

**POSSESSION OF A CONTROLLED DANGEROUS SUBSTANCE WITH INTENT
TO DISTRIBUTE IN PROXIMITY TO PUBLIC HOUSING FACILITIES,
PARKS OR BUILDINGS¹**
(N.J.S.A. 2C:35-7.1)

Count _____ of the indictment charges the defendant with possession of a controlled dangerous substance with intent to distribute in proximity to Public Housing Facilities, Parks or Buildings.

(Read Indictment)

The pertinent part of the statute upon which this count of the indictment is based reads as follows:

Any person who violates [another section of our law] by possessing with intent to distribute a controlled dangerous substance [or controlled substance analog] while in, on or within 500 feet of the real property comprising a Public Housing Facility, Public Park, or a Public Building is guilty of a crime.

As I have already explained, **(Insert appropriate CDS, e.g. heroin, cocaine, etc.)** is a dangerous substance prohibited by the statute.²

In order for you to find the defendant guilty of this count of the indictment, the State must first prove beyond a reasonable doubt that the defendant knowingly or purposely possessed with intent to distribute a controlled dangerous substance (or controlled substance analog). As I have previously instructed you, the elements of possession with intent to distribute a controlled dangerous substance are:³

- (1) S_____ in evidence is (insert appropriate CDS or controlled substance analog)
- (2) The defendant possessed or had S_____ under his/her control
- (3) The defendant had the purpose to distribute S_____ when he/she possessed it or had it under his/her control.

¹ This instruction is meant to be given as a supplement to the instructions on unlawful possession of CDS and possession of CDS with intent to distribute. In cases where those charges are not present, definitions of key terms must be incorporated here.

² When a controlled dangerous substance analog is involved, refer to the definition found in N.J.S.A. 2C:35-2.

³ If applicable, lack of legal authorization pursuant to N.J.S.A. 24:21-1 should be charged as an additional element.

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In addition to proving the elements of possession with intent to distribute a controlled dangerous substance, to establish the defendant's guilt on this count, the State must also prove beyond a reasonable doubt that when the defendant possessed a controlled dangerous substance with intent to distribute, he/she was:

[CHARGE AND DEFINE APPLICABLE TERM]

in (or within 500 feet of) any Public Housing Facility
OR
in (or within 500 feet of) any Public Park
OR
in (or within 500 feet of) any Public Building

"Public Housing Facility" means any dwelling, complex of dwellings, accommodation, building, structure or facility and real property of any nature appurtenant thereto and used in connection therewith, which is owned by or leased to a local housing authority in accordance with the "Local Redevelopment and Housing Law," [P.L. 1992, c.79 (C.40A:12A-1 et seq.)] for the purpose of providing living accommodations to persons of low income.

"Public park" means a park, recreation facility or area or playground owned or controlled by a State, county or local government unit.

"Public Building" means any publicly owned or leased library or museum.

The possibility that defendant may have been unaware that the prohibited conduct took place in or within 500 feet of a Public Housing Facility, Public Park or Public Building is not a defense to this crime and shall not be considered by you in your deliberations. I further instruct you that whether defendant intended to make the distribution within 500 feet of the public property is irrelevant. To prove this element, the State must prove beyond a reasonable doubt that when the defendant possessed a controlled dangerous substance with intent to distribute, he/she was in or within 500 feet of a Public Housing Facility, Public Park or Public Building.

To reiterate, in order for you to find the defendant guilty of this count of the indictment, the State must prove all of the following elements beyond a reasonable doubt:

- (1) S_____ in evidence is (insert appropriate CDS or controlled substance analog)
- (2) The defendant possessed or had S_____ under his/her control
- (3) The defendant had the purpose to distribute S_____ when he/she possessed it or

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had it under his/her control.

- (4) That when the defendant possessed S _____ with the purpose to distribute it, he/she was in or within 500 feet of a [charge as appropriate: Public Housing Facility, Public Park or Public Building].

If you find that the State has proven all of these elements beyond a reasonable doubt, then you must return a verdict of guilty. On the other hand, if you find that the State has failed to prove any of these elements beyond a reasonable doubt, then you must return a verdict of not guilty.

[SUBSTITUTE WHERE APPROPRIATE]

The Defendant, as part of his/her general denial of guilt, asserts the defense that he/she did not possess with intent to distribute **[insert appropriate CDS]** for profit and that he/she did not possess with intent to distribute **[insert appropriate CDS]** to a person 17 years or younger. In order for this defense to be available, the defendant must prove by a preponderance of the evidence, that is, it is more likely true than not, that:

- (1) The offense did not involve distribution of a controlled dangerous substance for profit

AND

- (2) The offense did not involve distribution to a person 17 years of age or younger

This defense applies only to this charge and shall not affect your verdict concerning any other count of the indictment.

If you find that the State has proven all the elements of this crime beyond a reasonable doubt, and also find that the defendant has failed to prove all of the elements of this defense by a preponderance of the evidence, then you must return a verdict of guilty. On the other hand, if you find that the State has failed to prove any of the elements of the crime beyond a reasonable doubt, or that defendant has proved all of the elements of the defense by a preponderance of the evidence, then you must return a verdict of not guilty.

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**(TO BE UTILIZED IN CASES IN WHICH THE QUANTITY OF MARIJUANA IS AN
ELEMENT OF THE OFFENSE)**

If you have found the defendant guilty of possession of marijuana with intent to distribute in or within 500 feet of a Public Housing Facility, Public Park or Public Building, you then must determine whether the State has proven beyond a reasonable doubt that the quantity of marijuana involved was:

One (1) ounce or more of marijuana including any adulterants and dilutants. **(Yes or No)**

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