

CHAPTER NINE

DANGEROUS DRUGS

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INSTRUCTION NO. [9-101]

[Criminal Distribution of Dangerous Drugs]

A person commits the offense of criminal distribution of dangerous drugs if he/she purposely or knowingly [sells] [barters] [exchanges] [gives away] or offers to [sell] [barter] [exchange] [or give away] the dangerous drug [name drug].

GIVEN: _____
DISTRICT JUDGE

SOURCE: MCJI 9-101 (2009)

Plaintiff's Proposed Instruction No. _____ Defendant's Proposed Instruction No. _____

Given as Instruction No. _____ Refused _____ Withdrawn _____ By _____

[Criminal Distribution of Dangerous Drugs, No. 9-101, 2009, Source and Comment]

SOURCE: MCA § 45-9-101 (2007).

COMMENT: In light of the severe maximum penalty, the Commission has inserted the “purposely” or “knowingly” requirements. Omitting the mental state requirement may leave a conviction subject to a valid attack. Where indicated above, specify the prohibited substance. Dangerous drugs are defined in MCA § 50-32-101(2007).

INSTRUCTION NO. [9-101(a)]

[Issues--Criminal Distribution of Dangerous Drugs]

To convict the Defendant of criminal distribution of dangerous drugs, the State must prove the following elements:

1. That the Defendant did **[sell] [barter] [exchange] [give away]** the dangerous drug **[name drug]**.

OR

2. That the Defendant offered to **[sell] [barter] [exchange] [or give away]** the dangerous drug **[name drug]**;

AND

3. That the Defendant acted purposely or knowingly.

If you find from your consideration of the evidence that each of these elements have been proved beyond a reasonable doubt, then you should find the Defendant guilty.

If, on the other hand, you find from your consideration of the evidence that either of these elements has not been proved beyond a reasonable doubt then you should find the Defendant not guilty.

GIVEN: _____
DISTRICT JUDGE

SOURCE: MCJI 9-101(a) (2009)

Plaintiff's Proposed Instruction No. _____ Defendant's Proposed Instruction No. _____

Given as Instruction No. _____ Refused _____ Withdrawn _____ By _____

[Issues--Criminal Distribution of Dangerous Drugs, No. 9-101(a), 2009, Source and Comment]]

SOURCE: MCA § 45-9-101(2007).

COMMENT: Where indicated above, specify the prohibited substance. The term “distribution” is defined by the internal requirements to sell, barter, exchange, or give away the dangerous drug. *State v. Rathbun*, 317 Mont. 66 (2003).

INSTRUCTION NO. [9-102]

[Criminal Possession of Dangerous Drugs—Felony]

A person commits the offense of criminal possession of dangerous drugs, if he/she purposely or knowingly:

[possesses the dangerous drug of _____ (non-marijuana drug as defined in MCA § 50-32-101)];

[possesses more than 60 grams of marijuana (or its derivatives)];

[possesses more than 1(one) gram of hashish];

[possesses an opiate (as defined in MCA § 50-32-101(19))].

GIVEN: _____
DISTRICT JUDGE

SOURCE: MCJI 9-102 (2009)

Plaintiff's Proposed Instruction No. _____ Defendant's Proposed Instruction No. _____

Given as Instruction No. _____ Refused _____ Withdrawn _____ By _____

[Criminal Possession of Dangerous Drugs [Felony], No. 9-102, 2009, Source and Comment]

SOURCE: MCA § 45-9-102 (2007).

COMMENT: Remove the felony identifier in the title of the instruction to be consistent with Montana Supreme Court case law.

INSTRUCTION NO. [9-102(a)]

[Issues--Criminal Possession of Dangerous Drugs--Felony]

To convict the Defendant of criminal possession of dangerous drugs, the State must prove the following elements:

1. **[That the Defendant [possessed the dangerous drug of (non-marijuana drug as defined in MCA § 50-32-101)]**
[possessed more than 60 grams of marijuana (or its derivatives)]
[possessed more than 1 (one) gram of hashish]
[possessed an opiate (as defined in MCA § 50-32-101(19))];

AND

2. That the Defendant acted purposely or knowingly.

If you find from your consideration of the evidence that all of these elements have been proved beyond a reasonable doubt, then you should find the Defendant guilty.

If, on the other hand, you find from your consideration of the evidence that any of these elements has not been proved beyond a reasonable doubt then you should find the Defendant not guilty.

