

**CONTROLLED DRUG ACT**

Approved 5/11/06

**DRAFT**

**RSA 318-B:2, I [Possess], [Have Under His/Her Control], [A Controlled Drug], [A Controlled Drug Analog], Or [A Preparation Containing A Controlled Drug]**

The defendant is charged with the crime of [possessing], [having under his/her control], [a controlled drug], [a controlled drug analog] or [a preparation containing a controlled drug]. The definition of this offense has four parts or elements. The state must prove each element beyond a reasonable doubt. In this case the state must prove that:

1. The defendant [possessed], [had under his/her control] a substance; and
2. The substance was the [controlled drug] [the controlled drug analog] or [a preparation containing the controlled drug ] [insert drug alleged in the charging document]; and
3. The defendant knew the substance was the [controlled drug] [the controlled drug analog ] or [a preparation containing the controlled drug ] [insert drug alleged in the charging document]; and
4. The defendant acted knowingly.

Certain words in the definition need to be defined:

“Possession” A person possesses an item when he/she has it in his/her physical custody and exercises dominion and control over it. Possession can be actual or constructive. Actual possession is when a person has direct physical control over the item. Constructive possession is the power to determine the use or disposition of the item. In either case, the State must prove that:

1. The defendant knew the location of the item; and
2. The defendant knew the nature of the item; and
3. The defendant has custody of the item in the sense that it was in a place where it was under his/her control.

In the case of constructive possession, mere access to the item is insufficient, as is mere presence in the location where the item is found. The defendant must have the power to control the item. Constructive possession can be inferred from all the evidence presented, including any incriminating statements or any other circumstances linking the defendant to the item. Furthermore, constructive possession of the item need not be exclusive; the item can be possessed jointly with another.<sup>1</sup>

“Knowingly” - ( see definition of knowingly)

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<sup>1</sup> See *State v. Smalley*, 138 N.H. 66 (2002); *State v Haycock*, 136 N.H. 361 (1992); *State v. Ward*, 134 N.H. 626 (1991)

Approved 3/17/06

**DRAFT**

**RSA 318-B:2, I Manufacture [A Controlled Drug], [A Controlled Drug Analog], Or [A Preparation Containing A Controlled Drug]**

The defendant is charged with the crime of manufacturing [a controlled drug], [a controlled drug analog] or [a preparation containing a controlled drug]. The definition of this offense has four parts or elements. The state must prove each element beyond a reasonable doubt. In this case the state must prove that:

1. The defendant manufactured a substance; and
2. The substance was the [controlled drug] [the controlled drug analog] or [a preparation containing the controlled drug] [insert drug alleged in the charging document];and
3. The defendant knew the substance was the [controlled drug] [the controlled drug analog] or [a preparation containing the controlled drug] [insert drug alleged in the charging document]; and
4. The defendant acted knowingly

Certain words in the definition need to be defined:

“Manufacturer” means a person who, by compounding, mixing, cultivating, growing or other process, produces or prepares controlled drugs, but shall not mean a pharmacist who compounds controlled drugs to be sold or dispensed on prescription.

“Knowingly” – see definition of knowingly.

Approved 3/17/06

**RSA 318-B:2, 1 [Purchase], [Prescribe], [Administer] [Transport] [A Controlled Drug], [A Controlled Drug Analog], Or [A Preparation Containing A Controlled Drug]**

**DRAFT**

The defendant is charged with the crime of [purchasing], [prescribing] or [administering] a controlled drug, [a controlled drug analog] or [a preparation containing a controlled drug]. The definition of this offense has four parts or elements. The state must prove each element beyond a reasonable doubt. In this case the state must prove that:

1. The defendant possessed, [purchased], [prescribed] or [administered] a substance;
2. The substance was the [controlled drug] [the controlled drug analog] or [a preparation containing the controlled drug] [insert drug alleged in the charging document];and
3. The defendant knew the substance was the [controlled drug] [the controlled drug analog] or [a preparation containing the controlled drug] [insert drug alleged in the charging document]; and
4. The defendant acted knowingly

Certain words in the definition need to be defined:

“Prescribe” means order or designate a remedy or any preparation containing controlled drugs.

