

**6001A EXAMPLE FINDING THE AMOUNT OF CONTROLLED SUBSTANCE
IN A METHAMPHETAMINE CASE**

ADD THE FOLLOWING TO INSTRUCTIONS FOR CASES INVOLVING THE MANUFACTURE, DISTRIBUTION, OR DELIVERY OF METHAMPHETAMINE OR THE POSSESSION OF METHAMPHETAMINE WITH INTENT TO MANUFACTURE, DISTRIBUTE, OR DELIVER,¹ WHERE THE EVIDENCE IS SUFFICIENT TO SUPPORT A FINDING THAT THE AMOUNT POSSESSED EXCEEDED THE REQUIRED AMOUNT:

If you find the defendant guilty, you must answer the following question "yes" or "no":

Was the amount of methamphetamine, including the weight of any other substance or material mixed or combined with it, more than 50 grams?

Before you may answer this question "yes," you must be satisfied beyond a reasonable doubt that the amount was more than 50 grams.

If you are not so satisfied, you must answer the question "no."

IF THERE IS A REASONABLE BASIS IN THE EVIDENCE FOR FINDING THAT THE LARGER AMOUNT WAS NOT ESTABLISHED AND THAT A SMALLER AMOUNT WAS, ADD THE FOLLOWING.

If you answer the first question "no," you must answer the following question "yes" or "no":

Was the amount of methamphetamine, including the weight of any other substance or material mixed or combined with it, more than 10 grams?

Before you may answer this question "yes," you must be satisfied beyond a reasonable doubt that the amount was more than 10 grams.

If you are not so satisfied, you must answer the question "no."

IF THERE IS A REASONABLE BASIS IN THE EVIDENCE FOR FINDING THAT THE LARGER AMOUNT WAS NOT ESTABLISHED AND THAT A SMALLER AMOUNT WAS, ADD THE FOLLOWING.

If you answer the second question "no," you must answer the following question "yes" or "no":

Was the amount of methamphetamine, including the weight of any other substance or material mixed or combined with it, more than 3 grams?

Before you may answer this question "yes," you must be satisfied beyond a reasonable doubt that the amount was more than 3 grams.

If you are not so satisfied, you must answer the question "no."

COMMENT

Wis JI-Criminal 6001A was approved by the Committee in April 2018; it provides an example for how Wis JI-Criminal 6001 would be adapted for a methamphetamine case.

Penalties for manufacture, distribution, or delivery of methamphetamine are found in § 161.41(1)(e):

- three grams or less – Class F felony
- more than 3 grams but not more than 10 – Class E felony
- more than 10 grams but not more than 50 – Class D felony
- more than 50 grams – Class C felony

The questions in this instruction begin with the highest amount and then work down, in a lesser included offense type of approach. The Committee concluded that a question about the amount is not required for the "3 grams or less" case – the offense instruction will have required that some amount of methamphetamine was involved. The Committee also concluded that it is not necessary to include the upper threshold – e.g., "but not more than 10 grams" – to avoid unnecessary jury debate about whether or not the upper threshold was exceeded.

For commentary and footnotes relating to finding the amount in controlled substance cases, see Wis JI-Criminal 6001.

1. If the case involves possession with intent to manufacture or deliver, the Committee recommends restating this sentence as follows: "Was the amount of (name controlled substance), including the weight of any other substance or material mixed or combined with it, possessed with intent to (manufacture) (deliver) more than _____?" The purpose is to avoid any argument that the necessary amount was simply possessed as opposed to being possessed with intent to deliver or manufacture. Simple possession is not subject to the added penalties addressed by this instruction.