GIVEN: _____
DISTRICT JUDGE

SOURCE: MCJI 9-102(a) (2009)

Plaintiff's Proposed Instruction No. _____ Defendant's Proposed Instruction No. _____

Given as Instruction No. _____ Refused _____ Withdrawn _____ By _____

**[Issues--Criminal Possession of Dangerous Drugs--Felony, No. 9-102(a), 2009,
Source and Comment]**

SOURCE: MCA § 45-9-102 (2007).

COMMENT: Remove the felony identifier in the title of the instruction.

INSTRUCTION NO. [9-103]

[Criminal Possession of Dangerous Drugs (Misdemeanor)]

A person commits the offense of criminal possession of dangerous drugs, if he purposely or knowingly possesses:

[60 grams or less of marijuana]

[1 gram or less of hashish]

[an anabolic steroid (as listed in MCA § 50-32-226)].

GIVEN: _____
DISTRICT JUDGE

SOURCE: MCJI 9-103 (2009)

Plaintiff's Proposed Instruction No. _____ Defendant's Proposed Instruction No. _____

Given as Instruction No. _____ Refused _____ Withdrawn _____ By _____

[Criminal Possession of Dangerous Drugs (Misdemeanor), No. 9-103, 2009, Source and Comment]

SOURCE: MCA § 45-9-102 (2007).

COMMENT: Remove the misdemeanor identifier from the instruction title.

INSTRUCTION NO. [9-103(a)]

[Issues in Criminal Possession of Dangerous Drugs (Misdemeanor)]

To convict the Defendant of criminal possession of dangerous drugs, the State must prove the following elements:

1. That the Defendant possessed [**60 grams or less of marijuana**] [**1 gram or less of hashish**] [**an anabolic steroid (as listed in MCA § 50-32-226)**];

AND

2. That the Defendant acted purposely or knowingly.

If you find from your consideration of the evidence that all of these elements have been proved beyond a reasonable doubt, then you should find the Defendant guilty.

If, on the other hand, you find from your consideration of the evidence that any of these elements has not been proved beyond a reasonable doubt then you should find the Defendant not guilty.

GIVEN: _____
DISTRICT JUDGE

SOURCE: MCJI 9-103(a) (2009)

Plaintiff's Proposed Instruction No. _____ Defendant's Proposed Instruction No. _____

Given as Instruction No. _____ Refused _____ Withdrawn _____ By _____

[Issues in Criminal Possession of Dangerous Drugs (Misdemeanor), No. 9-103(a), 2009, Source and Comment]

SOURCE: MCA § 45-9-102 (2007).

COMMENT: Remove the misdemeanor identifier in title of the instruction.

INSTRUCTION NO. [9-104]

[Criminal Possession with Intent to Distribute]

A person commits the offense of criminal possession with intent to distribute if he purposely or knowingly possesses with intent to distribute the dangerous drug _____ **[name drug]**.

GIVEN: _____
DISTRICT JUDGE

SOURCE: MCJI 9-104 (2009)

Plaintiff's Proposed Instruction No. _____ Defendant's Proposed Instruction No. _____

Given as Instruction No. _____ Refused _____ Withdrawn _____ By _____

[Criminal Possession with Intent to Distribute, No. 9-104, 2009, Source and Comment]

SOURCE MCA § 45-9-103 (2007).

COMMENT: Dangerous Drugs are defined in MCA § 50-32-101(2007). The term “distribute” is defined by the internal requirements of MCA § 45-9-101 (2005), to sell, barter, exchange or give away. *State v. Rathbun*, 317 Mont. 66 (2003).

INSTRUCTION NO. [9-104(a)]

[Issues--Criminal Possession with the Intent to Sell]

To convict the Defendant of criminal possession with intent to distribute, the State must prove the following elements:

1. That the Defendant possessed with intent to distribute the dangerous drug,
_____ **[name drug]**;

AND

2. The Defendant acted purposely or knowingly.

If you find from your consideration of the evidence that all of these elements have been proved beyond a reasonable doubt, then you should find the Defendant guilty.

If, on the other hand, you find from your consideration of the evidence that any of these elements has not been proved beyond a reasonable doubt then you should find the Defendant not guilty.

GIVEN: _____
DISTRICT JUDGE

SOURCE: MCJI 9-104(a) (2009)

Plaintiff's Proposed Instruction No. _____ Defendant's Proposed Instruction No. _____

Given as Instruction No. _____ Refused _____ Withdrawn _____ By _____

[Issues--Criminal Possession with the Intent to Sell, No. 9-104(a), 2009, Source and Comment]

SOURCE: MCA § 45-9-103 (2007).

