**CHAPTER NINE**

**DANGEROUS DRUGS**

No. Subject

9-101 Criminal Distribution of Dangerous Drugs

9-101.1 Criminal Distribution of Dangerous Drugs—Marijuana

9-101(a) Issues—Criminal Distribution of Dangerous Drugs

9-101.1(a) Issues—Criminal Distribution of Dangerous Drugs - Marijuana

9-101(b) Determining Age of Defendant and Recipient—Criminal Distribution of Dangerous Drugs

9-101(c) Determining if Death Resulted from Criminal Distribution of Dangerous Drugs

9-102 Criminal Possession of Dangerous Drugs—Felony

9-102.1 Criminal Possession of Dangerous Drugs—Marijuana

9-102(a) Issues—Criminal Possession of Dangerous Drugs—Felony

9-102.1(a) Issues—Criminal Possession of Dangerous Drugs—Marijuana

9-103 Criminal Possession with the Intent to Sell

9-103.1 Criminal Possession with Intent to Distribute - Marijuana

9-103(a) Issues—Criminal Possession with the Intent to Sell

9-103.1 Issues—Criminal Possession with Intent to Distribute—Marijuana

9-104 Possession of Dangerous Drugs—Actual or Constructive

9-105 Fraudulently Obtaining Dangerous Drugs

9-105(a) Issues—Fraudulently Obtaining Dangerous Drugs

9-106 Criminal Possession of Precursors to Dangerous Drugs

9-106(a) Issues Criminal Possession of Precursors to Dangerous Drugs

9-107 Possession of Precursors to Dangerous Drugs—Actual or Constructive

9-108 Criminal Distribution of Dangerous Drugs on or near School Property

9-108(a) Issues in Criminal Distribution of Dangerous Drugs on or near School Property

9-108(b) Affirmative Defense—Criminal Distribution of Dangerous Drugs on or near School Property

9-109 Criminal Production or Manufacture of Dangerous Drugs (non Marijuana)

9-109(a) Issues in Criminal Production or Manufacture of Dangerous Drugs (non Marijuana)

9-110 Criminal Production or Manufacture of Marijuana

9-110(a) Issues in Criminal Production or Manufacture of Marijuana

9-111 Criminal Distribution of Imitation Dangerous Drugs

9-111(a) Issues in Criminal Distribution of Imitation Dangerous Drugs

9-112 Criminal Possession of Imitation Dangerous Drugs with Purpose to Distribute

9-112(a) Issues in Criminal Possession of Imitation Dangerous Drugs with Purpose to Distribute

9-112(b) Possession of Imitation Dangerous Drugs—Actual or Constructive

9-113 Entrapment

9-114 Operation of Unlawful Clandestine Laboratory

9-114(a) Issues in Operation of Unlawful Clandestine Laboratory

9-115 Criminal Possession of Drug Paraphernalia

9-115(a) Issues in Criminal Possession of Drug Paraphernalia

9-116 Criminal Possession of Drug Paraphernalia—Definition

9-117 Manufacture or Delivery of Drug Paraphernalia

9-117(a) Issues in Manufacture or Delivery of Drug Paraphernalia

INSTRUCTION NO. **[9-101]**

**[Criminal Distribution of Dangerous Drugs]**

A person commits the offense of criminal distribution of dangerous drugs if the person purposely or knowingly **[sells] [barters] [exchanges] [gives away]** **[offers to (sell) (barter) (exchange) (give away)]** the dangerous drug, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

SOURCE: MCJI 9-101 (2022)

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, 2022, Source and Comment]**

SOURCE: MCA § 45-9-101 (2021).

COMMENT: Insert the type of dangerous drug from MCA § 50-32-101 (2021) in the blank.

 The statute defining this offense does not specify a mental state element. However, based on MCA § 45-2-104 and the penalties attached to this offense, the Commission has inserted the mental states of purposely or knowingly.

 INSTRUCTION NO. **[9-101.1]**

**[Criminal Distribution of Dangerous Drugs—Marijuana]**

A person commits the offense of criminal distribution of the dangerous drug marijuana if the person purposely or knowingly **[sells] [barters] [exchanges] [gives away more than** (**[2 ounces of marijuana] [16 grams of marijuana in a concentrated form])]** **[offers to (sell) (barter) (exchange) (give away** **more than** **[2 ounces of marijuana] [16 grams of marijuana in a concentrated form])**.

