, the defendant in this case, has been charged with the crime of misconduct involving a controlled substance in the third 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 [manufactured] [delivered] any amount of a schedule [IIA] [IIIA] controlled substance; and
2. the defendant did so knowingly

OR

(1) the defendant knowingly possessed any amount of a schedule [IIA] [IIIA] controlled substance; and

(2) the defendant did so with the intent to manufacture or deliver the controlled substance.

##  USE NOTE

The following terms are defined in other instructions:

“controlled substance” – 11.71.900(5)

“deliver” – 11.71.900(7)

“intentionally” – 11.81.900(a)(2) (intent)

“knowingly” – 11.81.900(a)(2)

“manufacture” – 11.71.900(13)

“schedule IIA controlled substance” – 11.71.900(24)

“schedule IIIA controlled substance” – 11.71.900(25)

Based on AS 11.81.610, the mental state “knowingly” is included as to the manufacture or delivery theory of this offense.

This statute provides an exception for individuals who are allowed access to controlled substances under AS 17.30. AS 11.71.030(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.’”).