COMMENT: The term “distribute” is defined by the internal requirements of MCA § 45-9-101 (2007), to sell, barter, exchange, or give away. *State v. Rathbun*, 317 Mont. 66 (2003).

INSTRUCTION NO. [9-105]

[Possession of Dangerous Drugs--Actual or Constructive]

Possession means the knowing control of anything for a sufficient time to be able to terminate control. Possession of dangerous drugs may be either "actual or constructive." Actual possession means that the Defendant had personal custody of the drugs. Constructive possession means that the drugs are not in the actual physical possession, but that the Defendant has dominion and control over the drugs or the joint dominion and control of the drugs with another.

GIVEN: _____
DISTRICT JUDGE

SOURCE: MCJI 9-105 (2009)

Plaintiff's Proposed Instruction No. _____ Defendant's Proposed Instruction No. _____

Given as Instruction No. _____ Refused _____ Withdrawn _____ By _____

[Possession of Dangerous Drugs--Actual or Constructive, No. 9-105, 2009, Source]

SOURCE: MCA § 45-2-101(59) (2007); *State v. Meader*, 184 Mont. 32 (1979),
State v. Caekaert, 295 Mont. 42 (1999)..

INSTRUCTION NO. [9-106]

[Fraudently Obtaining Dangerous Drugs]

A person commits the offense of fraudulently obtaining dangerous drugs if he/she purposely or knowingly obtains or attempts to obtain the dangerous drug

_____ **[name drug]**, by **[fraud, deceit, misrepresentation, or subterfuge]** **[falsely assuming the title of or representing himself to be a manufacturer, wholesaler, practitioner, pharmacist, owner of a pharmacy, or other person authorized to possess dangerous drugs]** **[the use of a forged, altered, or fictitious prescription]** **[the use of a false name or false address on a prescription]** **[the concealment of a material fact]**.

GIVEN: _____
DISTRICT JUDGE

SOURCE: MCJI 9-106 (2009)

Plaintiff's Proposed Instruction No. _____ Defendant's Proposed Instruction No. _____

Given as Instruction No. _____ Refused _____ Withdrawn _____ By _____

[Fraudulently Obtaining Dangerous Drugs, No. 9-106, 2009, Source and Comment]

SOURCE: MCA § 45-9-104 (2007).

COMMENT: Dangerous Drugs are defined in MCA § 50-32-101 (2007).

INSTRUCTION NO. [9-106(a)]

[Issues in Fraudulently Obtaining Dangerous Drugs]

To convict the Defendant of fraudulently obtaining dangerous drugs, the State must prove the following elements:

1. That the Defendant did obtain or attempt to obtain the dangerous drug of _____ **[name drug]** by **[fraud, deceit, misrepresentation, or subterfuge]** **[falsely assuming the title of or representing himself to be a manufacturer, wholesaler, practitioner, pharmacist, owner of a pharmacy, or other person authorized to possess dangerous drugs]** **[the use of a forged, altered, or fictitious prescription]** **[the use of a false name or false address on a prescription]** **[the concealment of a material fact];**

AND

2. That the Defendant acted purposely or knowingly.

If you find from your consideration of the evidence that all of these elements have been proved beyond a reasonable doubt, then you should find the Defendant guilty.

If, on the other hand, you find from your consideration of the evidence that any of these elements has not been proved beyond a reasonable doubt then you should find the Defendant not guilty.

GIVEN: _____
DISTRICT JUDGE

SOURCE: MCJI 9-106(a) (2009)

Plaintiff's Proposed Instruction No. _____ Defendant's Proposed Instruction No. _____

Given as Instruction No. _____ Refused _____ Withdrawn _____ By _____

[Issues in Fraudulently Obtaining Dangerous Drugs, No. 9-106(a), 2009, Source]

SOURCE: MCA § 45-9-104 (2007).

INSTRUCTION NO. [9-107]

[Criminal Possession of Precursors to Dangerous Drugs]

A person commits the offense of criminal possession of precursors to dangerous drugs if:

[the person knowingly possesses any material, compound, mixture, or preparation that contains any combination of the following with the intent to manufacture dangerous drugs: phenyl-2-propanone (phenylacetone); piperidine in conjunction with cyclohexanone; ephedrine; lead acetate; methylamine; methylformamide; n-methylephedrine; phenylpropanolamine; pseudoephedrine; anhydrous ammonia; hydriodic acid; red phosphorus; iodine in conjunction with ephedrine; pseudoephedrine; red phosphorus; lithium in conjunction with anhydrous ammonia];

OR

[the person knowingly possesses anhydrous ammonia for the purpose of manufacturing dangerous drugs.]

