

6044 POSSESSION OF METHAMPHETAMINE WASTE — § 961.67(2)(a)**Statutory Definition of the Crime**

The Wisconsin Statutes make it a crime to knowingly possess methamphetamine manufacturing waste.

State's Burden of Proof

Before you may find the defendant guilty of this offense, the State must prove by evidence which satisfies you beyond a reasonable doubt that the following three elements were present.

Elements of the Crime That the State Must Prove

1. The defendant knowingly possessed a substance.

"Possessed" means that the defendant knowingly¹ had actual physical control of a substance.²

ADD THE FOLLOWING PARAGRAPHS THAT ARE SUPPORTED BY THE EVIDENCE.

[A substance is (also) in a person's possession if it is in an area over which the person has control and the person intends to exercise control over the substance.]

[It is not required that a person own a substance in order to possess it. What is required is that the person exercise control over the substance.]

[Possession may be shared with another person. If a person exercises control over a substance, the substance is in that person's possession, even though another person may also have similar control.]

[It is not necessary that the quantity of the substance be substantial. Any amount is sufficient.]³

2. The substance was methamphetamine manufacturing waste.
3. The defendant knew that the substance was methamphetamine manufacturing waste.⁴

Meaning of "Methamphetamine Manufacturing Waste"

"Methamphetamine manufacturing waste" means any solid, semisolid, liquid or contained gaseous material or article that results from or is produced by the manufacture of methamphetamine.⁵

Deciding About Knowledge

You cannot look into a person's mind to determine knowledge. Knowledge must be found, if found at all, from the defendant's acts, words, and statements, if any, and from all the facts and circumstances in this case bearing upon knowledge.

Jury's Decision

If you are satisfied beyond a reasonable doubt that all three elements of this offense have been proved, you should find the defendant guilty.

If you are not so satisfied, you must find the defendant not guilty.

COMMENT

Wis JI-Criminal 6044 was originally published in 2002. It was revised in 2009 to reflect the renumbering of the statute.

This instruction is for violations of § 961.67(2)(a): knowingly possessing methamphetamine manufacturing waste. The statute was created as § 961.437 by 1999 Wisconsin Act 129, effective date: May 24, 2000. It was renumbered § 961.67 by 2005 Wisconsin Act 14, effective date: June 22, 2005. Subsection (2)(b) prohibits intentionally disposing of methamphetamine manufacturing waste. A uniform instruction has not been drafted for that offense because the possession offense is likely to cover that conduct: one who disposes of material must have possessed it.

Subsection (3) creates an exception for persons who are handling the material in compliance with statutes dealing with solid and hazardous waste or who have notified law enforcement of the existence of the material.

1. Section 961.67(2)(a) specifically requires that the defendant "knowingly possess" methamphetamine manufacturing waste.

In addition, inherent in the legal definition of "possession" is the concept of knowing or conscious possession. See Schwartz v. State, 192 Wis. 414, 418, 212 N.W. 664 (1927), Doscher v. State, 194 Wis. 67, 69, 214 N.W. 359 (1927). For a case finding circumstantial evidence to be sufficient to show knowing possession, see State v. Poellinger, 153 Wis.2d 394, 508-09, 451 N.W.2d 752 (1990).

2. The definition of "possess" is the one provided in Wis JI-Criminal 920. The first sentence should be given in all cases. The bracketed optional paragraphs are intended for use where the evidence shows that the object is not in the physical possession of the defendant or that possession is shared with another.

See the Comment to Wis JI-Criminal 920 for a discussion of various issues relating to "possession" in criminal cases, including so-called constructive possession.

3. This statement is included in instructions for possession of a controlled substance and the Committee concluded that it properly applies here, as well. Regarding possession of a controlled substance, see State v. Dodd, 28 Wis.2d 643, 651-52, 137 N.W.2d 465 (1965).

4. This requirement is based on the statute's requirement that the defendant "knowingly possess" methamphetamine manufacturing waste.

5. See § 961.67(1)(c). The statutory definition includes reference to "a controlled substance analog of methamphetamine." The Committee concluded that prosecution for violation of this statute is unlikely to be based on manufacturing an "analog" and therefore did not include that reference in the instruction. And, the statutory definition concludes with: "... in violation of this chapter." The Committee also concluded that retaining that reference in the instruction was not necessary. If the facts of a case raise the issue of methamphetamine being manufactured in compliance with Chapter 961, the instruction must be modified.