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

SOURCE: MCJI 9-101.1 (2022)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_ Defendant’s Proposed Instruction No.\_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_ By\_\_\_\_\_

**[Criminal Distribution of Dangerous Drugs - Marijuana, No. 9-101.1, 2022, Source and Comment]**

SOURCE: MCA § 45-9-101 (2021) and § 16-12-106(7)

COMMENT: Use this instruction when charging a marijuana offense not covered by the Montana Marijuana Regulation and Tax Act, MCA § 16-12-101, et seq.

 The statute defining this offense does not specify a mental state element. However, based on MCA § 45-2-104 and the penalties attached to this offense, the Commission has inserted the mental states of purposely or knowingly.

INSTRUCTION NO. **[9-101(a)]**

**[Issues in 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 **[sold] [bartered] [exchanged] [gave away] [offered to (sell) (barter) (exchange) (give away)]** the dangerous 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 9-101(a) (2022)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_ Defendant’s Proposed Instruction No.\_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_ By\_\_\_\_\_

**[Issues in Criminal Distribution of Dangerous Drugs, No. 9-101(a), 2022, Source and Comment]**

SOURCE: MCA § 45-9-101(2) (2021).

COMMENT: Insert the type of dangerous drug from MCA § 50-32-101 (2021) in the blank.

 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).

 The legislature has also provided greater penalties for adults who distribute dangerous drugs to minors. MCA § 45-9-101(4), (2021). If the State seeks the greater penalty for distribution set forth in that statute, also use MCJI 9-101(b) and the special verdict form in MCJI 1-123. *See* MCA § 46-1-401 (2021).

INSTRUCTION NO. **[9-101.1(a)]**

**[Issues in Criminal Distribution of Dangerous Drugs—Marijuana]**

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

1. That the Defendant **[sold] [bartered] [exchanged] [gave away more than [two ounces of marijuana] [16 grams of marijuana in a concentrated form] [offered to (sell) (barter) (exchange) (give away more than [two ounces of marijuana] [16 grams of marijuana in a concentrated form]** the dangerous drug marijuana.

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 9-101.1(a) (2022)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_ Defendant’s Proposed Instruction No.\_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_ By\_\_\_\_\_

**[Issues in Criminal Distribution of Dangerous Drugs - Marijuana, No. 9-101.1(a), 2022, Source and Comment]**

SOURCE: MCA § 45-9-101 and § 16-12-106(7) (2021)

COMMENT: Use this instruction when charging a marijuana offense not covered by the Montana Marijuana Regulation and Tax Act, MCA § 16-12-101, et seq.

 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).

 The legislature has provided greater penalties for adults who distribute dangerous drugs to minors. MCA § 45-9-101(4)(2021). If the State seeks the greater penalty for distribution set forth in that statute, also use MCJI 9-101(b) and the special verdict form in MCJI 1-123. *See* MCA § 46-1-401 (2021).

INSTRUCTION NO. **[9-101(b)]**

**[Determining Age of Defendant and Recipient—Criminal Distribution of Dangerous Drugs]**

If you find the defendant guilty of criminal distribution of the dangerous drug, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, as charged inCount \_\_\_, you must then determine whether the State proved beyond a reasonable doubt that the Defendant was an adult at the time of distribution and that the person to whom the Defendant distributed the dangerous drug was a minor.

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

SOURCE: MCJI 9-101(b) (2022)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_ Defendant’s Proposed Instruction No.\_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_ By\_\_\_\_\_

**[Determining Age of Defendant and Recipient—Criminal Distribution of Dangerous Drugs, No. 9-101(b), 2022, Source and Comment]**

SOURCE: MCA § 45-9-101(5) (2021)

COMMENT: The legislature has provided greater penalties for adults convicted of distributing dangerous drugs to minors. MCA § 45-9-101(4). This instruction should be used when the State seeks to impose the greater penalties found in that statute. The special verdict form in MCJI 1-123 should also be provided.

 *See* MCA § 46-1-401 (2021).

 Insert the type of dangerous drug from MCA § 50-32-101 (2021) in the blank.

INSTRUCTION NO. **[9-101(c)]**

**[Determining if Death Resulted from Criminal Distribution of Dangerous Drugs]**

If you find the defendant guilty of criminal distribution of the dangerous drug, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, as charged inCount \_\_\_, you must then determine whether the State proved beyond a reasonable doubt that the death of \_\_\_\_\_\_\_\_\_\_, resulted from the use of any dangerous drug that was distributed.