GIVEN: _____
DISTRICT JUDGE

SOURCE: MCJI 9-107 (2009)

Plaintiff's Proposed Instruction No. _____ Defendant's Proposed Instruction No. _____

Given as Instruction No. _____ Refused _____ Withdrawn _____ By _____

[Criminal Possession of Precursors to Dangerous Drugs, No. 9-107, 2009, Source and Comment]

SOURCE: MCA § 45-2-101(59) (2007) *and* MCA § 45-9-107 (2007)

COMMENT: Where indicated above, specify the prohibited substance. Dangerous drugs are defined in MCA § 50-32-101 (2007).

INSTRUCTION NO [9-107(a)]

[Issues in Criminal Possession of Precursors to Dangerous Drugs]

To convict the Defendant of criminal possession of precursors to dangerous drugs, the State must prove the following elements:

1. That the Defendant possessed any material, compound, mixture, or preparation that contains any combination of:

[Phenyl-2-propanone (phenylacetone)]
[piperidine in conjunction with cyclohexanone]
[ephedrine]
[lead acetate]
[methylamine]
[methylformamide]
[n-methylephedrine]
[phenylpropanolamine]
[pseudoephedrine]
[anhydrous ammonia]
[hydriodic acid]
[red phosphorus]
[iodine in conjunction with ephedrine, pseudoephedrine, or red phosphorus]
[lithium in conjunction with anhydrous ammonia];

AND

2. That the defendant acted knowingly;

AND

3. That the Defendant had the intent to manufacture dangerous drugs (**name drugs**)

OR

1. That the Defendant possessed anhydrous ammonia;

AND

2. That the Defendant acted knowingly;

AND

3. That the Defendant had the intent manufacture dangerous drugs (**name drugs**).

If you find from your consideration of the evidence that all of these elements have been proved beyond a reasonable doubt, then you should find the Defendant guilty.

If, on the other hand, you find from your consideration of the evidence that any of these elements has not been proved beyond a reasonable doubt then you should find the Defendant not guilty.

GIVEN: _____
DISTRICT JUDGE

SOURCE: MCJI 9-107(a) (2009)

Plaintiff's Proposed Instruction No. _____ Defendant's Proposed Instruction No. _____

Given as Instruction No. _____ Refused _____ Withdrawn _____ By _____

**[Issues in Criminal Possession of Precursors to Dangerous Drugs, No. 9-107(a), 2009,
Source and Comment]**

SOURCE: MCA § 45-2-101(59) (2007); MCA § 45-9-107 (2007).

COMMENT: Where indicated above, specify the prohibited substance. Dangerous drugs are defined in MCA § 50-32-101(2007).

INSTRUCTION NO. [9-108]

[Possession of Precursors to Dangerous Drugs—Actual or Constructive]

Possession means the knowing control of anything for a sufficient time to be able to terminate control. Possession of precursors to dangerous drugs may be either actual or constructive. Actual possession means that the Defendant has personal custody of the precursors to dangerous drugs. Constructive possession means that the precursors to dangerous drugs are not in actual physical possession, but that the Defendant has dominion and control over the precursors or the joint dominion and control of the precursors with another.

GIVEN: _____
DISTRICT JUDGE

SOURCE: MCJI 9-108 (2009)

Plaintiff's Proposed Instruction No. _____ Defendant's Proposed Instruction No. _____

Given as Instruction No. _____ Refused _____ Withdrawn _____ By _____

[Possession of Precursors to Dangerous Drugs – Actual or Constructive, No. 9-108, 2009, Source and Comment]

SOURCE: MCA § 45-2-101(59) (2007); *State v. Meader*, 184 Mont. 32 (1979), *State v. Caekaert*, 295 Mont. 42 (1999).

INSTRUCTION NO. [9-109]

[Criminal Distribution of Dangerous Drugs on or near School Property]

A person commits the offense of criminal distribution of dangerous drugs on or near school property if the person purposely or knowingly [sells] [barters] [exchanges] [gives away] or offers to [sell] [barter] [exchange] [or give away] the dangerous drug [name drug] in, on, or within 1000 feet of the real property comprising a public or private elementary or secondary school.

GIVEN: _____
DISTRICT JUDGE

SOURCE: MCJI 9-109 (2009)

Plaintiff's Proposed Instruction No. _____ Defendant's Proposed Instruction No. _____

Given as Instruction No. _____ Refused _____ Withdrawn _____ By _____

[Criminal Distribution of Dangerous Drugs on or Near School Property, No. 9-109, 2009, Source and Comment]

SOURCE: MCA § 45-9-109 (2007).

