

25.17 CONTRABAND IN COUNTY DETENTION FACILITY

§ 951.22, Fla. Stat.

To prove the crime of Contraband in a County Detention Facility, the State must prove the following three elements beyond a reasonable doubt:

- 1. (Defendant) had knowledge of the presence of an item.**
- 2. (Defendant)**

Give as applicable.

- a. introduced the item into a county detention facility.**
 - b. possessed the item upon the grounds of a county detention facility.**
 - c. gave the item to an inmate of a county detention facility.**
 - d. received the item from an inmate of a county detention facility.**
 - e. took the item from a county detention facility.**
 - f. attempted to [take] [send] the item from a county detention facility.**
- 3. The item was:**

Give as applicable.

- a. a written communication to give to or receive from an inmate.**
- b. a recorded communication to give to or receive from an inmate.**
- c. currency or coin to give to or receive from an inmate.**
- d. an article of [food] [clothing] to give to or receive from an inmate.**
- e. a tobacco product.**
- f. a cigarette.**
- g. a cigar.**
- h. a beverage that causes or may cause an intoxicating effect.**
- i. a narcotic, hypnotic, or excitative drug or drug of any kind or nature.**

- j. a controlled substance.
- k. a firearm.
- l. any instrumentality customarily used or which is intended to be used as a dangerous weapon.
- m. any instrumentality of any nature that may be or is intended to be used as an aid in effecting or attempting to effect an escape from a county facility.
- n. any [cellular telephone] [or] [portable communication device] intentionally and unlawfully introduced inside the secure perimeter of a county detention facility.
- o. any vapor-generating electronic device intentionally and unlawfully introduced inside the secure perimeter of a county detention facility.

Definitions.

Give in all cases. § 951.23(1)(a), Fla. Stat.

“County detention facility” means a county jail, a county stockade, a county work camp, a county residential probation center, and any other place except a municipal detention facility used by a county or county officer for the detention of persons charged with or convicted of either felony or misdemeanor.

§ 951.23(1)(b), Fla. Stat.

“County residential probation center” means a county-operated facility housing offenders serving misdemeanor sentences or first-time felony sentences.

§ 951.23(1)(d), Fla. Stat.

“Municipal detention facility” means a city jail, a city stockade, a city prison camp, and any other place except a county detention facility used by a municipality or municipal officer for the detention of persons charged with or convicted of violation of municipal laws or ordinances.

Give as applicable.

To “introduce” means to put inside or into.

Give when the evidence involves an inmate who is not in the facility.

It is unlawful to [give] [receive] a contraband item [to] [from] an inmate of a county detention facility even if the inmate was outside the facility at the time the contraband item was [given] [received].

Give if clothing is alleged. State v. Becton, 665 So. 2d 358 (Fla. 5th DCA 1995).

“Clothing” means things worn to cover the body and limbs.

Give if currency is alleged. State v. Becton, 665 So. 2d 358 (Fla. 5th DCA 1995).

“Currency” means money or another commodity which is in circulation as a medium of exchange.

Give if dangerous_weapon is alleged.

A “dangerous weapon” is any object that will likely cause death or great bodily harm if used in the ordinary and usual manner contemplated by its design and construction.

Give if applicable and if evidence shows defendant possessed the object in the detention facility or brought it into the detention facility or attempted to do so.

An object not designed to inflict bodily harm may nonetheless be a “dangerous weapon” if (defendant)

[knew it would be used] [intended it to be used] in a manner likely to cause death or great bodily harm

or

[knew it would be used] [intended it to be used] to threaten someone with death or great bodily harm.

Give if applicable and if evidence shows the object had been used as a dangerous weapon in a detention facility.

An object not designed to inflict bodily harm may nonetheless be a “dangerous weapon” if (defendant) knew it had been used [in a manner likely to cause death or great bodily harm] [or] [to threaten someone with death or great bodily harm].

“Great bodily harm” means great as distinguished from slight, trivial, minor, or moderate harm, and as such does not include mere bruises.

Give if tobacco product is alleged. § 210.25(11), Fla. Stat.

“Tobacco products” means loose tobacco suitable for smoking; snuff; snuff flour; cavendish; plug and twist tobacco; fine cuts and other chewing tobaccos; shorts; refuse scraps; clippings, cuttings, and sweepings of tobacco, and other kinds and forms of tobacco prepared in such manner as to be suitable for chewing; but “tobacco products” does not include cigarettes or cigars.

Give if cigarette is alleged. § 210.01(1), Fla. Stat.

“Cigarette” means any roll for smoking, except one of which the tobacco is fully naturally fermented, without regard to the kind of tobacco or other substances used in the inner roll or the nature or composition of the material in which the roll is wrapped, which is made wholly or in part of tobacco irrespective of size or shape and whether such tobacco is flavored, adulterated or mixed with any other ingredient.

Give if a drug or controlled substance is alleged.

A “drug of any kind” includes [nasal inhalators] [sleeping pills] [barbiturates] [marijuana] [hemp] [industrial hemp] [a controlled substance]. (Name of drug or controlled substance) is a [drug] [controlled substance].

Give if firearm is alleged. § 790.001, Fla. Stat.

“Firearm” means any weapon (including a starter gun) which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive [; the frame or receiver of any such weapon] [any firearm muffler or firearm silencer] [any destructive device] [any machine gun]. [A destructive device is (insert definition in § 790.001, Fla. Stat.).] [A “machine gun” is (insert definition in § 790.001, Fla. Stat.).]

Give if portable communication device is alleged. §§ 944.47(1)(a)6., and 951.22(1)(k), Fla. Stats.

