Chapter 12 Narcotics

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CJI2d 12.1 Unlawful Manufacture of a Controlled Substance

(1) The defendant is charged with the crime of illegally manufacturing **[** *(state weight)* **of a mixture containing]** [1] a controlled substance, _____. Manufacturing means producing or processing a controlled substance. It is alleged in this case that the defendant manufactured _____ by *[list specific acts]* .[2] To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant manufactured a controlled substance.

(3) Second, that the substance manufactured was _____.

(4) Third, that the defendant knew **[he / she]** was manufacturing _____.

[(5) Fourth, that the substance was in a mixture that weighed *(state weight)* **.]** [1]

[(6) Fifth, that the defendant was not legally authorized to manufacture this substance.] [3]

[(7) Sixth, that the defendant was not (preparing / compounding) this substance for (his / her) own use.] [4]

Use Note

1. Use the bracketed portion when the controlled substance is a narcotic drug classified in Schedule 1 or 2, or a cocaine-related substance as found in MCL 333.7214(a)(iv).

2. Such specific acts of manufacturing may include extraction from natural substances, chemical synthesis, packaging or repackaging the substance, or labeling or relabeling the container.

3. This paragraph should be given only when the defense has presented some competent evidence beyond a mere assertion that the defendant was authorized to possess the substance. If the defense presents such evidence, the prosecution must prove lack of authorization beyond a reasonable doubt. *People v Pegenau*, 447 Mich 278, 523 NW2d 325 (1994).

4. This paragraph should be given only if some evidence has been presented that the defendant prepared or compounded the substance for his or her own use.

History

CJI2d 12.1 was CJI 12:2:00, 12:2:01, 12:2:02; amended June, 1991.

Commentary

The court of appeals upheld the constitutionality of the controlled substance statute in *People v Stahl*, 110 Mich App 757, 313 NW2d 103 (1981).

The definition of *manufacture* in this instruction comes from MCL 333.7106(2). In *People v Hunter*,201 Mich App 671, 506 NW2d 611 (1993), the court of appeals held that to convert powdered cocaine into free base or crack cocaine is to "manufacture" cocaine for purposes of this statute. In*People v Pearson*, 157 Mich App 68, 72, 403 NW2d 498 (1987), *lv den*, 428 Mich 893 (1987), the court held that the personal use exception in MCL 333.7106(2)(a) "applies only to the preparation and compounding of a controlled substance already in existence."

The element of quantity, as stated in the fifth paragraph of the instruction, is established by the aggregate weight of the mixture, not by the weight of the pure controlled substance alone. *People v Puertas*, 122 Mich App 626, 332 NW2d 399 (1983); *Stahl*. However, in *People v Velasquez*, 125 Mich App 1, 335 NW2d 705 (1983), the court erred reversibly in instructing that the contents of a bag that did not contain cocaine could be combined with the contents of a bag containing cocaine to arrive at a total weight of over 50 grams. Likewise, in *People v Barajas*, 198 Mich App 551, 499 NW2d 396 (1993), the court of appeals held that a "mixture" must be reasonably homogeneous or uniform. In that case, the court concluded that a kilogram of baking soda and a 26-gram rock of cocaine that were both contained in one box did not constitute a mixture. The court held that the controlled substance and filler must be "mixed" together to form a mixture that is reasonably uniform. *Id.* at 556. The supreme court affirmed, 444 Mich 556, 557, 513 NW2d 772 (1994), saying, however, that "the analysis employed by the Court of Appeals is limited strictly to the facts of this case."

While knowledge of the nature of the substance may be required, knowledge of the quantity of the substance is not an essential element of the offense. *People v Marion*, 250 Mich App 446, 617 NW2d 521 (2002).

Paragraph (7) of this instruction was amended by the committee in June of 1991 to reflect that the personal use exemption applies only to the preparation and compounding of a controlled substance and not to other acts of manufacturing.

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CJI2d 12.2 Unlawful Delivery of a Controlled Substance

(1) The defendant is charged with the crime of illegally delivering **[** *(state weight)* **of a mixture containing]** [1] a controlled substance, ____. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant delivered a controlled substance.

(3) Second, that the substance delivered was ____.

(4) Third, that the defendant knew **[he / she]** was delivering ____.