COMMENT: It is not a defense that the person did not know the distance involved. MCA § 45-9-109(3) (2007). It is an affirmative defense if the distribution took place within a private residence and no person under the age of 18 was in the residence. *See* MCA § 45-9-109(4) and MCJI 9-109(a).

In light of the severe maximum penalty, the committee has inserted the “purposely” or “knowingly” element. Omitting the mental state element may leave a conviction subject to a valid attack.

Where indicated above, specify the prohibited substances. Dangerous drugs are defined in MCA § 50-32-101 (2007).

INSTRUCTION NO. [9-109(a)]

[Issues in Criminal Distribution of Dangerous Drugs on or near School Property]

To convict the Defendant of criminal distribution of dangerous drugs on or near school property, the State must prove the following elements:

1. That the Defendant did [sell] [barter] [exchange] [give away] or that he/she did offer to [sell] [barter] [exchange] [or give away] the dangerous drug _____ (name drug);

AND

2. That the Defendant acted purposely or knowingly.

AND

3. The offense occurred on, or within 1,000 feet of the real property comprising a public or private elementary or secondary school.

If you find from your consideration of the evidence that all of these elements have been proved beyond a reasonable doubt, then you should find the Defendant guilty.

If, on the other hand, you find from your consideration of the evidence that any of these elements has not been proved beyond a reasonable doubt then you should find the Defendant not guilty.

GIVEN: _____
DISTRICT JUDGE

SOURCE: MCJI 9-109(a) (2009)

Plaintiff's Proposed Instruction No. _____ Defendant's Proposed Instruction No. _____

Given as Instruction No. _____ Refused _____ Withdrawn _____ By _____

**[Issues in Criminal Distribution of Dangerous Drugs on or near School Property,
No. 9-109(a), 2009, Source and Comment]**

SOURCE: MCA § 45-9-109(a) (2007).

COMMENT: Where indicated above, specify the prohibited substance. Dangerous
Drugs are defined in MCA § 50-32-101 (2007).

INSTRUCTION NO. [9-109(b)]

[Affirmative Defense – Criminal Distribution of Dangerous Drugs on or near School Property]

It is an affirmative defense to the charge of criminal distribution of dangerous drugs on or near school property if:

1. The prohibited conduct took place entirely within a private residence;

AND

2. No person 17 years of age or younger was present in the private residence at any time during the commission of the offense.

GIVEN: _____
DISTRICT JUDGE

SOURCE: MCJI 9-109(b) (2009)

Plaintiff's Proposed Instruction No. _____ Defendant's Proposed Instruction No. _____

Given as Instruction No. _____ Refused _____ Withdrawn _____ By _____

[Affirmative Defense – Criminal Distribution of Dangerous Drugs on or near School Property, No. 9-109(b), 2009, Source and Comment]

SOURCE: MCA § 45-9-109 (4) (2007).

COMMENT: The legislature did not delineate the burden of proof for this affirmative defense.

INSTRUCTION NO. [9-110]

[Criminal Production or Manufacture of Dangerous Drugs (Non-Marijuana)]

A person commits the offense of criminal production or manufacture of dangerous drugs if he/she purposely or knowingly **[produces] [manufactures] [prepares] [cultivates] [compounds] or [processes]** the dangerous drug _____ (name drug).

GIVEN: _____
DISTRICT JUDGE

SOURCE: MCJI 9-110 (2009)

Plaintiff's Proposed Instruction No. _____ Defendant's Proposed Instruction No. _____

Given as Instruction No. _____ Refused _____ Withdrawn _____ By _____

[Criminal Production or Manufacture of Dangerous Drugs (Non-Marijuana), No. 9-110, 2009, Source and Comment]

SOURCE: MCA § 45-9-110 (2007).

COMMENT: Where indicated above, specify the prohibited substance. Dangerous drugs are defined in MCA § 50-32-101 (2005).

Practitioners and agents under their supervision acting in the course of a professional practice, as defined in MCA § 50-32- 101 are exempt from this provision.

INSTRUCTION NO. 9-110(a)

[Issues in Criminal Production or Manufacture of Dangerous Drugs (Non-Marijuana)]

To convict the Defendant of criminal production or manufacture of dangerous drugs, the State must prove the following elements:

1. That the Defendant **[produced]** **[manufactured]** **[prepared]** **[cultivated]** **[compounded]** or **[processed]** the dangerous drug
_____ (name drug);

AND

2. That the Defendant acted purposely or knowingly.

If you find from your consideration of the evidence that each of these elements have been proved beyond a reasonable doubt, then you should find the Defendant guilty.