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

SOURCE: MCJI 9-101(c) (2022)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_ Defendant’s Proposed Instruction No.\_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_ By\_\_\_\_\_

**[Determining if Death Resulted from Criminal Distribution of Dangerous Drugs, No. 9-101(c), 2022, Source and Comment]**

SOURCE: MCA § 45-9-101(5) (2021)

COMMENT: The legislature has provided a new penalty when distributing dangerous drugs results in the death of an individual who used the dangerous drugs. § 45-9-101(5). This instruction should be used when the State seeks to impose the greater penalties found in that statute. The special verdict form in MCJI 1-123 should also be provided. *See* MCA § 46-1-401 (2021).

 Insert the type of dangerous drug from MCA § 50-32-101 (2021) in the blank.

INSTRUCTION NO. **[9-102]**

**[Criminal Possession of Dangerous Drugs]**

A person commits the offense of criminal possession of dangerous drugs if the person purposely or knowingly possesses the dangerous drug, \_\_\_\_\_\_\_\_\_\_\_\_\_.

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

SOURCE: MCJI 9-102 (2022)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_ Defendant’s Proposed Instruction No.\_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_ By\_\_\_\_\_

**[Criminal Possession of Dangerous Drugs, No. 9-102, 2022, Source and Comment]**

SOURCE: MCA § 45-9-102 (2021)

COMMENT: Insert the type of dangerous drug from MCA § 50-32-101 (2021) in the blank.

 The statute defining this offense do not specify a mental state element. However, based on MCA § 45-2-104 and the penalties attached to this offense, the Commission has inserted the mental states of purposely or knowingly.

 INSTRUCTION NO. **[9-102.1]**

**[Criminal Possession of Dangerous Drugs - Marijuana]**

 A person commits the offense of criminal possession of dangerous drugs if the person purposely or knowingly possesses more than **[two ounces of marijuana] [16 grams of marijuana in a concentrated form] of** the dangerous drug, marijuana.

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

SOURCE: MCJI 9-102.1

Plaintiff’s Proposed Instruction No. \_\_\_\_\_ Defendant’s Proposed Instruction No.\_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_ By\_\_\_\_\_

**[Criminal Possession of Dangerous Drugs – Marijuana, No. 9-102.1, 2022, Source and Comment]**

SOURCE: MCA § 45-9-102 and § 16-12-106(7) (2021)

COMMENT: Use this instruction when charging a marijuana offense not covered by the Montana Marijuana Regulation and Tax Act, MCA § 16-12-101, et seq.

 The statute defining this offense do not specify a mental state element. However, based on MCA § 45-2-104 and the penalties attached to this offense, the Commission has inserted the mental states of purposely or knowingly.

INSTRUCTION NO. **[9-102(a)]**

**[Issues in Criminal Possession of Dangerous Drugs]**

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, \_\_\_\_\_\_\_\_\_\_\_\_\_;

**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) (2022)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_ Defendant’s Proposed Instruction No.\_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_ By\_\_\_\_\_

**[Issues in Criminal Possession of Dangerous Drugs, No. 9-102(a), 2022, Source and Comment]**

SOURCE: MCA § 45-9-102(1) (2021)

COMMENT: Insert the type of dangerous drug from MCA § 50-32-101 (2021) in the blank.

INSTRUCTION NO. **[9-102.1(a)]**

**[Issues in Criminal Possession of Dangerous Drugs – Marijuana]**

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, marijuana;

**AND**

 2. That the Defendant possessed more than **[two ounces of marijuana] [16 grams of marijuana in a concentrated form]**

**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 9-102.1(a)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_ Defendant’s Proposed Instruction No.\_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_ By\_\_\_\_\_

**[Issues in Criminal Possession of Dangerous Drugs, No. 9-102.1(a), 2022, Source and Comment]**

SOURCE: MCA § 45-9-102(1) and § 16-12-106(7) (2021)

COMMENT: Use this instruction when charging a marijuana offense not covered by the Montana Marijuana Regulation and Tax Act, MCA § 16-12-101, et seq.

INSTRUCTION NO. **[9-103]**

**[Criminal Possession with Intent to Distribute]**

A person commits the offense of criminal possession with intent to distribute if the person purposely or knowingly possesses with intent to distribute the dangerous drug, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

SOURCE: MCJI 9-103 (2022)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_ Defendant’s Proposed Instruction No.\_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_ By\_\_\_\_\_

**[Criminal Possession with Intent to Distribute, No. 9-103, 2022, Source and Comment]**

SOURCE MCA § 45-9-103 (2021)

COMMENT: Insert the type of dangerous drug from MCA § 50-32-101 (2021) in the blank.

 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).

 The statute defining this offense do not specify a mental state element. However, based on MCA § 45-2-104 and the penalties attached to this offense, the Commission has inserted the mental states of purposely or knowingly.