[(5) Fourth, that the substance was in a mixture that weighed *(state weight)* **.]** [1]

[(6) Fifth, that the defendant was not legally authorized to deliver this substance.] [2]

(7) "Delivery" means that the defendant transferred or attempted to transfer the substance to another person, knowing that it was *[state substance]* and intending to transfer it to that person. **[An attempt has two elements. First, the defendant must have intended to deliver the substance to someone else. Second, the defendant must have taken some action toward delivering the substance, but failed to complete the delivery. It is not enough to prove that the defendant made preparations for delivering the substance. Things like planning the crime or arranging how it will be committed are just preparations; they do not qualify as an attempt. In order to qualify as an attempt, the action must go beyond mere preparation, to the point where the crime would have been completed if it hadn't been interrupted by outside circumstances. To qualify as an attempt, the act must clearly and directly be related to the crime the defendant is charged with attempting and not some other goal.]** [3]

Use Note

Because the statutory definition of delivery includes actual, constructive, or attempted transfer of a substance, attempted delivery is not a lesser included offense. MCL 333.7105(1).

1. This bracketed material should be given where the controlled substance is a narcotic drug classified in Schedule 1 or 2, or a cocaine-related substance as found in MCL 333.7214(a)(iv).

2. This paragraph should be given only when the defense has presented some competent evidence beyond a mere assertion that the defendant was authorized to possess the substance. If the defense presents such evidence, the prosecution must prove lack of authorization beyond a reasonable doubt. *People v Pegenau*, 447 Mich 278, 523 NW2d 325 (1994).

3. Use bracketed material defining attempt only in cases involving act falling short of completed delivery. Any attempt is a specific intent crime. *People v Joeseype Johnson*, 407 Mich 196, 239, 284 NW2d 718 (1979) (opinion of Levin, J.).

History

CJI2d 12.2 was CJI 12:2:00, 12:2:01, 12:2:03; amended October, 1993.

Commentary

Delivery does not necessarily imply an exchange of money or goods, as does *sale*. It is defined inMCL 333.7105(1) as "the actual, constructive, or attempted transfer from 1 person to another of a controlled substance, whether or not there is an agency relationship." *See also People v Williams*,54 Mich App 448, 450, 221 NW2d 204 (1974).

In *People v Delgado*, 404 Mich 76, 86, 273 NW2d 395 (1978), the court stated that while neither case law nor statute requires a jury instruction that knowledge is an essential element of the crime of delivery of a controlled substance, it is the better practice to give the instruction in delivery cases to guarantee the *mens rea* requirement. The court stated that the knowledge instruction is essential where there is a question about whether the defendant knew the nature of the substance he or she was delivering. *See also People v Steele*, 429 Mich 13, 26 n10, 412 NW2d 206 (1987). The *Delgado*decision cited CJI 12:2:03 (now CJI2d 12.2).

In *People v Tate*, 134 Mich App 682, 352 NW2d 297 (1984), the court of appeals held that a trial court properly instructs a jury in a trial for delivery of cocaine where it instructs that delivery requires both knowledge of the nature of the substance and an intent to deliver the substance to another. However, in *People v Maleski*, 220 Mich App 518, 522, 560 NW2d 71 (1996), the court of appeals held that the delivery of a controlled substance is not a specific intent crime and that voluntary intoxication is therefore not a defense. Knowledge of the amount of the controlled substance is not an element in a prosecution for delivery of a controlled substance but is an element in a prosecution for conspiracy to deliver a controlled substance. *People v Mass*, 464 Mich 615, 628 NW2d 540 (2001).

In *People v Brown*, 163 Mich App 273, 413 NW2d 766 (1987), the court found that the statutory definition of delivery was satisfied by the social sharing of a drug. When the defendant gave drugs to a prostitute in exchange for sex during the course of their lengthy relationship, evidence of delivery was sufficient to support bindover.

It is the element of transfer that distinguishes delivery from possession. *Steele.*

In *People v Collins*, 298 Mich App 458, 828 NW2d 392 (2012), the court of appeals held that the prosecution cannot aggregate multiple deliveries of small amounts of narcotics in order to charge a single, larger delivery count. Separate deliveries constitute separate criminal transactions. The court noted, however, that the prosecution can aggregate amounts when the charge is conspiracy to deliver controlled substances.

This instruction was revised by the committee in October, 1993, to eliminate gender-biased language.