“Administer” means to act whereby a single dose of a drug is instilled into the body of or given to a person or animal for immediate consumption or use.

“Knowingly” – means (see definition of knowingly.)

Submitted and approved 3/17/06

**DRAFT**

**RSA 318-B:2, I Sale of [A Controlled Drug][A Controlled Drug Analog][Any Preparation Con-  
taining a Controlled Drug]**

The defendant is charged with the crime of sale of a [controlled drug] [a controlled drug analog] [any preparation containing a controlled drug]. The definition of this offense has four parts or elements. The state must prove each element beyond a reasonable doubt. In this case the state must prove that:

1. The defendant sold a substance to another;
2. The defendant knew that the substance was the [controlled drug] [the controlled drug analog] [a preparation containing the controlled drug,] (insert drug alleged in charging document);
3. The amount of the controlled drug was [ ], including any adulterants or dilutants;
4. The defendant acted knowingly.

Certain words in the definition need to be defined:

“Sale” is defined by statute to mean barter, exchange or gift, or offer therefor, and each such transaction made by any person whether as principal, proprietor, agent, servant, or employee. The State does not have to prove that the defendant made any profit, received any money or consideration, or that any money changed hands. Rather, the sale of a controlled drug is committed by the transfer or distribution of the drug from one person to another.

“Knowingly” see definition of knowingly.

Submitted 3/17/2006

**RSA 318-B:2, I [Possession] [Transportation] Of A [Controlled Drug][Controlled Drug Analog]  
[A Preparation Containing a Controlled Drug] With Intent To [Sell] [Dispense] [Compound]**

**DRAFT**

The defendant is charged with the crime of [possession] [transportation] of a [controlled drug] [a controlled drug analog] [a preparation containing a controlled drug] with the intent to [sell] [dispense] or [compound]. The definition of this offense has six parts or elements. The state must prove each element beyond a reasonable doubt. In this case the state must prove that:

1. The defendant [possessed] [transported] a substance; and
2. The substance was [the controlled drug] [the controlled drug analog] [a preparation containing the controlled drug] [insert drug alleged in the charging document]; and
3. The defendant knew the substance was [the controlled drug] [the controlled drug analog] [a preparation containing the controlled drug] [insert drug alleged in the charging document]; and
4. The quantity of the drug was [insert quantity alleged in the charging document], including any adulterants or dilutants; and
5. The defendant had the intent to [sell] [dispense] [compound] this drug; and,
6. The defendant acted knowingly.

Certain words in the definition need to be further defined:

“Possession” A person possesses an item when he/she has it in his/her physical custody and exercises dominion and control over it. Possession can be actual or constructive. Actual possession is when a person has direct physical control over the item. Constructive possession is the power to determine the use or disposition of the item. In either case, the State must prove that:

1. The defendant knew the location of the item; and
2. The defendant knew the nature of the item; and
3. The defendant has custody of the item in the sense that it was in a place where it was under his/her control.

In the case of constructive possession, mere access to the item is insufficient, as is mere presence in the location where the item is found. The defendant must have the power to control the item. Constructive possession can be inferred from all the evidence presented, including any incriminating statements or any other circumstances linking the defendant to the item. Furthermore,

constructive possession of the item need not be exclusive; the item can be possessed jointly with another.<sup>1</sup>

“Sale” means barter, exchange, or gift, or an offer therefore, and each such transaction make by an person whether as a principal, proprietor, agent, servant, or employee. The state does not have to prove that the defendant intended to sell the controlled drug for profit or in exchange for money. Rather, the state is only required to proved that the defendant intended to transfer this drug to another person

“Dispense” means to distribute, leave with, give away, dispose of, deliver, or sell one or more doses of a medication, and shall include the transfer of more than a single dose of a medication from one container to another and the labeling or otherwise identifying a container holding more than a single dose of a drug.

“Compound” means to combine two or more substances.

“Knowingly” means see definition of knowingly.

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<sup>1</sup> See *State v. Smalley*, 138 N.H. 66 (2002); *State v. Haycock*, 136 N.H. 361 (1992); *State v. Ward*, 134 N.H. 626 (1991)