INSTRUCTION NO. **[9-103.1]**

**[Criminal Possession with Intent to Distribute—Marijuana]**

 A person commits the offense of criminal possession with intent to distribute if the person purposely or knowingly possesses with intent to distribute more than **[two ounces of marijuana] [16 grams of marijuana in a concentrated form]** the dangerous drug, marijuana.

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

SOURCE: MCJI 9-103.1 (2022)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_ Defendant’s Proposed Instruction No.\_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_ By\_\_\_\_\_

**[Criminal Possession with Intent to Distribute—Marijuana, No. 9-103.1, 2022 Supp., Source and Comment]**

SOURCE MCA § 45-9-103 and § 16-12-106(7) (2021)

COMMENT: Use this instruction when charging a marijuana offense not covered by the Montana Marijuana Regulation and Tax Act, MCA § 16-12-101, et seq.

 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).

 The statute defining this offense do not specify a mental state element. However, based on MCA § 45-2-104 and the penalties attached to this offense, the Commission has inserted the mental states of purposely or knowingly.

INSTRUCTION NO. **[9-103(a)]**

**[Issues in Criminal Possession with the Intent to Distribute]**

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, **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**;

**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 9-103(a) (2022)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_ Defendant’s Proposed Instruction No.\_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_ By\_\_\_\_\_

**[Issues in Criminal Possession with the Intent to Distribute, No. 9-103(a), 2022, Source and Comment]**

SOURCE: MCA § 45-9-103 (2021)

COMMENT: Insert the type of dangerous drug from MCA § 50-32-101 (2021) in the blank.

 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. **[9-103.1(a)]**

**[Issues in Criminal Possession with the Intent to Distribute—Marijuana]**

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, marijuana;

**AND**

 2. That the Defendant possessed with the intent to distribute more than **[two ounces of marijuana] [16 grams of marijuana in a concentrated form]**

3. 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 9-103.1(a) (2022)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_ Defendant’s Proposed Instruction No.\_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_ By\_\_\_\_\_

**[Issues in Criminal Possession with the Intent to Distribute, No. 9-103.1(a), 2022, Source and Comment]**

SOURCE: MCA § 45-9-103 and § 15-12-106(7) (2021)

COMMENT: Use this instruction when charging a marijuana offense not covered by the Montana Marijuana Regulation and Tax Act, MCA § 16-12-101, et seq.

 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. **[9-104]**

**[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 9-104 (2022)

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. 9-104, 2022, Source]**

SOURCE: MCA § 45-2-101(59) (2021); *State v. Meader,* 184 Mont. 32 (1979), *State v. Caekaert,* 295 Mont. 42 (1999).

INSTRUCTION NO. **[9-105]**

**[Fraudulently Obtaining Dangerous Drugs]**

 A person commits the offense of fraudulently obtaining dangerous drugs if the person purposely or knowingly obtains or attempts to obtain the dangerous 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) (person authorized to possess dangerous drugs).]**

 **[the use of a (forged) (altered) (fictitious) prescription.]**

 **[the use of a false (name) (address) on a prescription.]**

 **[the concealment of a material fact.]**

 **[failing to disclose to a practitioner that the person has received the same or a similar dangerous drug or prescription for a dangerous drug from another source within the prior 30 days.]**

 **[communicating (false) (incomplete) information to a practitioner with the intent to procure the (administration of) (a prescription for) a dangerous drug.]**

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

SOURCE: MCJI 9-105 (2022)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_ Defendant’s Proposed Instruction No.\_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_ By\_\_\_\_\_

**[Fraudulently Obtaining Dangerous Drugs, No. 9-105, 2022, Source and Comment]**

SOURCE: MCA § 45-9-104 (2021).

COMMENT: Insert the type of dangerous drug from MCA § 50-32-101 (2021) in the blank.

 The statute defining this offense does not specify a mental state element except with respect to those criminal mechanisms set forth in MCA §§ 45-9-104(6), (7). However, based on MCA § 45-2-104 and the penalties attached to this offense, the Commission inserted the mental states of purposely or knowingly with respect to all of the mechanisms for committing this crime. As such, the Commission deleted the duplicative references to those mental states in subsections (6) and (7).