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CJI2d 12.2a Delivery of a Controlled Substance Causing Death

(1) The defendant is charged with the crime of delivery of a controlled substance[1] causing death. To prove this charge, the prosecution must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant delivered a controlled substance to another person. "Delivery" means that the defendant transferred the substance to another person knowing that it was a controlled substance and intending to transfer it to that person.

(3) Second, that the substance delivered was a controlled substance.

(4) Third, that the defendant knew **[he / she]** was delivering a controlled substance.

(5) Fourth, that the controlled substance was consumed by *[state name of person who consumed]* .

(6) Fifth, that consuming the controlled substance caused the death of *[state victim's name]* .[2]

Use Note

1. The controlled substance must be a schedule 1 or 2 controlled substance other than marijuana, MCL 750.317a.

2. Concerning causation, see CJI2d 16.15, Act of Defendant Must be Cause of Death.

History

Adopted by the committee in May, 2008, for the crime found at MCL 750.317a.

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CJI2d 12.3 Unlawful Possession of a Controlled Substance with Intent to Deliver

(1) The defendant is charged with the crime of illegally possessing with intent to deliver **[***(state weight)* **of a mixture containing]** [1] a controlled substance, ____. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant knowingly possessed[2] a controlled substance.

(3) Second, that the defendant intended to deliver this substance to someone else.[3]

(4) Third, that the substance possessed was ____ and the defendant knew it was.

[(5) Fourth, that the substance was in a mixture that weighed *(state weight)* **.]** [1]

[(6) Fifth, that the defendant was not legally authorized to possess this substance.] [4]

Use Note

1. Use the bracketed portion when the controlled substance is a narcotic drug classified in Schedule 1 or 2, or a cocaine-related substance as found in MCL 333.7214(a)(iv).

2. For a definition of *possession*, see CJI2d 12.7.

3. This is a specific intent crime.

4. This paragraph should be given only when the defense has presented some competent evidence beyond a mere assertion that the defendant was authorized to possess the substance. If the defense presents such evidence, the prosecution must prove lack of authorization beyond a reasonable doubt. *People v Pegenau*, 447 Mich 278, 523 NW2d 325 (1994).

History

CJI2d 12.3 was CJI 12:2:00, 12:2:01, 12:2:04.

Commentary

The Controlled Substances Act does not define the term *possession*. Many Michigan cases discuss the meaning of possession. In *People v Mumford*, 60 Mich App 279, 282–283, 230 NW2d 395 (1975), the court said:

The term “possession” connotes dominion or the right of control over the drug with knowledge of its presence and character. *People v Germaine*, 234 Mich 623, 627; 208 NW 705, 706 (1926). The term “possession” is to be construed in its commonly understood sense and may encompass both actual and constructive possession.*People v Harper*, 365 Mich 494, 506–507; 113 NW2d 808, 813–814 (1962); *cert den*, 371 US 930; 83 S CT 302; 9 L Ed 2d 237 (1962). Possession, like other elements of the corpus delicti, may be proved by circumstantial evidence and reasonable inferences therefrom. *People v Allen*, 390 Mich 383, *supra, Peterson v Oceana Circuit Judge*, 243 Mich 215; 219 NW 934 (1928).

In *People v Wolfe*, 440 Mich 508, 519–520, 489 NW2d 748 (1992) (citations omitted), the supreme court noted:

A person need not have actual physical possession of a controlled substance to be guilty of possessing it. Possession may be either actual or constructive. Likewise, possession may be found even when the defendant is not the owner of recovered narcotics. Moreover, possession may be joint, with more than one person actually or constructively possessing a controlled substance.

In this case, there was no direct evidence that defendant Wolfe actually possessed the cocaine. Rather, the evidence produced at trial showed that he constructively possessed the cocaine, i.e., that he “had the right to exercise control of the cocaine and knew that it was present.” The courts have frequently addressed the concept of constructive possession and the link between a defendant and narcotics that must be shown to establish constructive possession. It is well established that a person’s presence, by itself, at a location where drugs are found is insufficient to prove constructive possession. Instead, some additional connection between the defendant and the contraband must be shown.

In *People v Konrad*, 449 Mich 263, 273, 536 NW2d 517 (1995), the supreme court held that constructive possession could be found where the defendant had paid for drugs which were being delivered to him by a person acting as his agent.

