

25.7 POSSESSION OF A CONTROLLED SUBSTANCE

§ 893.13(6), Fla. Stat.

Certain drugs and chemical substances are by law known as “controlled substances.”
(Specific substance) **is a controlled substance.**

To prove the crime of Possession of a Controlled Substance, the State must prove the following [two] [three] elements beyond a reasonable doubt:

- 1. (Defendant) possessed a substance.**
- 2. The substance was (specific substance).**

§ 893.13(6)(b), Fla. Stat. Give if applicable.

The jury must make a finding as to weight if the defendant is charged with possessing more than 20 grams of cannabis.

- 3. The cannabis weighed more than 20 grams.**

To prove (defendant) “possessed a substance,” the State must prove beyond a reasonable doubt that [he] [she] a) knew of the existence of the substance and b) intentionally exercised control over that substance.

Give if applicable.

Control can be exercised over a substance whether the substance is carried on a person, near a person, or in a completely separate location. Mere proximity to a substance does not establish that the person intentionally exercised control over the substance in the absence of additional evidence. Control can be established by proof that (defendant) had direct personal power to control the substance or the present ability to direct its control by another.

Joint possession. Give if applicable.

Possession of a substance may be sole or joint, that is, two or more persons may possess a substance.

Give if applicable. Cannabis. §§ 893.02(3), 893.13(6)(b), Fla. Stat.

See Comment section for medical marijuana.

Cannabis means all parts of any plant of the genus *Cannabis*, whether growing or not, and the seeds thereof [but does not include any resin extracted from the plant].

Affirmative defense: Lack of knowledge of illicit nature. Give if applicable. § 893.101(2) and (3), Fla. Stat.

Lack of knowledge of the illicit nature of a controlled substance is a defense to (crime charged). You may but are not required to infer that (defendant) was aware of the illicit nature of the controlled substance if you find that [he] [she] possessed the controlled substance.

If you are convinced beyond a reasonable doubt that (defendant) knew of the illicit nature of the controlled substance, and all of the elements of the charge have been proved, you should find [him] [her] guilty of Possession of a Controlled Substance.

If you have a reasonable doubt on the question of whether (defendant) knew of the illicit nature of the controlled substance, you should find [him] [her] not guilty of Possession of a Controlled Substance.

Lesser Included Offenses

| POSSESSION OF A CONTROLLED SUBSTANCE — 893.13(6) | | | |
|---|--------------|--------------|----------|
| CATEGORY ONE | CATEGORY TWO | FLA. STAT. | INS. NO. |
| Possession of Less than 20 Grams of Cannabis if the felony level of cannabis is charged | | 893.13(6)(b) | 25.7 |
| | Attempt | 777.04(1) | 5.1 |

Comments

§ 893.21, Fla. Stat.

A person acting in good faith who seeks medical assistance for himself, herself, or another experiencing or believed to be experiencing a drug-related or alcohol-related overdose may not be prosecuted for simple Possession of a Controlled Substance if the evidence of the possession was obtained as a result of the person seeking medical assistance.

A special instruction is necessary when the defense is a mere involuntary or superficial possession. *See* cases such as *Hamilton v. State*, 732 So. 2d 493 (Fla. 2d DCA 1999) and *Sanders v. State*, 563 So. 2d 781 (Fla. 1st DCA 1990).

Starting in 2014, the Legislature passed laws pertaining to “medical cannabis” or “low-THC cannabis,” which is excluded from the definition of “cannabis” in § 893.02(3), Fla. Stat.; is defined in § 381.986(1), Fla. Stat.; and must be manufactured, possessed, sold, purchased, delivered, distributed, or dispensed in conformance with § 381.986, Fla. Stat. A special instruction will be necessary in cases where a defendant relies on a cannabis-related prescription defense.

Starting in 2019, the Legislature excluded hemp as defined in § 581.217, Fla. Stat., and industrial hemp as defined in § 1004.4473, Fla. Stat., from the definition of “cannabis” in § 893.02(3), Fla. Stat.

This instruction was adopted in 1981 and amended in 1989 [543 So. 2d 1205], 1997 [697 So. 2d 84], 2007 [969 So. 2d 245], 2014 [153 So. 3d 192], 2016 [191 So. 3d 291], 2017 [216 So. 3d 497], 2018 [238 So. 3d 182], and 2020.