

**25.13(g) POSSESSION OF A PLACE FOR [[TRAFFICKING IN] [SALE OF] A
CONTROLLED SUBSTANCE] [MANUFACTURING A CONTROLLED SUBSTANCE
INTENDED FOR SALE OR DISTRIBUTION]**

§ 893.1351(2), Fla. Stat.

Certain drugs and chemical substances are by law known as “controlled substances.” (Insert name(s) of controlled substance(s)) [is a] [are] controlled substance[s].

To prove the crime of Possession of a Place for [[Trafficking in] [Sale of] a Controlled Substance] [Manufacturing a Controlled Substance Intended for Sale or Distribution], the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) was knowingly in possession of a [place] [structure [or part thereof]] [trailer] [conveyance].
2. At the time, (defendant) knew the [place] [structure [or part thereof]] [trailer] [conveyance] would be used for the purpose of [Trafficking in (insert name(s) of controlled substance)] [Sale of a Controlled Substance] [Manufacture of a Controlled Substance that was intended for sale or distribution to another].

Inference. Give if applicable. § 893.1351(4), Fla. Stat.

You may, but are not required to, infer that cannabis was intended for sale or distribution upon proof of the possession of 25 or more cannabis plants.

§ 893.02(3), Fla. Stat.

“Cannabis” means all parts of any plant of the genus *Cannabis*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin.

Definitions. Give as applicable.

§ 810.011(1), Fla. Stat. Dubose v. State, 210 So. 3d 641 (Fla. 2017).

A “structure” is any building of any kind, either temporary or permanent, which has a roof over it together with the curtilage. The “curtilage” is the enclosed land adjoining the structure. [The enclosure need not be continuous as it may have an ungated opening for entering and exiting.]

§ 810.011(3), Fla. Stat.

A “conveyance” means any motor vehicle, ship, vessel, railroad vehicle or car, trailer, aircraft, or sleeping car.

Insert elements of Trafficking alleged, if applicable.

“Sell” means to transfer or deliver something to another person in exchange for money or something of value or a promise of money or something of value.

§ 893.02(15)(a), Fla. Stat.

“Manufacture” means the production, preparation, propagation, compounding, cultivating, growing, conversion, or processing of a controlled substance, either directly or indirectly, by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging of the substance or labeling or relabeling of its container.

Give if applicable.

The term “manufacture” does not include the preparation, compounding, packaging, or labeling of a controlled substance by:

- 1. A practitioner or pharmacist as an incident to his or her administering or delivering of a controlled substance in the course of his or her professional practice.**
- 2. A practitioner, or by his or her authorized agent under the practitioner’s supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis, and not for sale.**

Possession.

To prove (defendant) “possessed a [place] [structure [or part thereof]] [trailer] [conveyance],” the State must prove beyond a reasonable doubt that [he] [she] a) knew of the existence of the [place] [structure [or part thereof]] [trailer] [conveyance], and b) intentionally exercised control over it.

Give if applicable.

Control can be exercised over a [place] [structure [or part thereof]] [trailer] [conveyance] regardless of whether it is near a person or in a completely separate location. Mere proximity to a [place] [structure [or part thereof]] [trailer] [conveyance] does not establish that the person intentionally exercised control over it in the absence of additional evidence. Control can be established by proof that (defendant) had direct personal power to control the [place] [structure [or part thereof]] [trailer] [conveyance] or the present ability to direct its control by another.

Joint possession. Give if applicable.

Possession of a [place] [structure [or part thereof]] [trailer] [conveyance] may be sole or joint, that is, two or more persons may possess a [place] [structure [or part thereof]] [conveyance].

Lesser Included Offenses

**POSSESSION OF A PLACE FOR [[TRAFFICKING IN] [SALE OF] A CONTROLLED
SUBSTANCE] [MANUFACTURING A CONTROLLED SUBSTANCE INTENDED FOR SALE
OR DISTRIBUTION — § 893.1351(2)**

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempted Trafficking of a Controlled Substance	777.04(1) & 893.135	
	Attempted [Sale] [Manufacture] of a Controlled Substance	777.04(1) & 893.13	5.1 & 25.2 or 25.3
	[Ownership] [Lease] [Rental] of a Place for [[Trafficking in] [Sale of] a Controlled Substance] [Manufacturing a Controlled Substance Intended for Sale or Distribution]	893.1351(1)	25.13(f)
	Attempt	777.04(1)	5.1

Comments

It is unlawful to sell or manufacture all of the controlled substances listed in § 893.02, Fla. Stat. However, only certain controlled substances qualify for prosecution under the trafficking statute, § 893.135, Fla. Stat. Accordingly, the exact nature of the substance must be proven if the State is prosecuting under the trafficking prong of § 893.1351(2), Fla. Stat.

A special instruction will be required if the defense is that the defendant did not know of the illicit nature of the controlled substance. *See* § 893.101, Fla. Stat.

A special instruction may be required to address the nexus between a conveyance, place, structure, trailer, and the drug activity. *See Hunt v. State*, 256 So. 3d 243 (Fla. 2d DCA 2018) and *Delgado-George v. State*, 125 So. 3d 1031 (Fla. 2d DCA 2013).

§ 893.1351(1) and (2), Fla. Stat., require that the place *will* be used for certain drug-related activity while § 893.1351(3), Fla. Stat., requires that the place *was* being used to manufacture a controlled substance. *See Zeigler v. State*, 198 So. 3d 1005 (Fla. 1st DCA 2016).

This instruction was adopted in 2020.