INSTRUCTION NO. **[9-105(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 obtained or attempted to obtain the dangerous drug, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_;

**2. hat the Defendant did so by fraud, deceit, misrepresentation, or subterfuge;**

 **OR**

**2. That the Defendant did so by falsely assuming the title of or representing himself to be a (manufacturer) (wholesaler) (practitioner) (pharmacist) (owner of a pharmacy) (person authorized to possess dangerous drugs);**

 **OR**

**2. That the Defendant did so by the use of a (forged) (altered) (fictitious) prescription;**

 **OR**

**2. That the Defendant did so by the use of a false (name) (address) on a prescription;**

 **OR**

**2. That the Defendant did so by the concealment of a material fact;**

 **OR**

**2. That the Defendant did so by failing to disclose to a practitioner that the person has received the same or a similar dangerous drug or prescription for a dangerous drug from another source within the prior 30 days;]**

 **OR**

**2. That the Defendant did so by communicating (false) (incomplete) information to a practitioner with the intent to procure the (administration of) (a prescription for) a dangerous drug;**

 **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 9-105(a) (2022)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_ Defendant’s Proposed Instruction No.\_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_ By\_\_\_\_\_

**[Issues in Fraudulently Obtaining Dangerous Drugs, No. 9-105(a), 2022, Source and Comment]**

SOURCE: MCA § 45-9-104 (2021)

COMMENT: Insert the type of dangerous drug from MCA § 50-32-101 (2021) in the blank.

 The statute defining this offense does not specify a mental state element except with respect to those criminal mechanisms set forth in MCA §§ 45-9-104(6), (7). However, based on MCA § 45-2-104 and the penalties attached to this offense, the Commission inserted the mental states of purposely or knowingly with respect to all of the mechanisms for committing this crime. As such, the Commission deleted the duplicative references to those mental states in subsections (6) and (7).

INSTRUCTION NO. **[9-106]**

**[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 9-106 (2022)

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. 9-106, 2022, Source and Comment]**

SOURCE: MCA § 45-2-101(59) (2021) *and* MCA § 45-9-107 (2021)

COMMENT: Where indicated above, specify the prohibited substance. Dangerous drugs are defined in MCA § 50-32-101 (2021).

INSTRUCTION NO **[9-106(a)]**

**[Issues in Criminal Poss ession 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 9-106(a) (2022)

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. 9-106(a), 2022, Source and Comment]**

SOURCE: MCA § 45-2-101(59) (2021); MCA § 45-9-107 (2021)

COMMENT: Where indicated above, specify the prohibited substance. Dangerous drugs are defined in MCA § 50-32-101 (2021).

INSTRUCTION NO. **[9-107]**

**[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 9-107 (2022)

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. 9-107, 2022, Source and Comment]**

SOURCE: MCA § 45-2-101(59) (2021); *State v. Meader,* 184 Mont. 32 (1979), *State v. Caekaert,* 295 Mont. 42 (1999).

INSTRUCTION NO. **[9-108]**

**[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 9-108 (2022)

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. 9-108, 2022, Source and Comment]**

SOURCE: MCA § 45-9-109 (2021)

COMMENT: It is not a defense that the person did not know the distance involved. MCA § 45-9-109(3) (2021). 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 (2021).

INSTRUCTION NO. **[9-108(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 9-108(a) (2022)

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. 9-108(a), 2022, Source and Comment]**

SOURCE: MCA § 45-9-109(1) (2021.

COMMENT: Where indicated above, specify the prohibited substance. Dangerous Drugs are defined in MCA § 50-32-101 (2021).

INSTRUCTION NO. **[9-108(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 9-108(b) (2022)

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. 9-108(b), 2022, Source and Comment]**

SOURCE: MCA § 45-9-109 (4) (2021)

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

INSTRUCTION NO. **[9-109]**

**[Criminal Production or Manufacture of Dangerous Drugs]**

A person commits the offense of criminal production or manufacture of dangerous drugs if the person knowingly or purposely **[produces] [manufactures] [prepares] [cultivates] [compounds] [processes]** the dangerous drug, \_\_\_\_\_\_\_\_\_\_\_\_\_.

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

SOURCE: MCJI 9-109 (2022)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_ Defendant’s Proposed Instruction No.\_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_ By\_\_\_\_\_

**[Criminal Production or Manufacture of Dangerous Drugs, No. 9-109, 2022, Source and Comment]**

SOURCE: MCA § 45-9-110 (4) (2021)

COMMENT: Insert the type of dangerous drug from MCA § 50-32-101 (2021) in the blank.

INSTRUCTION NO. **[9-109(a)]**

**[Issues in Criminal Production or Manufacture of Dangerous Drugs]**

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]** **[processed]** the dangerous 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 9-109(a) (2022)

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, No. 9-109(a), 2022, Source and Comment]**

SOURCE: MCA § 45-9-110(1) (2021)

COMMENT: Insert the type of dangerous drug from MCA § 50-32-101 (2021) in the blank.