In *People v Davenport*, 39 Mich App 252, 197 NW2d 521 (1972), the court reversed the conviction of a defendant who was one of four people living in a house where narcotics were found. The court found that possession was not established and stated: “More than mere association must be shown to establish joint possession. ‘An additional independent factor linking the defendant with the narcotic must be shown.’ ” *Id.* at 257, quoting *State v Faircloth*, 181 Neb 333, 337, 148 NW2d 187 (1967).

For the offense of possession with intent to deliver, the possession must be coupled with a specific intent to deliver. *People v Johnson*, 68 Mich App 697, 243 NW2d 715 (1976).

See commentary to CJI2d 12.1 for a discussion of the quantity element in this instruction.

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CJI2d 12.4 Defendant Is a Practitioner or an Agent

[Choose (1) or (2):]

[(1) The preparation of a controlled substance by a *(state practitioner)* **in the course of his professional practice or employment is legal. If you find that the defendant was a** *(state practitioner)* **and that he was preparing** *(list substance)* **, you must also be convinced beyond a reasonable doubt that he was not doing so in the course of his professional practice in order to convict him of manufacturing.]**

[(2) The preparation of a controlled substance by a pharmacist or physician, or by an authorized agent under the supervision of a pharmacist or physician, for research, teaching, or chemical analysis and not for sale, is legal. If you find that the defendant was a pharmacist or physician, or an authorized agent under the supervision of a pharmacist or physician, and that he was preparing or compounding *(list substance)* **, you must also be convinced beyond a reasonable doubt that he was not doing so in the course of his professional practice in order to convict him of manufacturing.]**

Use Note

This instruction should be given only if some evidence has been presented that the defendant was a practitioner or agent. *People v Wooster*, 143 Mich App 513, 515–518, 372 NW2d 353 (1985);*People v Bates*, 91 Mich App 506, 513–516, 283 NW2d 785 (1979).

History

CJI2d 12.4 was CJI 12:2:05.

Commentary

See MCL 333.7106(2) for the definition of manufacture and MCL 333.7109(3) for the definition of practitioner.

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CJI2d 12.5 Unlawful Possession of a Controlled Substance

(1) The defendant is charged with the crime of knowingly or intentionally possessing **[***(state weight)* **of a mixture containing]** [1] a controlled substance, _____. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant possessed[2] a controlled substance.

(3) Second, that the substance possessed was _____.

(4) Third, that the defendant knew that **[he / she]** was possessing *[list substance]* .

[(5) Fourth, that the substance was in a mixture that weighed *(state weight)* **.]** [1]

[(6) Fifth, that the substance was not obtained by a valid prescription given to the defendant.] [3]

[(7) Sixth, that the defendant was not otherwise authorized to possess this substance.] [4]

Use Note

1. This bracketed material should be given where the controlled substance is a narcotic drug classified in Schedule 1 or 2, or a cocaine-related substance as found in MCL 333.7214(a)(iv).

2. For a definition of *possession,* see CJI2d 12.7.

3. This paragraph should be given only if some evidence has been presented that the defendant had a valid prescription for the substance. See *People v Little*, 87 Mich App 50, 54–55, 273 NW2d 583 (1978), and Use Note 4 below.

4. This paragraph should be given only when the defense has presented some competent evidence beyond a mere assertion that the defendant was authorized to possess the substance. If the defense presents such evidence, the prosecution must prove lack of authorization beyond a reasonable doubt. *People v Pegenau*, 447 Mich 278, 523 NW2d 325 (1994).

History

CJI2d 12.5 was CJI 12:3:00–12:3:01; amended October, 1993.

Commentary

The element of quantity, CJI2d 12.5(5), is established by the aggregate weight of the mixture, not by the weight of the pure controlled substance alone. *People v Puertas*, 122 Mich App 626, 332 NW2d 399 (1983); *People v Stahl*, 110 Mich App 757, 313 NW2d 103 (1981).

