

SUPPLEMENTAL CHARGE TO OFFENSES SET FORTH
IN N.J.S.A. 2C:35-5

**(To be utilized in cases in which the quantity
of the CDS is an element of the offense)**

If you have found the defendant guilty of (possession of) (distributing) (possessing with intent to distribute) (insert appropriate CDS or controlled substance analog), you then must determine the quantity of (insert appropriate CDS or controlled substance analog) involved. It is the State's burden to prove beyond a reasonable doubt the quantity of (insert appropriate CDS or controlled substance analog) _____ involved. The State need not prove defendant's knowledge of the quantity of the drugs, so long as it proves beyond a reasonable doubt that defendant knowingly possessed the controlled dangerous substance.¹

**[THE FOLLOWING SHOULD BE CHARGED ONLY WHEN THE INDICTMENT
OR ACCUSATION ALLEGES AGGREGATION OF INDIVIDUAL ACTS]**

[You may aggregate (insert the appropriate CDS or Controlled Substance analog) when you find that separate amounts of the (insert the appropriate CDS or Controlled Substance analog) were obtained/possessed or distributed or manufactured according to a scheme or course of conduct either by one or several, or all of the defendants. If you determine that the (insert the appropriate CDS or Controlled Substance analog) was obtained/possessed or distributed or manufactured according to a scheme or course of conduct, by one, several, or all of the defendants, the weight amounts may be added together to form a single total amount. Each defendant in the scheme or course of conduct may be found guilty of possession/distribution/manufacture of the aggregate quantity. The mere fact that more than one person may be present in the same location with a controlled dangerous substance is not enough to aggregate to all of the parties without circumstantial evidence or statements of the defendants to show a common scheme or joint possession.

Therefore, you should consider everything each defendant did and said at the time and place and all the surrounding circumstances.]²

**[THE FOLLOWING IS TO BE CHARGED WHEN HEROIN OR COCAINE (OR
THEIR ANALOGS) IS INVOLVED:]**

¹ State v. Torres, 236 N.J. Super. 6 (App. Div. 1989).

² State v. Curry and Lawrence, 245 N.J. Super. 278, (Law Div. 1989).

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N.J.S.A. 2C:35-5(b)(1) - (3)

Specifically, you must determine which one of the following quantities have been proven:

1. Five (5) ounces or more³ of (insert appropriate CDS or controlled substance analog), including any adulterants or dilutants, (and included within this quantity were at least 3.5 grams free base drug).⁴

or

2. One-half ounce or more, (but less than five (5) ounces),⁵ of (insert appropriate CDS or controlled substance analog) including any adulterants or dilutants, (and included within this quantity were at least 3.5 grams or pure free base drug).⁶

or

3. Less than one-half (½) ounce of (insert appropriate CDS or controlled substance analog), including any adulterants or dilutants (and included within this quantity were less than 3.5 grams of pure free base drug or an undetermined amount of pure free base drug.)⁷

After determining which one of these quantities the State has proven beyond a reasonable doubt, you should mark the appropriate section of the verdict sheet which will be supplied to you.

³ This quantity makes the offense a first degree crime. N.J.S.A. 2C:35-5b(1). In cases in which only a second degree offense is charged (N.J.S.A. 2C:35-5b(2)), this portion of the charge should not be given. In such a second degree case, the jury should simply be instructed to determine whether the State has proven beyond a reasonable doubt that quantity was one-half (½) ounce or more, including any adulterants or dilutants, (and included within this quantity were at least 3.5 grams of pure free base drug (see footnote 4 below).

⁴ As originally enacted, N.J.S.A. 2C:35-5b(1) - (3); N.J.S.A. 2C:35-5(4) and (5); and N.J.S.A. 2C:35-5b(8) and (9) required that the State prove that there was at least 3.5 grams pure free base drug to elevate the degree of the crime. On June 28, 1988, L. 1988, L. 1988 c. 44 was enacted. This law made a number of amendments to the Comprehensive Drug Reform Act. Among these amendments were provisions deleting the requirements for proof of at least 3.5 grams of pure free base drug. Accordingly, this language should be charged only in cases occurring before June 28, 1988. For cases occurring on or after this date, the language should not be charged.

