, the defendant in this case, has been charged with the crime of misconduct involving a controlled substance in the second degree.

To prove that the defendant committed this crime, the state must prove beyond a reasonable doubt each of the following elements:

(1) the defendant knowingly delivered to another person an immediate precursor of methamphetamine, or the salts, isomers, or salts of isomers of the immediate precursor of methamphetamine; and

(2) the defendant did so with reckless disregard that the immediate precursor will be used to manufacture any material, compound, mixture or preparation that contains methamphetamine, or its salts, isomers, or salts of isomers.

OR

(1) the defendant knowingly delivered to another person a [listed chemical described in AS 11.71.200]; and

(2) the defendant did so with reckless disregard that the [listed chemical described in AS 11.71.200] will be used to manufacture any material, compound, mixture or preparation that contains [methamphetamine, or its salts, isomers, or salts of isomers] [an immediate precursor of methamphetamine, or its salts, isomers, or salts of isomers] [methamphetamine or its salts, isomers, or salts of isomers in an organic solution].

## 

## USE NOTE

The following terms are defined in other instructions:

“immediate precursor” – 11.71.900(13)

“knowingly” – 11.81.900(a)(2)

“manufacture” – 11.71.900(14)

“recklessly” – 11.81.900(a)(3) (reckless disregard)

Based on AS 11.81.610, the mental state “knowingly” is included in the first element of this offense.

The statute provides an exception for individuals who are allowed access to controlled substances under AS 17.30. AS 11.70.021(a). If this exception applies, an additional element should be considered.

In certain cases it will be necessary to instruct the jury that the state must also prove the defendant’s culpable mental state regarding the controlled nature of the substance. It is not settled whether that mental state is “knowingly” or “recklessly.” *See* *Moreau v. State*, 588 P.2d 275, 285 (Alaska 1978) (“A defendant’s knowledge of the [controlled nature] of a substance can be shown by inferences that can be reasonably drawn from facts in evidence.”). *See also* Ninth Circuit Criminal Pattern Jury Instruction 9.15, Controlled Substance—Possession with Intent to Distribute. *But cf.* AS 11.81.610(b)(2) (“if a provision of law defining an offense does not prescribe a culpable mental state, the culpable mental state that must be proved with respect to a circumstance or a result is ‘recklessly.’”).