The Controlled Substances Act does not define the term *possession.* Many Michigan cases discuss the meaning of *possession.* In *People v Mumford*, 60 Mich App 279, 282–283, 230 NW2d 395 (1975), the court said:

The term “possession” connotes dominion or the right of control over the drug with knowledge of its presence and character. *People v Germaine*, 234 Mich 623, 627; 208 NW 705, 706 (1926). The term “possession” is to be construed in its commonly understood sense and may encompass both actual and constructive possession.*People*

v Harper, 365 Mich 494, 506–507; 113 NW2d 808, 813–814 (1962); *cert den*, 371 US 930; 83 S Ct 302; 9 L Ed 2d 237 (1962). Possession, like other elements of the corpus delicti, may be proved by circumstantial evidence and reasonable inferences therefrom. *People v Allen*, 390 Mich 383[, 212 NW2d 21 (1973)], *supra*,*Peterson v Oceana Circuit Judge*, 243 Mich 215; 219 NW 934 (1928).

In *People v Davenport*, 39 Mich App 252, 197 NW2d 521 (1972), the court reversed the conviction of a defendant who was one of four people living in a house where narcotics were found. The court found that possession was not established and stated: "More than mere association must be shown to establish joint possession. 'An additional independent factor linking the defendant with the narcotic must be shown.' " *Id.* at 257, quoting *State v Faircloth*, 181 Neb 333, 337, 148 NW2d 187 (1967).

Possession requires that the defendant exercised control or had the right to exercise control over the controlled substance. *People v Gould*, 61 Mich App 614, 233 NW2d 109 (1975).

Possession requires that the defendant was aware of the presence and character of the substance and intentionally and consciously possessed it. *People v Delongchamps*, 103 Mich App 151, 302 NW2d 626 (1981).

In *People v Binder (On Remand)*, 215 Mich App 30, 544 NW2d 714 (1996), the court of appeals held that possession of a controlled substance is a cognate lesser offense of delivery and not a necessarily lesser included offense. Therefore, the trial court must instruct on possession in a delivery case if such an instruction is requested by the defendant and supported by the evidence.

This instruction was revised by the committee in October, 1993, to eliminate gender-biased language.

The "medical marijuana" defense to the charge of marijuana possession has been the subject of considerable appellate litigation. In terms of defenses to prosecutions and other penalties, the supreme court in *People v Kolanek*, 491 Mich 382, 817 NW2d 528 (2012), divided the Michigan Medical Marihuana Act (MMMA) into two distinguishable parts based on whether the respondent is claiming relief as a "qualifying patient" under section 4, MCL 333.26424, or as a party claiming relief under section 8, MCL 333.26428. A qualified patient who holds a registry identification card may claim relief under section 4 and has "broad immunity from criminal prosecution, civil penalties, and disciplinary actions." *Kolanek,* 491 Mich at 394–395. On the other hand, a person who claims relief under section 8 may assert an entitlement to narrower relief, in the form of an affirmative defense to criminal charges involving marijuana for its medical use. A party is entitled to the affirmative defense under section 8 by establishing that "(1) '[a] physician has stated [before the commission of the offense] that, in the physician's professional opinion, after having completed a full assessment of the patient's medical history and current medical condition made in the course of a bona fide physician-patient relationship, the patient is likely to receive therapeutic or palliative benefit from

the medical use of marihuana,' (2) the patient did not possess an amount of marijuana that was more than 'reasonably necessary' for this purpose, and (3) the patient's use was 'to treat or alleviate the patient's serious or debilitating medical condition or symptoms.' " *Id.* at 398–399 (quoting MCL 333.26427(a)(1)–(3)). The section 8 affirmative defense also requires a showing that MCL 333.26427(b) was not violated. *Kolanek* also held that it is not necessary to demonstrate compliance with section 4 of the MMMA to assert an affirmative defense under section 8. 491 Mich at 401; *see also State v McQueen*, 293 Mich App 644, 811 NW2d 513 (2011), *appeal granted,* 491 Mich 890, 810 NW2d 32 (2012); *People v Redden*, 290 Mich App 65, 799 NW2d 184 (2010).

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CJI2d 12.6 Unlawful Use of a Controlled Substance

(1) The defendant is charged with the crime of illegally using a controlled substance, _____. To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant used a controlled substance.

(3) Second, that the substance used was _____.

(4) Third, that at the time **[he / she]** used it, the defendant knew the substance was _____.

[(5) Fourth, that the substance was not obtained by a valid prescription given to the defendant.] [1]

[(6) Fifth, that the defendant was not otherwise authorized by law to use this substance.] [2]

Use Note

1. This paragraph should be given only if some evidence has been presented that the defendant had a valid prescription. See *People v Little*, 87 Mich App 50, 54–55, 273 NW2d 583 (1978), and Use Note 2 below.

