

**25.15 DELIVERY, POSSESSION WITH INTENT TO DELIVER, OR
MANUFACTURE WITH INTENT TO DELIVER DRUG PARAPHERNALIA**

§ 893.147(2), Fla. Stat.

To prove the crime of (crime charged), the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **[delivered] [possessed with intent to deliver] [manufactured with intent to deliver] drug paraphernalia.**
2. (Defendant) **had knowledge of the presence of the drug paraphernalia.**
3. (Defendant) **knew or reasonably should have known that the drug paraphernalia would be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce a controlled substance into the human body.**

The Court instructs you that (name of substance) is a controlled substance.

Give if possession with intent to deliver is charged.

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

Give if applicable.

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

Joint possession. Give if applicable.

Possession of drug paraphernalia may be sole or joint, that is, two or more persons may possess drug paraphernalia.

Drug Paraphernalia. § 893.145, Fla. Stat.

The term “drug paraphernalia” means all equipment, products, and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, transporting, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled

substance or a substance listed in § 877.111, Florida Statutes. The Court instructs you that (name of substance) is a substance listed in § 877.111, Florida Statutes.

Give specific definition as applicable.

- 1. Kits used, intended for use, or designed for use in planting, propagating, cultivating, growing, or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived.**
- 2. Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances.**
- 3. Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substance.**
- 4. Testing equipment used, intended for use, or designed for use in identifying, or in analyzing the strength, effectiveness, or purity of, controlled substances, excluding narcotic-drug-testing products that are used solely to determine whether a controlled substance contains fentanyl as described in s. 893.03(2)(b)9. or any other controlled substance specified in s. 893.135(1)(c)4.a. This exclusion does not apply to a narcotic-drug-testing product that can measure or determine the quantity, weight, or potency of a controlled substance.**
- 5. Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances.**
- 6. Diluents and adulterants, such as quinine hydrochloride, caffeine, dimethyl sulfone, mannitol, mannite, dextrose, and lactose used, intended for use, or designed for use in diluting controlled substances or substances such as damiana leaf, marshmallow leaf, and mullein leaf, used, intended for use, or designed for use as carrier mediums of controlled substances.**
- 7. Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, cannabis.**
- 8. Blenders, bowls, containers, spoons, and mixing devices used, intended for use, or designed for use in compounding controlled substances.**

9. Capsules, balloons, envelopes, and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances.
10. Containers and other objects used, intended for use, or designed for use in storing or concealing controlled substances.
11. Hypodermic syringes, needles, and other objects used, intended for use, or designed for use in parenterally injecting controlled substances into the human body.
12. Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing controlled substances or a substance listed in § 877.111, Florida Statutes, into the human body, such as:
 - a. Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls.
 - b. Water pipes.
 - c. Carburetion tubes and devices.
 - d. Smoking and carburetion masks.
 - e. Roach clips: meaning objects used to hold burning material, such as a cannabis cigarette, that has become too small or too short to be held in the hand.
 - f. Miniature cocaine spoons, and cocaine vials.
 - g. Chamber pipes.
 - h. Carburetor pipes.
 - i. Electric pipes.
 - j. Air-driven pipes.
 - k. Chillums.
 - l. Bongs.
 - m. Ice pipes or chillers.

Relevant factors. § 893.146, Fla. Stat.

In addition to all other logically relevant factors, the following factors shall be considered in determining whether an object is drug paraphernalia:

1. **Statements by an owner or by anyone in control of the object concerning its use.**
2. **The proximity of the object, in time and space, to a direct violation of the drug laws.**
3. **The proximity of the object to controlled substances.**
4. **The existence of any residue of controlled substances on the object.**
5. **Evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons whom [he] [she] knows, or should reasonably know, intend to use the object to facilitate a violation of the drug laws. The innocence of an owner, or of anyone in control of the object, as to a direct violation of the drug laws shall not prevent a finding that the object is intended for use, or designed for use, as drug paraphernalia.**
6. **Instructions, oral or written, provided with the object concerning its use.**
7. **Descriptive materials accompanying the object which explain or depict its use.**
8. **Any advertising concerning its use.**
9. **The manner in which the object is displayed for sale.**
10. **Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products.**
11. **Evidence of the ratio of sales of the object or objects to the total sales of the business enterprise.**
12. **The existence and scope of legitimate uses for the object in the community.**
13. **Expert testimony concerning its use.**

Lesser Included Offenses

DELIVERY, POSSESSION WITH INTENT TO DELIVER, OR MANUFACTURE WITH INTENT TO DELIVER DRUG PARAPHERNALIA — 893.147(2)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
*Use or Possession with Intent to Use Drug Paraphernalia, if Possession of Drug		893.147(1)	25.14

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Paraphernalia with Intent to Deliver is charged			
	Attempt	777.04(1)	5.1

Comments

*It is unclear if the courts will determine that a person charged with either Delivery of Drug Paraphernalia or Manufacture with Intent to Deliver Drug Paraphernalia is necessarily charged with Use or Possession with Intent to Use Drug Paraphernalia.

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], 2019 [272 So. 3d 243], and on December 15, 2023.