“Portable communication device” means any device carried, worn, or stored which is designed or intended to receive or transmit verbal or written messages, access or store data, or connect electronically to the Internet or any other electronic device and which allows communications in any form. Such devices include, but are not limited to, portable two-way pagers, hand-held radios, cellular telephones, Blackberry-type devices, personal digital assistants or PDA’s, laptop computers, or any components of these devices which are intended to be used to assemble such devices.

Give if marijuana is alleged. § 381.986(1)(f), Fla. Stat.

“Marijuana” 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, including low-THC cannabis, which are dispensed from a medical marijuana treatment center for medical use by a qualified patient.

Give if hemp is alleged. § 581.217(3)(d), Fla. Stat.

“Hemp” means the plant *Cannabis sativa* L. and any part of that plant, including the seeds thereof, and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers thereof, whether growing or not, that has a total delta-9-tetrahydrocannabinol concentration that does not exceed 0.3 percent on a dry-weight basis.

Give if industrial hemp is alleged. § 1004.4473(1)(c), Fla. Stat.

“Industrial hemp” means all parts and varieties of the cannabis sativa plant, cultivated or possessed by an approved grower under the pilot project, whether growing or not, which contain a tetrahydrocannabinol concentration that does not exceed 0.3 percent on a dry-weight basis.

Give if vapor-generating electronic device is alleged. § 386.203(15), Fla. Stat.

“Vapor-generating electronic device” means any product that employs an electronic, a chemical, or a mechanical means capable of producing vapor or aerosol from a nicotine product or any other substances, including, but not limited to, an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product, any replacement cartridge for such device, and any other container of a solution or other substance intended to be used with or within an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product.

Give if possession is alleged.

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

Give if possession alleged and if applicable.

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

Joint possession. Give if applicable.

Possession of an item may be sole or joint, that is, two or more persons may possess an item.

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 possession of a controlled substance. Accordingly, the defendant is not guilty of possessing a controlled substance if [he] [she] did not know of the illicit nature of the substance.

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.

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.

Affirmative defense of permission. Give if the defendant has satisfied his or her burden of production. See Wright v. State, 442 So. 2d 1058 (Fla. 1st DCA 1983).

It is a defense to the crime of Contraband in a County Detention Facility if the defendant used regular channels and was authorized by the sheriff or officer in charge of the detention facility to [introduce] [possess] [give] [receive] [take] [attempt to take or send] the contraband item [into] [from] the facility. The defendant has raised this defense.

If you have a reasonable doubt as to whether the defendant used regular channels and had authorization from the sheriff or officer in charge of the detention facility, you should find [him] [her] not guilty.

If the State proved beyond a reasonable doubt that the defendant did not use regular channels or did not have authorization from the sheriff or officer in charge of the detention facility, you should find [him] [her] guilty, if all the elements of the charge have also been proven beyond a reasonable doubt.

Lesser Included Offenses

CONTRABAND IN COUNTY DETENTION FACILITIES — 951.22			
CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
*Possession of a Controlled Substance if a controlled substance is the contraband alleged		893.13(6)	25.7
	Carrying a Concealed Firearm	790.01(2)	10.1
	Carrying a Concealed Weapon	790.01(1)	10.1
	Attempt	777.04(1)	5.1

Comments

*It is unclear if the courts will determine that Possession of a Controlled Substance is necessarily included in a charge of Contraband in County Detention Facility, for elements other than #2b. Possession is not a necessary lesser-included offense of either Sale or Manufacture of a Controlled Substance. *State v. McCloud*, 577 So. 2d 939 (Fla. 1991); *Anderson v. State*, 447 So. 2d 236 (Fla. 1st DCA 1983).

If the contraband item is a written communication, § 951.22(1)(a), Fla. Stat., exempts any document or correspondence exchanged between a lawyer, paralegal or other legal staff and an inmate at a detention facility if the document or correspondence is otherwise lawfully possessed and disseminated and relates to the legal representation of the inmate. As of September 2020, it was unclear if the exemption is an affirmative defense, and if so, what the burden of persuasion is and who bears that burden for that defense. A special instruction will be necessary if the exemption is at issue.

A special instruction will be necessary in cases where the dangerous weapon was an animal or a substance or something that is not commonly referred to as an “object.”

The term “portable communication device” includes any new technology that is developed for similar purposes. Judges will have to create a special instruction as technology develops.

Excluded from the definition of cellular telephone or other portable communication device is any device having communication capabilities which has been approved or issued by the sheriff or officer in charge for investigative or institutional security purposes or for conducting other official business. *See* § 951.22(1)(k), Fla. Stat. As of September 2020, it was unclear if the exception is an affirmative defense, and if so, what the burden of persuasion is and who bears that burden for that defense. A special instruction will be necessary if the exception is at issue.

If the contraband item alleged is a cellular telephone, portable communication device, or vapor-generating electronic device, the item must have been “intentionally and unlawfully introduced inside the secure perimeter” of the county detention facility. *See* §§ 951.22(1)(k), (1)(l), Fla. Stat. As of September 2020, there was no definition of “secure perimeter.” Therefore, if the location in which the cellular telephone, portable communication device, or vapor-generating electronic device was introduced is at issue, a special instruction will be necessary.

Additionally, as of September 2020, there was no case law about what “unlawfully introduced” (for cellular telephones, portable communication devices, or vapor-generating electronic devices) means.

This instruction was adopted in 1987 and amended in 1989 [543 So. 2d 1205], 2014 [153 So. 3d 192], 2016 [191 So. 3d 291], 2017 [216 So. 3d 497], 2019 [272 So. 3d 243], on April 3, 2020, and on October 2, 2020.