If, on the other hand, you find from your consideration of the evidence that either of these elements has not been proved beyond a reasonable doubt then you should find the Defendant not guilty.

GIVEN: _____
DISTRICT JUDGE

SOURCE: MCJI 9-110(a) (2009)

Plaintiff's Proposed Instruction No. _____ Defendant's Proposed Instruction No. _____

Given as Instruction No. _____ Refused _____ Withdrawn _____ By _____

[Issues in Criminal Production or Manufacture of Dangerous Drugs (Non-Marijuana), No. 9-110(a), 2009, Source and Comment]

SOURCE: MCA § 45-9-110 (2007).

COMMENT: Where indicated above, specify the prohibited substance. Dangerous drugs are defined in MCA § 50-32-101 (2007).

INSTRUCTION NO. [9-111]

A person commits the offense of criminal production or manufacture of marijuana if he/she purposely or knowingly **[produces]** **[manufactures]** **[prepares]** **[cultivates]** **[compounds]** or **[processes]** marijuana.

GIVEN: _____
DISTRICT JUDGE

SOURCE: MCJI 9-111 (2009).

Plaintiff's Proposed Instruction No. _____ Defendant's Proposed Instruction No. _____

Given as Instruction No. _____ Refused _____ Withdrawn _____ By _____

[Criminal Production or Manufacture of Marijuana, No. 9-111, 2009, Source and Comment]

SOURCE: MCA § 45-9-110 (4) (2007).

COMMENT: Jury must make finding beyond a reasonable doubt of the amount of marijuana because of the enhanced penalty involved See MCA § 46-1-401(2007).

INSTRUCTION NO. [9-111(a)]

[Issues in Criminal Production or Manufacture of Marijuana]

To convict the Defendant of criminal production or manufacture of marijuana, the State must prove the following elements:

1. That the Defendant [**produced**] [**manufactured**] [**prepared**] [**cultivated**] [**compounded**] or [**processed**] marijuana;

AND

2. That the total weight of marijuana was [**greater than**] [**less than**] one pound, total weight being the weight of a dry plant, including leaves and stem but not the root structure;

OR

2. That the number of plants was [**greater than**] [**less than**] 30 plants;

AND

3. That the Defendant acted purposely or knowingly.

If you find from your consideration of the evidence that each of these elements have been proved beyond a reasonable doubt, then you should find the Defendant guilty.

If, on the other hand, you find from your consideration of the evidence that either of these elements has not been proved beyond a reasonable doubt then you should find the Defendant not guilty.

GIVEN: _____
DISTRICT JUDGE

SOURCE: MCJI 9-111(a) (2009)

Plaintiff's Proposed Instruction No. _____ Defendant's Proposed Instruction No. _____

Given as Instruction No. _____ Refused _____ Withdrawn _____ By _____

**[Issues in Criminal Production or Manufacture of Marijuana, No. 9-111(a), 2009,
Source and Comment]**

SOURCE: MCA § 45-9-110 (4) (2007).

COMMENT: Note that the pleading and verdict requirements of MCA § 45-1-401 are implicated because of the enhanced penalty in the statute.

INSTRUCTION NO. [9-112]

[Criminal Distribution of Imitation Dangerous Drugs]

A person commits the offense of criminal sale of imitation dangerous drugs if he/she knowingly or purposely [sells] [barters] [exchanges] [gives away] or offers to [sell] [barter] [exchange] [give away] the imitation dangerous drug _____ (name substance) to a person [18 years of age or older] [under the age of 18].

“Imitation dangerous drug” means a substance that is expressly or impliedly represented to be a dangerous drug or to simulate the effect of a dangerous drug and the appearance of which, including the color, shape, size, and markings, would lead a reasonable person to believe that the substance is a dangerous drug.

GIVEN: _____
DISTRICT JUDGE

SOURCE: MCJI 9-112 (2009)

Plaintiff’s Proposed Instruction No. _____ Defendant’s Proposed Instruction No. _____

Given as Instruction No. _____ Refused _____ Withdrawn _____ By _____

[Criminal Distribution of Imitation Dangerous Drugs, No. 9-112, 2009, Source and Comment]

SOURCE: MCA § 45-9-111 (2007); MCA § 45-9-112 (2007).

COMMENT: Where indicated above, specify the prohibited substance being imitated. Dangerous drugs are defined in MCA § 50-32-101 (2007).