INSTRUCTION NO. **[9-110]**

**[Determining Amount of Marijuana or Tetrahydrocannabinol—Criminal Production or Manufacture of Dangerous Drugs]**

If you find the defendant guilty of criminal production or manufacture of the dangerous drug, **[marijuana] [tetrahydrocannabinol]**,as charged inCount \_\_\_, you must then determine whether the State proved beyond a reasonable doubt that **[the total weight is more than a pound] [the number of plants is more than 30].**

“Weight” means the weight of the dry plant and includes the leaves and stem structure but does not include the root structure.

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

SOURCE: MCJI 9-110 (2022)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_ Defendant’s Proposed Instruction No.\_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_ By\_\_\_\_\_

**[Determining Amount of Marijuana or Tetrahydrocannabinol—Criminal Production or Manufacture, No. 9-110, 2022, Source and Comment]**

SOURCE: MCA § 45-9-110(3) (2021)

COMMENT: Insert the type of dangerous drug from MCA § 50-32-101 (2021) in the blank.

INSTRUCTION NO. **[9-111]**

**[Criminal Distribution of Imitation Dangerous Drugs]**

A person commits the offense of criminal sale of imitation dangerous drugs if the person knowingly or purposely **[sells] [barters] [exchanges] [gives away] [offers to (sell) (barter) (exchange) (give away)]** the imitation dangerous drug, **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**.

“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 9-111 (2022)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_ Defendant’s Proposed Instruction No.\_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_ By\_\_\_\_\_

**[Criminal Distribution of Imitation Dangerous Drugs, No. 9-111, 2022, Source and Comment]**

SOURCE: MCA §§ 45-9-111, -112 (2021)

COMMENT: Insert the type of imitation dangerous drug from MCA § 50-32-101 (2021) in the blank.

INSTRUCTION NO. **[9-111(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)]** the imitation dangerous drug, \_\_\_\_\_\_\_\_\_\_\_\_\_\_;

**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 9-111(a) (2022)

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. 9-111(a), 2022, Source and Comment]**

SOURCE: MCA § 45-9-112 (2021)

COMMENT: Insert the type of imitation dangerous drug from MCA § 50-32-101 (2021) in the blank.

 The legislature has provided greater sentences for those convicted of distributing imitation dangerous drugs to minors. MCA § 45-9-112(3). If the State seeks to impose the greater penalties found in that statute, MCJI 9-112(b) and the special verdict form in MCJI 1-123 should also be provided. *See* MCA § 46-1-401 (2021).

INSTRUCTION NO. **[9-111(b)]**

**[Determining Age of Recipient—Criminal Distribution of Imitation Dangerous Drugs]**

If you find the defendant guilty of criminal distribution of the imitation dangerous drug, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, as charged inCount \_\_\_, you must then determine whether the State proved beyond a reasonable doubt that the person to whom the Defendant distributed the dangerous drug was under the age of 18.

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

SOURCE: MCJI 9-111(b) (2022)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_ Defendant’s Proposed Instruction No.\_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_ By\_\_\_\_\_

**[Determining Age of Recipient—Criminal Distribution of Imitation Dangerous Drugs, No. 9-111(b), 2022, Source and Comment]**

SOURCE: MCA § 45-9-112(3) (2021).

COMMENT: Insert the type of imitation dangerous drug from MCA § 50-32-101 (2021) in the blank.

 The legislature has provided greater sentences for those convicted of distributing imitation dangerous drugs to minors. *See* MCA § 45-9-112(3). This instruction should be used when the State seeks to impose the greater penalties found in that statute. The special verdict form in MCJI 1-123 should also be provided. *See* MCA § 46-1-401 (2021).

INSTRUCTION NO. **[9-112]**

**[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 9-112 (2022)

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. 9-112, 2022, Source and Comment]**

SOURCE: MCA § 45-9-113 (2021)

COMMENT: Dangerous Drugs are defined in MCA § 50-32-101 (2021).

INSTRUCTION NO. **[9-112(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 9-112(a) (2022)

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. 9-112(a), 2022, Source and Comment]**

SOURCE: MCA § 45-9-113 (2021)

COMMENT: Dangerous Drugs are defined in MCA § 50-32-101 (2021).

INSTRUCTION NO. **[9-112(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 9-112(b) (2022)

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. 9-112(b), 2022, Source and Comment]**

SOURCE: MCA § 45-2-101 (59) (2021); *State v. Meader*, 184 Mont. 32 (1979), and *State v. Caekaert*, 295 Mont. 42 (1999).