2. This paragraph should be given only when the defense has presented some competent evidence beyond a mere assertion that the defendant was authorized to possess the substance. If the defense presents such evidence, the prosecution must prove lack of authorization beyond a reasonable doubt. *People v Pegenau*, 447 Mich 278, 523 NW2d 325 (1994).

History

CJI2d 12.6 was CJI 12:4:01; amended October, 1993.

Commentary

This instruction is based on statutory language as well as on those cases that hold that the defendant has the burden of establishing that he or she had a prescription for a controlled substance, and that lack of license or authorization is not an element of a controlled substance offense under MCL 333.7101 et seq. See cases cited in Use Note.

This instruction was revised by the committee in October, 1993, to eliminate gender-biased language.

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CJI2d 12.7 Meaning of Possession

Possession does not necessarily mean ownership. Possession means that either:

(1) the person has actual physical control of the **[substance / thing]** , as I do with the pen I'm now holding, or

(2) the person has the right to control the **[substance / thing]** , even though it is in a different room or place.

Possession may be sole, where one person alone possesses the **[substance / thing]** .

Possession may be joint, where two or more people each share possession.

It is not enough if the defendant merely knew about the *[state substance or thing]* ; the defendant possessed the *[state substance or thing]* only if **[he / she]** had control of it or the right to control it, either alone or together with someone else.

Use Note

In felony firearm cases, see CJI2d 11.34a for the applicable definition of *constructive possession.*

History

CJI2d 12.7 new June, 1995.

Commentary

See commentary to CJI2d 12.3.

In *People v Williams*, 212 Mich App 607, 538 NW2d 89 (1995), the court of appeals held that "possession" for purposes of the felony-firearm statute is more restricted than for purposes of drug prosecutions. Specifically, the court found that a person who is away from home cannot be deemed to possess a firearm found in his or her house, even though the same person may be in constructive possession of drugs found at his or her house. The key requirement for constructive possession under the felony-firearm statute is ready accessibility.

The supreme court's subsequent decision in *People v Burgenmeyer*, 461 Mich 431, 606 NW2d 645 (2000), emphasizes that possession must be determined at the time charged in the information, not at the time of a search or arrest. Therefore, in a felony-firearm prosecution, ready accessibility of the weapon must be determined as of the date the defendant was charged with possession of the drugs, not when a later search was conducted or an arrest made.

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CJI2d 12.8 Maintaining a Drug House

(1) The defendant is charged with the crime commonly known as knowingly maintaining or keeping a drug house. To prove this charge the prosecutor must prove each of the following elements beyond a reasonable doubt:

(2) First, that the defendant knowingly kept or maintained a **[building / dwelling / vehicle / vessel /** *(describe other place)* **]** .

(3) Second, that this **[building / dwelling / vehicle / vessel /** *(describe other place)* **]**was—

[Select (a), (b), and/or (c) as appropriate.]

(a) frequented by persons for the purpose of illegally using controlled substances.

(b) used for illegally keeping controlled substances.

(c) used for illegally selling controlled substances.

(4) Third, that the defendant knew that the **[building / dwelling / vehicle / vessel /***(describe other place)* **]** was frequented or used for such illegal purposes.

History

This instruction was adopted by the committee in October, 2002, to reflect the elements of this offense. MCL 333.7405(d).

Commentary

In *People v Thompson*, 477 Mich 146, 156–157, 730 NW2d 708 (2007), the supreme court adopted the following test, from *Dawson v State*, 894 P2d 672, 674 (Alas App 1995), to define the "keeping or maintaining" element of drug-house statutes:

The state need not prove that the property was used for the exclusive purpose of keeping or distributing controlled substances, but such use must be a substantial purpose of the users of the property, and the use must be continuous to some degree; incidental use of the property for keeping or distributing drugs or a single, isolated occurrence of drug-related activity will not suffice. The purpose [for] which a person uses property and whether such use is continuous are issues of fact to be decided on the totality of the evidence of each case; the state is not required to prove more than a single specific incident involving the keeping or distribution of drugs if other evidence of continuity exists.

Dawson, 894 P2d at 678–679.

In adopting this test the supreme court rejected the court of appeals' test in *People v Griffin*, 235 Mich App 27, 32, 597 NW2d 176 (1999), that the defendant's actions occurred "continuously for an appreciable period."