

## 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 alleged) **is a controlled substance.**

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

- 1. (Defendant) knew of the presence of a substance.**
- 2. (Defendant) exercised control or ownership over that substance.**
- 3. The substance was (specific substance alleged).**

*§ 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.*

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

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

*The jury must make a finding as to weight if the defendant is charged with violating § 893.13(6)(c), Fla. Stat.*

- 4. The [(insert name of substance listed in 893.03(1)(a) or 893.03(1)(b))] [combination of (insert names of substances listed in 893.03(1)(a) or 893.03(1)(b))] [mixture containing (insert name of substance listed in 893.03(1)(a) or 893.03(1)(b))] weighed more than 10 grams.**

*Definitions.*

*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].**

*Give if applicable. Mixture. § 893.02(16), Fla. Stat.*

**“Mixture” means any physical combination of two or more substances, including, but not limited to, a blend, an aggregation, a suspension, an emulsion, a solution, or a dosage unit, whether or not such combination can be separated into its components by physical means, whether mechanical or thermal.**

*Possession.*

**There are two types of possession: actual possession and constructive possession.**

*Actual possession.*

**Actual possession means the person is aware of the presence of the substance and:**

- a. The substance is in the hand of or on the person, or**
- b. The substance is in a container in the hand of or on the person, or**
- c. The substance is so close as to be within ready reach and is under the control of the person.**

*Constructive possession.*

**Constructive possession means the person is aware of the presence of the substance, the substance is in a place over which the person has control, and the person has the ability to control the substance.**

*Give if applicable.*

**Mere proximity to a substance is not sufficient to establish the power and intention to control that substance when the substance is in a place that the person does not control.**

*Give if applicable.*

**In order to establish (defendant's) constructive possession of a substance that was in a place [he] [she] did not control, the State must prove (defendant) (1) knew that the substance was within [his] [her] presence and (2) exercised control or ownership over the substance itself.**

*Joint possession.*

**Possession of a substance may be sole or joint, that is, two or more persons may be aware of the presence of a substance and may jointly exercise control over it. In that case, each of those persons is considered to be in possession of the substance.**

*Give if applicable. § 893.02(19), Fla. Stat.*

**“Possession” includes temporary possession for the purpose of verification or testing, irrespective of dominion or control.**

*Inference.*

*Exclusive control. Henderson v. State, 88 So. 3d 1060 (Fla. 1st DCA 2012); Meme v. State, 72 So. 3d 254 (Fla. 4th DCA 2011).*

**If you find that (defendant):**

- a. **had direct physical custody of the substance, [or]**
- b. **was within ready reach of the substance and the substance was under [his] [her] control, [or]**
- c. **had exclusive control of the place where the substance was located,**

**you may infer that [he] [she] was aware of the presence of the substance and had the power and intention to control it.**

**If (defendant) did not have exclusive control over the place where a substance was located, you may not infer [he] [she] had knowledge of the presence of the substance or the power and intention to control it, in the absence of other incriminating evidence.**

*Give if applicable. See Duncan v. State, 986 So. 2d 653 (Fla. 4th DCA 2008).*

**However, you may infer that (defendant) knew of the presence of the substance and had the power and intention to control it if [he] [she] had joint control over the place where the substance was located, and the substance was located in a common area in plain view and in the presence of the defendant.**

*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 are permitted to infer that (defendant) was aware of the illicit nature of the controlled substance if you find that [he] [she] knew of the presence of the substance and exercised control or ownership over the 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

<b>POSSESSION OF A CONTROLLED SUBSTANCE — 893.13(6)</b>			
<b>CATEGORY ONE</b>	<b>CATEGORY TWO</b>	<b>FLA. STAT.</b>	<b>INS. NO.</b>
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

<b>POSSESSION OF MORE THAN TEN GRAMS OF A CONTROLLED SUBSTANCE LISTED IN 893.13(1)(a) OR (1)(b) — 893.13(6)(c)</b>			
<b>CATEGORY ONE</b>	<b>CATEGORY TWO</b>	<b>FLA. STAT.</b>	<b>INS. NO.</b>
Possession of a controlled substance (listed in 893.13(1)(a) or (1)(b))		893.13(6)(a)	25.7
	Attempt	777.04(1)	5.1

#### Comments

*§ 893.21, Fla. Stat.*

A person acting in good faith who seeks medical assistance for an individual experiencing a drug-related overdose may not be prosecuted for Possession of a Controlled Substance if the evidence of the possession was obtained as a result of the person’s 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.

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], and 2017.