INSTRUCTION NO. **[9-113]**

**[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 9-113 (2022)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_ Defendant’s Proposed Instruction No.\_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_ By\_\_\_\_\_

**[Entrapment, No. 9-113, 2022, Source and Comment]**

SOURCE: MCA § 45-2-213 (2021); *State v. Sweet*, 287 Mont. 336 (1998).

INSTRUCTION NO. **[9-114]**

**[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 9-114 (2022)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_ Defendant’s Proposed Instruction No.\_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_ By\_\_\_\_\_

**[Operation of Unlawful Clandestine Laboratory, No. 9-114, 2022, Source and Comment]**

SOURCE: MCA § 45-9-132 (2021)

COMMENT: The definition of criminal production or manufacture of dangerous drugs contained in MCA § 45-9-110 (2021) should be given with this instruction.

INSTRUCTION NO. **[9-114(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**

1. 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 § 9-114(a) (2022)

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. 9-114(a), 2022, Source and Comment]**

SOURCE: MCA § 45-9-132 (2021)

COMMENT: If applicable, the definition of “possession” provided in MCA § 45-2-101 (59) (2021) should be given with this instruction.

 The definition of criminal production or manufacture of dangerous drugs contained in MCA § 45-9-110 (2021) should be given with this instruction

INSTRUCTION NO. **[9-115]**

**[Criminal Possession of Drug Paraphernalia]**

A person commits the offense of criminal possession of drug paraphernalia if the person **[uses] [possesses with intent to use]** drug paraphernalia to **[plant] [propagate] [cultivate] [grow] [harvest] [manufacture] [compound] [convert] [produce] [process] [prepare] [test] [analyze] [pack] [repack] [store] [contain] [conceal] [inject] [ingest] [inhale] [or otherwise introduce into the human body]** a dangerous drug.

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

Source: MCJI 9-115 (2022)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_ Defendant’s Proposed Instruction No.\_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_ By\_\_\_\_\_

**[Criminal Possession of Drug Paraphernalia, No. 9-115, 2022, Source and Comment]**

SOURCE: MCA § 45-10-103 (2021)

COMMENT: Note the option to select either use or drug paraphernalia or possession of drug paraphernalia with intent to use it as well as the activity the paraphrenia was used in conjunction with.

 A definition of dangerous drug should be included.

INSTRUCTION NO. **[9-115(a)]**

**[Issues in Criminal Possession of Drug Paraphernalia]**

To convict the Defendant of Criminal Possession of Drug Paraphernalia, the State must prove the following elements:

1. That the Defendant **[used] [possessed with intent to use]** drug paraphernalia;

**AND**

2. That the Defendant **[used] [possessed with intent to use]** the drug paraphernalia to **[plant] [propagate] [cultivate] [grow] [harvest] [manufacture] [compound] [convert] [produce] [process] [prepare] [test] [analyze] [pack] [repack] [store] [contain] [conceal] [inject] [ingest] [inhale] [or otherwise introduce into the human body]** a dangerous drug;

**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 9-115(a) (2022)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_ Defendant’s Proposed Instruction No.\_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_ By\_\_\_\_\_

**[Issues in Criminal Possession of Drug Paraphernalia, No. 9-115(a), 2022, Source and Comment]**

SOURCE: MCA § 45-10-103 (2021)

COMMENT: Note the option to select either use or drug paraphernalia or possession of drug paraphernalia with intent to use it as well as the activity the paraphrenia was used in conjunction with.

A definition of dangerous drug should be included.

INSTRUCTION NO. **[9-116]**

**[Criminal Possession of Drug Paraphernalia—Definition]**

 The term “drug paraphernalia” means all equipment, products, and materials of any kind that are used, intended for use, or designed for use in **[planting] [propagating] [cultivating] [growing] [harvesting] [manufacturing] [compounding] [converting] [producing] [processing] [preparing] [testing] [analyzing] [packaging] [repackaging] [storing] [containing] [concealing] [injecting] [ingesting] [inhaling] [or otherwise introducing into the human body]** a dangerous drug.

