

N.C.P.I.—CRIMINAL 260.22
SALE OR DELIVERY OF A CONTROLLED SUBSTANCE TO A MINOR OR PREGNANT WOMAN—
LESSER INCLUDED OFFENSE. FELONY.
GENERAL CRIMINAL VOLUME
REPLACEMENT JANUARY 2001
N.C. Gen. Stat. §§ 90-95(a)(1), (e)(5)

260.22 SALE OR DELIVERY OF A CONTROLLED SUBSTANCE TO A MINOR OR
PREGNANT WOMAN—LESSER INCLUDED OFFENSE. 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.

The defendant has been charged with [selling] [delivering] (*name substance*), a controlled substance, to a [minor under 16 years of age but more than 13 3years of age] [pregnant woman] [minor 13 years of age or younger].

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]¹ (*name substance*) to (name buyer or distributee)² (*Describe conduct*) would be [sale] [delivery] of a controlled substance.³

Second, that the person who received the controlled substance was [under 16 years of age but more than 13 years of age] [a pregnant woman] [13 years of age or younger].⁴

And Third, that at the time of [sale] [delivery] the defendant was 18 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*) to (*name buyer or distributee*), and that the recipient was a [minor under 16 years of age but more than 13 years of age] [pregnant woman] [minor 13 years of age or younger], and that the defendant was 18 years of age or older, it would be your duty to return a verdict of guilty of [selling] [delivering] (*name substance*) to a [minor under 16 years of age

but more than 13 years of age] [pregnant woman] [minor 13 years of age or younger]. If you do not so find or if you have a reasonable doubt as to one or more of these things, you will not return a verdict of guilty of [selling] [delivering] (*name substance*) to a [minor under 16 years of age but more than 13 years of age] [pregnant woman] [minor 13 years of age or younger].⁵

If you do not find the defendant guilty of this offense, you must consider whether he is guilty of [selling] [delivering] (*name substance*). [Selling] [Delivering] (*name substance*) does not require proof that the defendant was 18 years of age or older or that the (*name buyer or distributee*) was a [minor under 16 years of age but more than 13 years of age] [pregnant woman] [minor 13 years of age or younger].

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 of [selling] [delivering] (*name substance*). 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.

1. "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(b)(2).

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

3. 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). Neither mistake of age or knowledge that the woman was pregnant is a defense to this charge.

4. If the person receiving the controlled substance is 13 years of age or younger, this offense is punished as a Class C felony, instead of the Class D punishment for the others.

5. If all the evidence is that the defendant is guilty of the greater offense, if he is guilty at all, the judge should conclude, ". . .it would be your duty to return a verdict of not guilty."