

**MAINTAINING OR OPERATING A CONTROLLED DANGEROUS  
SUBSTANCE PRODUCTION FACILITY**  
**(N.J.S.A. 2C:35-4)**

Count \_\_\_\_\_ of the indictment charges the defendant with the crime of maintaining or operating a controlled dangerous substance production facility. That section of our statutes provides in pertinent part that:

Any person who knowingly maintains or operates any premises, place, or facility used for the manufacture of **[choose appropriate CDS or controlled substance analog]** methamphetamine, lysergic acid diethylamide, phencyclidine, or marijuana in an amount greater than five pounds or ten plants of any substance listed in Schedule I or II or any drug or substance which, when ingested, is metabolized or otherwise becomes a controlled dangerous substance in the human body<sup>1</sup>, or the analog of any such substance, or any person who knowingly aids, promotes, finances or otherwise participates in the maintenance or operations of such premises, place or facility is guilty of a crime . . .

In order to convict the defendant of this charge, the State must prove each of the following elements beyond a reasonable doubt:

1). That the defendant maintained or operated, or aided, promoted, financed or otherwise participated in the maintenance or operation of, a premises, place, or facility. To maintain means to carry on, to keep up, to continue.<sup>2</sup> In order for the State to prove that the defendant maintained the premises, place or facility, there must be evidence of continuity in the use of the **(name location of facility)** to manufacture **(insert appropriate controlled dangerous substance)**.<sup>3</sup>

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<sup>1</sup>See N.J.S.A. 2C:35-2 (effective August 19, 1999).

<sup>2</sup>State v. Kittrell, 145 N.J. 112, 122 (1996).

<sup>3</sup>When the allegation is that the defendant was apprehended the first time that (he/she) operated a manufacturing facility, the jury should be instructed that to convict the defendant, there must be evidence that the defendant intended to operate the manufacturing facility on more than one occasion. State v. Kittrell, 145 N.J. at 122.

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2). That the premises, place or facility was used for the manufacture of **[insert appropriate controlled dangerous substance or controlled substance analog]**. Manufacture means the production, preparation, propagation, compounding, conversion or processing of a controlled dangerous substance or controlled substance analog, either directly or by extraction from substances of natural origin, or independently by means of chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container.<sup>4</sup>

3). That the defendant acted knowingly. A person acts knowingly with respect to the nature of (his/her) conduct or the attendant circumstances if (he/she) is aware that (his/her) conduct is of that nature, or that such circumstances exist, or (he/she) is aware of a high probability of their existence. A person acts knowingly with respect to a result of (his/her) conduct if (he/she) is aware that it is practically certain that (his/her) conduct will cause such a result. "Knowing," "with knowledge" or equivalent terms have the same meaning. Knowledge is a condition of the mind that cannot be seen and can only be determined by inference from conduct, words or acts. Therefore, it is not necessary that witnesses be produced by the State to testify that a defendant said that (he/she) knowingly did something. (His/her) knowledge may be gathered from (his/her) acts and (his/her) conduct and from all (he/she) said and did at the particular time and place and from all the surrounding circumstances reflected in the testimony [and evidence adduced at trial].

If you find that the State has proven each of these elements beyond a reasonable doubt, then you must find the defendant guilty of the charge. If you find that the State has failed to prove any of these elements beyond a reasonable doubt, then you must find the defendant not guilty.

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