

**MANUFACTURING OF A CONTROLLED DANGEROUS SUBSTANCE**  
**(BATH SALTS)<sup>1</sup>**  
**(N.J.S.A. 2C:35-5.3a)**

Count \_\_\_\_\_ of the indictment charges the defendant as follows:

**(Read Indictment)**

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

It is a crime for any person knowingly or purposely to manufacture ... substances containing **[insert appropriate bath salt chemical here, either: 4-methylmethcathinone (mephedrone, 4-MMC); 3,4-methylenedioxypropylone (MDPV); 3,4-methylenedioxymethcathinone (methydone, MDMC), 4-methoxymethcathinone (methedrone, bk-PMMA, PMMC); 3-fluoromethcathinone (3-FMC); or 4-fluoromethcathinone (flephedrone, 4-FMC)].**<sup>2</sup>

In order for you to find defendant guilty of the charge, the State must prove the following elements beyond a reasonable doubt:

1. That S \_\_\_\_\_ in evidence contains **[insert appropriate CDS (bath salt) here];**
2. That the defendant manufactured S \_\_\_\_\_; and
3. That the defendant acted knowingly or purposefully in manufacturing S \_\_\_\_\_.

The first element that the State must prove beyond a reasonable doubt is that S \_\_\_\_\_ contains **[insert appropriate CDS (bath salt) here].**

In regard to the second element, the State alleges that defendant manufactured S \_\_\_\_\_ in evidence.

To "manufacture" means the production, preparation, propagation, compounding, conversion or processing of a controlled dangerous substance, either directly or by extraction from substances or natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or re-labeling of its container, except that this term does not include the preparation of compounding of a controlled dangerous substance by an individual for his/her

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<sup>1</sup> N.J.S.A. 2C:35-5.3a grades this offense for sentencing purposes by the quantity of the CDS (bath salt) involved. Because the quantity of the CDS (bath salt) is an element of the offense, N.J.S.A. 2C:35-5.3a.b. and c. require that this element be determined by the jury. Accordingly, this charge may need to be supplemented to add this element. Please see the Supplemental model charge to Bath Salts Offenses concerning this required element of quantity.

<sup>2</sup> If the issue of authorization is raised as an affirmative defense, see N.J.S.A. 2C:35-18.

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own use or the preparation, compounding, packaging, or labeling of a controlled dangerous substance: (1) by a practitioner as an incident to his/her administering or dispensing of a controlled dangerous substance in the course of his/her professional practice, or (2) by a practitioner (or under his/her supervision) for the purpose of, or as an incident to, research, teaching or chemical analysis and not for sale.<sup>3</sup>

In this regard the term "practitioner" means a physician, dentist, veterinarian, scientific investigator, laboratory worker, pharmacist, hospital worker or other person licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or administer a controlled dangerous substance in the course of professional practice or research in this State.<sup>4</sup>

In regard to the third element, the State must prove that the defendant acted knowingly or purposefully in manufacturing S\_\_\_\_\_.

A person acts knowingly with respect to the nature of his/her conduct or the attendant circumstances if he/she is aware that his/her conduct is of that nature, or that such circumstances exist, or he/she is aware of a high probability of their existence. A person acts knowingly with respect to a result of his/her conduct if he/she is aware that it is practically certain that his/her conduct will cause such a result. "Knowing," "with knowledge" or equivalent terms have the same meaning.<sup>5</sup>

A person acts purposely with respect to the nature of his/her conduct or a result thereof if it is his/her conscious object to engage in conduct of that nature or to cause such a result. A person acts purposely with respect to attendant circumstances if he/she is aware of the existence of such circumstances or he/she believes or hopes that they exist. "With purpose," "designed," "with design" or equivalent terms have the same meaning.<sup>6</sup>

Remember that when we speak of knowingly and purposely we are speaking of conditions of the mind that cannot be seen. It is not necessary for the State to prove the existence of such mental states by direct evidence such as a statement by the defendant that he/she had particular knowledge or a particular purpose. Knowledge and purpose as separate propositions of proof do not commonly exist. They must ordinarily be discovered as other mental states are from circumstantial evidence; that is, by reference to the defendant's conduct, words or acts and

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<sup>3</sup> N.J.S.A. 2C:35-2.

<sup>4</sup> N.J.S.A. 2C:35-2.

<sup>5</sup> N.J.S.A. 2C:2-2b(1).

<sup>6</sup> N.J.S.A. 2C:2-2b(2).

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all the surrounding circumstances.

To reiterate, the three elements of this offense that the State must prove beyond a reasonable doubt are:

1. That S \_\_\_\_\_ in evidence contains **[insert appropriate CDS (bath salt) here]**;
2. That the defendant manufactured S \_\_\_\_\_ ; and
3. That the defendant acted knowingly or purposefully in manufacturing S\_\_\_\_\_.

If you find that the State has proven all 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.