 The term may include **[kits used, intended for use, or designed for use in planting, propagating, cultivating, growing, or harvesting of any species of plant that is a dangerous drug or from which a dangerous drug can be derived] [kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing dangerous drugs] [isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant that is a dangerous drug] [testing equipment used, intended for use, or designed for use in identifying or in analyzing the strength, effectiveness, or purity of dangerous drugs] [scales and balances used, intended for use, or designed for use in weighing or measuring dangerous drugs] [dilutents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose, and lactose, used, intended for use, or designed for use in cutting dangerous drugs] [separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from or in otherwise cleaning or refining marijuana] [blenders, bowls, containers, spoons, and mixing devices used, intended for use, or designed for use in compounding dangerous drugs] [capsules, balloons, envelopes, and other containers used, intended for use, or designed for use in packaging small quantities of dangerous drugs] [containers and other objects used, intended for use, or designed for use in storing or concealing dangerous drugs] [objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, hashish oil, or other dangerous drug into the human body, such as {metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls} {water pipes} {carburetion tubes and devices} {smoking and carburetion masks} {roach clips, meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand} {miniature cocaine spoons and cocaine vials}**

**{chamber pipes} {carburetor pipes} {electric pipes} {air-driven pipes} {chillums}**

**{bongs} {ice pipes or chillers}]**.

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

Source: MCJI 9-116 (2022)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_ Defendant’s Proposed Instruction No.\_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_ By\_\_\_\_\_

**[Criminal Possession of Drug Paraphernalia - Definition, No. 9-116, 2022, Source and Comment]**

SOURCE: MCA § 45-10-101 (2021)

COMMENT: The particular alleged paraphernalia and, if applicable, device used to introduce the dangerous drug into the human body should be selected.

 A definition of the term “dangerous drug” should also be given.

INSTRUCTION NO. **[9-117]**

**[Manufacture or Delivery of Drug Paraphernalia]**

A person commits the offense of manufacture or delivery of drug paraphernalia if the person **[delivers] [possesses with intent to deliver] [manufactures with intent to deliver]** drug paraphernalia, **[knowing] [under circumstances where one reasonably should know**] that it will be used to **[plant] [propagate] [cultivate] [grow] [harvest] [manufacture] [compound] [convert] [produce] [process] [prepare] [test] [analyze] [pack] [repack] [store] [contain] [conceal] [inject] [ingest] [inhale] [or otherwise introduce into the human body]** a dangerous drug.

GIVEN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISTRICT JUDGE

Source: MCJI 9-117 (2022)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_ Defendant’s Proposed Instruction No.\_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_ By\_\_\_\_\_

**[Manufacture or Delivery of Drug Paraphernalia, No. 9-117, 2022, Source and Comment]**

SOURCE: MCA § 45-10-104 (2021)

COMMENT: The particular alleged paraphernalia and, if applicable, device used to introduce the dangerous drug into the human body should be selected.

 A definition of the term “dangerous drug” should also be given.

 MCA § 45-10-105 enhances the penalty for violation of MCA § 45-10-105 if paraphernalia is delivered to a person who is under 18 and at least 3 years younger than the defendant from 6 months in the county jail and/or a $500 fine, to 1 year in the county jail and/or a $1,000 fine. The age of the individual to whom the paraphernalia is delivered should be specially plead in the Information and a separate finding of the individual’s age should be included on the verdict form.

INSTRUCTION NO. **[9-117(a)]**

**[Issues in Manufacture or Delivery of Drug Paraphernalia]**

To convict the Defendant of Manufacture or Delivery of Drug Paraphernalia, the State must prove the following elements:

1. That the Defendant [delivered] [possessed with intent to deliver] [manufactured] drug paraphernalia;

**AND**

2. That the Defendant [knew] [under the circumstances reasonably should have known] the paraphernalia would be used to **[plant] [propagate] [cultivate] [grow] [harvest] [manufacture] [compound] [convert] [produce] [process] [prepare] [test] [analyze] [pack] [repack] [store] [contain] [conceal] [inject] [ingest] [inhale] [or otherwise introduce into the human body]** a dangerous drug;

**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 9-117(a) (2022)

Plaintiff’s Proposed Instruction No. \_\_\_\_\_ Defendant’s Proposed Instruction No.\_\_\_\_\_

Given as Instruction No. \_\_\_\_\_ Refused \_\_\_\_\_ Withdrawn \_\_\_\_\_ By\_\_\_\_\_

**[Issues in Manufacture or Delivery of Drug Paraphernalia, No. 9-117(a), 2022, Source and Comment]**

SOURCE: MCA § 45-10-104 (2021)

COMMENT: The particular alleged paraphernalia and, if applicable, device used to introduce the dangerous drug into the human body should be selected.

 A definition of the term “dangerous drug” should also be given.

 MCA § 45-10-105 enhances the penalty for violation of MCA § 45-10-105 if paraphernalia is delivered to a person who is under 18 and at least 3 years younger than the defendant from 6 months in the county jail and/or a $500 fine, to 1 year in the county jail and/or a $1,000 fine. The age of the individual to whom the paraphernalia is delivered should be specially plead in the Information and a separate finding of the individual’s age should be included on the verdict form.