Age of the imitation drug recipient must be found by the jury by proof beyond a reasonable doubt. MCA § 46-1-401 (2007).

INSTRUCTION NO. [9-112(a)]

[Issues in Criminal Distribution of Imitation Dangerous Drugs]

To convict the Defendant of Criminal Distribution of Imitation Dangerous Drugs, the State must prove the following elements:

1. That the Defendant **[sold] [bartered] [exchanged] [gave away] [offered to (sell) (barter) (exchange) (give away)]** an imitation dangerous drug;

AND

2. That the person receiving the imitation dangerous drug was **[18 years of age or older] [under the age of 18]**.

AND

3. That the Defendant acted purposely or knowingly.

If you find from your consideration of the evidence that all of these elements have been proved beyond a reasonable doubt, then you should find the Defendant guilty.

If, on the other hand, you find from your consideration of the evidence that any of these elements has not been proved beyond a reasonable doubt then you should find the Defendant not guilty.

GIVEN: _____
DISTRICT JUDGE

SOURCE: MCJI 9-112(a) (2009)

Plaintiff's Proposed Instruction No. _____ Defendant's Proposed Instruction No. _____

Given as Instruction No. _____ Refused _____ Withdrawn _____ By _____

**[Issues in Criminal Distribution of Imitation Dangerous Drugs, No. 9-112(a), 2009,
Source and Comment]**

SOURCE: MCA § 45-9-112 (2007).

COMMENT: Pleading and verdict requirements of MCA § 46-1-401 (2007) must be met to impose the enhanced penalty.

INSTRUCTION NO. [9-113]

[Criminal Possession of Imitation Dangerous Drug with the Purpose to Distribute]

A person commits the offense of criminal possession of an imitation dangerous drug with the purpose to distribute if he/she possesses an imitation dangerous drug and has the purpose to distribute such imitation dangerous drug.

GIVEN: _____
DISTRICT JUDGE

SOURCE: MCJI 9-113 (2009)

Plaintiff's Proposed Instruction No. _____ Defendant's Proposed Instruction No. _____

Given as Instruction No. _____ Refused _____ Withdrawn _____ By _____

**[Criminal Possession of Imitation Dangerous Drug with the Purpose to Distribute,
No. 9-113, 2009, Source and Comment]**

SOURCE: MCA § 45-9-113 (2007).

COMMENT: Dangerous Drugs are defined in MCA § 50-32-101 (2007).

INSTRUCTION NO. [9-113(a)]

[Issues in Criminal Possession of Imitation Dangerous Drugs with Purpose to Distribute]

To convict the Defendant of Criminal Possession of Imitation Dangerous Drugs with the Purpose to Distribute, the State must prove the following elements:

1. That the Defendant possessed an imitation dangerous drug; and
2. That the Defendant had the purpose to distribute such imitation dangerous drug.

If you find from your consideration of the evidence that both of these elements have been proved beyond a reasonable doubt, then you should find the Defendant guilty.

If, on the other hand, you find from your consideration of the evidence that any of these elements has not been proved beyond a reasonable doubt then you should find the Defendant not guilty.

GIVEN: _____
DISTRICT JUDGE

SOURCE: MCJI 9-113(a) (2009)

Plaintiff's Proposed Instruction No. _____ Defendant's Proposed Instruction No. _____

Given as Instruction No. _____ Refused _____ Withdrawn _____ By _____

[Issues in Criminal Possession of Imitation Dangerous Drugs with the Purpose to Distribute, No. 9-113(a), 2009, Source and Comment]

SOURCE: MCA § 45-9-113 (2007).

COMMENT: Dangerous Drugs are defined in MCA § 50-32-101 (2007).

INSTRUCTION NO. [9-113(b)]

Possession means the knowing control of anything for a sufficient time to be able to terminate control. Possession of imitation dangerous drugs may be either “actual” or “constructive.” Actual possession means that the Defendant has personal custody of the imitation dangerous drugs; constructive possession means that the imitation dangerous drugs are not in actual physical possession, but that the Defendant has dominion and control over imitation dangerous drugs or the joint dominion and control of the imitation dangerous drugs with another.

GIVEN: _____
DISTRICT JUDGE

SOURCE: MCJI 9-113(b) (2005).

Plaintiff's Proposed Instruction No. _____ Defendant's Proposed Instruction No. _____

Given as Instruction No. _____ Refused _____ Withdrawn _____ By _____

[Possession of Imitation Dangerous Drugs – Actual or Constructive, No. 9-113(b), 2009, Source and Comment]

SOURCE: MCA § 45-2-101 (59) (2005); *State v. Meader*, 184 Mont. 32 (1979), and *State v. Caekaert*, 295 Mont. 42 (1999).

