

**UNLAWFUL MANUFACTURE OF  
METHAMPHETAMINE  
SECOND DEGREE  
(C Felony)  
PENAL LAW 220.74(1)  
(Committed on or after Oct. 1, 2005)**

The \_\_\_ count is Unlawful Manufacture of Methamphetamine in the Second Degree.

Under our law, a person is guilty of Unlawful Manufacture of Methamphetamine in the Second Degree when that person possesses at the same time and location with intent to use, or knowing that another intends to use, each such product to unlawfully manufacture, prepare or produce methamphetamine:

*Select appropriate alternative(s):*

two or more items of laboratory equipment and two or more precursors, chemical reagents or solvents in any combination.

one item of laboratory equipment and three or more precursors, chemical reagents or solvents in any combination.

a precursor mixed together with a chemical reagent or solvent.

a precursor with two or more chemical reagents and/or solvents mixed together.

and does so in the presence of another person under the age of sixteen, provided, however, that the defendant is at least five years older than such other person under the age of sixteen.<sup>1</sup>

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<sup>1</sup> The statute reads:

“A person is guilty of unlawful manufacture of methamphetamine in the second degree when he or she:

Some of the terms used in this definition have their own special meaning in our law. I will now give you the meaning of the following terms: "possess," "laboratory equipment," "precursor," "chemical reagent," "solvent," "intent," and "unlawfully."

POSSESS means to have physical possession or otherwise to exercise dominion or control over tangible property.<sup>2</sup>

LABORATORY EQUIPMENT means any items, components or materials that can be used in the manufacture, preparation or production of methamphetamine.<sup>3</sup>

PRECURSOR means ephedrine, pseudoephedrine, or any salt, isomer or salt of an isomer of such substances.<sup>4</sup>

CHEMICAL REAGENT means a chemical reagent that can be used in the manufacture, production or preparation of methamphetamine.<sup>5</sup>

SOLVENT means a solvent that can be used in the manufacture, production or preparation of methamphetamine.<sup>6</sup>

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1. Commits the offense of unlawful manufacture of methamphetamine in the third degree as defined in section 220.73 of this article in the presence of another person under the age of sixteen, provided, however, that the actor is at least five years older than such other person under the age of sixteen."

<sup>2</sup>See Penal Law § 10.00(8). Where constructive possession is alleged, or where the People rely on a statutory presumption of possession, insert the appropriate instruction from the "Additional Charges" section at the end of this article.

<sup>3</sup> Penal Law § 220.00(16)(d).

<sup>4</sup> Penal Law § 220.00(16)(a).

<sup>5</sup> Penal Law § 220.00(16)(b).

<sup>6</sup> Penal Law § 220.00(16)(c).

INTENT means conscious objective or purpose. Thus, a person possesses a product with intent to use it to unlawfully manufacture, prepare or produce methamphetamine when his or her conscious objective or purpose is to do so.<sup>7</sup>

A person UNLAWFULLY manufactures, produces or prepares methamphetamine when that person has no legal right to produce or manufacture it.<sup>8</sup> Under our law, with certain exceptions not applicable here, a person has no legal right to produce or manufacture methamphetamine.

In order for you to find the defendant guilty of this crime, the People are required to prove, from all the evidence in the case, beyond a reasonable doubt, each of the following three elements:

1. That on or about  (date) , in the county of  (county) , the defendant,  (defendant's name) , possessed at the same time and location:

*Select appropriate alternative:*

two or more items of laboratory equipment and two or more precursors, chemical reagents or solvents in any combination.

one item of laboratory equipment and three or more precursors, chemical reagents or solvents in any combination.

a precursor mixed together with a chemical reagent or solvent.

a precursor with two or more chemical reagents and/or solvents mixed together.

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<sup>7</sup> See Penal Law § 15.05(1).

<sup>8</sup> See Penal Law § 220.00(2) and Public Health Law § 3396(1).

2. That the defendant did so with the intent to use, or knowing another intended to use, each such product to unlawfully manufacture, prepare or produce methamphetamine; and
3. That the defendant did so in the presence of another person under the age of sixteen and the defendant was at least five years older than such person.

Therefore, if you find that the People have proven beyond a reasonable doubt each of those elements, you must find the defendant guilty of the crime of Unlawful Manufacture of Methamphetamine in the Second Degree as charged in the \_\_\_ count.

On the other hand, if you find that the People have not proven beyond a reasonable doubt any one or more of those elements, you must find the defendant not guilty of the crime of Unlawful Manufacture of Methamphetamine in the Second Degree as charged in the \_\_\_ count.