

260.40 EMPLOYING A MINOR TO COMMIT A DRUG LAW VIOLATION.
FELONY¹.

The defendant has been charged with hiring or intentionally using a minor to violate the controlled substances act.

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

First, that the defendant [hired] [intentionally² used] (*name minor*) to violate the controlled substances act by (*describe violation of N.C. Gen. Stat. § 90-95(a)(1)*).

Second, that (*name minor*) was less than 18 years of age at the time *he* was [hired] [intentionally used].³

And Third, that at the time *he* [hired] [intentionally used] (*name minor*) the defendant was [at least 18 years old but less than 21 years old] [21 years of age or older].

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant [hired] [intentionally used] (*name minor*) who was less than 18 years of age at that time to violate the controlled substances act, and that at that time the defendant was [at least 18 years old but less than 21 years old] [21 years of age or older], it would be your duty to return a verdict of guilty. 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. Effective January 1, 1999, N.C. Gen. Stat. § 90-95.4 provides:

N.C.P.I.-Crim. 260.40
Employing a minor to commit a drug law violation. Felony.
GENERAL CRIMINAL VOLUME
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N.C. Gen. Stat. § 90-95.4

When found guilty, a defendant who was over 18 but under 21 at the time of the offense is to be punished as for a felony one class more than that for which the minor was hired or intentionally used, if the minor was more than 13 years of age. If the minor was 13 years of age or younger, then the defendant shall be punished two classes more severe than that for which the minor was hired or intentionally used.

When a defendant who was 21 years or older at the time of the offense is found guilty, he shall be punished three classes more severe than the violation for which the minor was hired or intentionally used, if the minor was more than 13 years of age at the time of the offense. If the minor was 13 years of age or younger at the time of the offense, the defendant shall be punished four classes more severe than the violation for which the minor was hired or intentionally used.

2. For definition of intent see N.C.P.I.-Crim. 120.10.

3. If the defendant contends that he was mistaken about the age of the minor, the jury should be instructed as follows: "Mistake of age is not a defense to a prosecution under this section." N.C. Gen. Stat. § 90-95.4(c).