INSTRUCTION NO. [9-114]

[Entrapment]

You are instructed that one of the issues in this case is whether the Defendant was entrapped. If the Defendant was entrapped, he/she must be found not guilty. The state has the burden of proving beyond a reasonable doubt that the Defendant was not entrapped.

If the Defendant before contact with **[law enforcement officer/agent]** did not have any intent or disposition to commit the crime charged and was induced or persuaded by **[officer/agent]** to commit that crime, then she/he was entrapped.

On the other hand, if the Defendant before contact with **[officer/agent]** did have an intent or disposition to commit the crime charged, then he/she was not entrapped, even though **[officer/agent]** provided a favorable opportunity to commit the crime or made committing the crime easier or even participated in acts essential to the crime.

GIVEN: _____
DISTRICT JUDGE

SOURCE: MCJI 9-114 (2009)

Plaintiff's Proposed Instruction No. _____ Defendant's Proposed Instruction No. _____

Given as Instruction No. _____ Refused _____ Withdrawn _____ By _____

[Entrapment, No. 9-114, 2009, Source and Comment]

SOURCE: MCA § 45-2-213 (2007); *State v. Sweet*, 287 Mont. 336,(1998).

INSTRUCTION NO. [9-115]

[Operation of Unlawful Clandestine Laboratory]

A person commits the offense of operation of an unlawful clandestine laboratory if the person purposely or knowingly engages in:

[the procurement, possession, or use of chemicals, precursors to dangerous drugs, supplies, equipment, or a laboratory location for the criminal production or manufacture of dangerous drugs as prohibited by MCA § 45-9-110]

OR

[the transportation of or arranging for the transportation of chemicals, precursors to dangerous drugs, supplies or equipment for the criminal production or manufacture of dangerous drugs as prohibited by MCA § 45-9-110]

OR

[the setting up of equipment or supplies in preparation for the criminal production or manufacture of dangerous drugs as prohibited by MCA § 45-9-110]

GIVEN: _____
DISTRICT JUDGE

SOURCE: MCJI 9-115 (2009)

Plaintiff's Proposed Instruction No. _____ Defendant's Proposed Instruction No. _____

Given as Instruction No. _____ Refused _____ Withdrawn _____ By _____

[Operation of Unlawful Clandestine Laboratory, No. 9-115, 2009, Source and Comment]

SOURCE: MCA § 45-9-132 (2007).

COMMENT: The definition of criminal production or manufacture of dangerous drugs contained in MCA § 45-9-110 (2007) should be given with this instruction.

INSTRUCTION NO. [9-115(a)]

[Issues in Operation of Unlawful Clandestine Laboratory]

To convict the defendant of operation of an unlawful clandestine laboratory, the State must prove the following elements:

1. That the Defendant engaged in: **[the procurement, possession, or use of chemicals, precursors to dangerous drugs, supplies, equipment, or a laboratory location for the criminal production or manufacture of dangerous drugs as prohibited by MCA § 45-9-110]**

OR

1. That the Defendant engaged in: **[the transportation of or arranging for the transportation of chemicals, precursors to dangerous drugs, supplies or equipment for the criminal production or manufacture of dangerous drugs as prohibited by MCA § 45-9-110]**

OR

1. That the Defendant engaged in: **[the setting up of equipment or supplies in preparation for the criminal production or manufacture of dangerous drugs as prohibited by MCA § 45-9-110]**

AND

2. That the Defendant acted purposely or knowingly.

If you find from your consideration of the evidence that all of these elements have been proved beyond a reasonable doubt, then you should find the Defendant guilty.

If, on the other hand, you find from your consideration of the evidence that any of these elements has not been proved beyond a reasonable doubt then you should find the Defendant not guilty.

GIVEN: _____
DISTRICT JUDGE

SOURCE: MCJI § 9-115(a) (2009)

Plaintiff's Proposed Instruction No. _____ Defendant's Proposed Instruction No. _____

Given as Instruction No. _____ Refused _____ Withdrawn _____ By _____

[Issues in Operation of Unlawful Clandestine Laboratory, No. 9-115(a), 2009, Source and Comment]

SOURCE: MCA § 45-9-132 (2007).

COMMENT: If applicable, the definition of “possession” provided in MCA § 45-2-101 (59) (2007) should be given with this instruction.

The definition of criminal production or manufacture of dangerous drugs contained in MCA § 45-9-110 (2007) should be given with this instruction.