misdemeanor offense under N.C. Gen. Stat. § 90-108(a)(12)(b) may not exist.