⁵ The language "but less than five (5) ounces" should be used in cases in which a first degree offense is charged. There is no need to include this language when only a second degree offense is charged.

⁶ As originally enacted, N.J.S.A. 2C:35-5b(1) - (3); N.J.S.A. 2C:35-5(4) and (5); and N.J.S.A. 2C:35-5b(8) and (9) required that the State prove that there was at least 3.5 grams pure free base drug to elevate the degree of the crime. On June 28, 1988, L. 1988, L. 1988 c. 44 was enacted. This law made a number of amendments to the Comprehensive Drug Reform Act. Among these amendments were provisions deleting the requirements for proof of at least 3.5 grams of pure free base drug. Accordingly, this language should be charged only in cases occurring before June 28, 1988. For cases occurring on or after this date, the language should not be charged.

⁷ Ibid.

**SUPPLEMENTAL CHARGE TO OFFENSES
IN N.J.S.A. 2C:35-5**

[THE FOLLOWING IS TO BE CHARGED WHEN A SCHEDULE I OR II DRUG (OR ITS ANALOGS) OTHER THAN HEROIN OR COCAINE IS INVOLVED N.J.S.A. 2C:35-5b(4) AND (5)]

Specifically, you must determine whether the State has proven beyond a reasonable doubt that the quantity of the (insert appropriate CDS or controlled substance analog) was one (1) ounce or more, including any adulterants or dilutants, (and included within this quantity were at least 3.5 grams of pure free base drug).⁸ There will be a space on the verdict sheet on which you should mark your decision in this regard.

[THE FOLLOWING IS TO BE CHARGED WHEN LSD OR PHENCYCLIDINE (OR THEIR ANALOGS) IS INVOLVED: N.J.S.A. 2C:35-5(b)(6) AND (7)]

Specifically, you must determine whether the State has proven beyond a reasonable doubt that the quantity of the (LSD or its analog) (phencyclidine or its analog) was (100 milligrams) (10 grams) or more including any adulterants or dilutants. There will be space on the verdict sheet on which you should mark your decision in this regard.

[THE FOLLOWING IS TO BE CHARGED WHEN METHAMPHETAMINE (OR ITS ANALOG) IS INVOLVED: N.J.S.A. 2C:35-5(b)(8) AND (9)]

Specifically, you must determine whether the State has proven beyond a reasonable doubt that the quantity of the methamphetamine (or its analog) was one (1) ounce or more, including any adulterants or dilutants, (and included in this quantity were at least 3.5 grams pure free base drug).⁹ There will be space on the verdict sheet on which you should mark your decision in this regard.

[THE FOLLOWING IS TO BE CHARGED WHEN MARIJUANA OR HASHISH IS INVOLVED N.J.S.A. 2C:35-5(b)(10) - (12)]

Specifically, you must determine which one of the following quantities has been proven:

⁸ Ibid.
⁹ Ibid.

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1. (Five (5) pounds) (One (1) pound) or more of (marijuana) (hashish) including any adulterants or dilutants.¹⁰

or

2. (One (1) ounce) (Five (5) grams) or more of (marijuana) (hashish) (but less than (five (5) pounds) (one (1) pound)),¹¹ including any adulterants and dilutants.

or

3. Less than (one (1) ounce) (five (5) grams) of (marijuana) (hashish) including any adulterants and dilutants.

After determining which one of these quantities the State has proven beyond a reasonable doubt, you should mark the appropriate section of the verdict sheet which will be supplied to you.

¹⁰ This quantity makes the offense a second degree crime. N.J.S.A. 2C:35-5b(10). In cases in which only a third degree offense is charged (N.J.S.A. 2C:35-5b(11)), this portion of the charge should not be given. In such a third degree case, the jury should simply be instructed to determine whether the State has proven beyond a reasonable doubt that quantity was one (1) ounce or more in the case of marijuana or (5) grams or more in the case of hashish.

¹¹ The language "but less than (five (5) pounds) (1) pound): should be used in cases in which a second degree offense is charged. There is no need to include this language when a third degree offense is charged.