

**25.21 [INTRODUCTION] [REMOVAL] OF CONTRABAND [INTO] [FROM] A
STATE CORRECTIONAL INSTITUTION**

§ 944.47(1)(a), Fla. Stat.

To prove the crime of [Introduction] [Removal] of Contraband [into] [from] a State Correctional Institution, the State must prove the following [three] [four] elements beyond a reasonable doubt:

- 1. (Defendant) [introduced into or upon the grounds of] [took] [sent] [attempted to [take] [send]] an item [into] [from] a state correctional institution.**
- 2. (Defendant) had knowledge of the presence of the item.**
- 3. The item was:**

Give as applicable.

- a. a [written] [recorded] communication.**
- b. [currency] [or] [coin].**
- c. an article of [food] [clothing].**
- d. an intoxicating beverage or a beverage which causes or may cause an intoxicating effect.**
- e. a controlled substance. (Name of controlled substance) is a controlled substance.**
- f. marijuana.**
- g. hemp.**
- h. industrial hemp.**
- i. any prescription or nonprescription drug having a hypnotic, stimulating, or depressing effect.**
- j. [a firearm] [a weapon of any kind] [an explosive substance].**
- k. any [cellular telephone] [or] [portable communication device] intentionally and unlawfully introduced inside the secure perimeter of a state correctional institution.**
- l. any vapor-generating electronic device intentionally and unlawfully introduced inside the secure perimeter of a state correctional institution.**

Give element #4 if element #3a, 3b, or 3c is given.

4. (Defendant) **[gave or transmitted] [or] [intended to give or transmit] the [written communication] [recorded communication] [currency] [coin] [article of food] [article of clothing] to an inmate of the state correctional institution.**

Give if it is alleged that the crime was committed by an employee. §§ 944.47(2)(b) and 944.115(2)(b), Fla. Stats.

If you find (defendant) guilty of [Introduction] [Removal] of Contraband [into] [from] a State Correctional Institution, you must then determine whether the State proved beyond a reasonable doubt that [he] [she] was an employee who used or attempted to use the powers, rights, privileges, duties, or position of [his] [her] employment in the commission of the crime.

An “employee” means an employee of the Department of Corrections or a private vendor in a contractual relationship with either the Department of Corrections or the Department of Management Services, and includes persons such as contractors, volunteers, or law enforcement officers who are within a state correctional facility to perform a professional service.

Give in all cases. State Correctional Institution. § 944.02(8), Fla. Stat.

“State correctional institution” means any prison, road camp, prison industry, prison forestry camp, or any prison camp or prison farm or other correctional facility, temporary or permanent, in which prisoners are housed, worked, or maintained, under the custody and jurisdiction of the Department of Corrections.

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 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 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 weapon is alleged.

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

Give if applicable and if evidence shows defendant brought the object into the correctional institution or attempted to do so.

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

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

or

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

Give if applicable and if evidence shows the object had been used as a weapon in a correctional institution.

An object not designed to inflict bodily harm may nonetheless be a “weapon” if (defendant) knew it had been used or threatened to be used in a manner likely to cause bodily harm.

Give if portable communication device is alleged. § 944.47(1)(a)(6), Fla. Stat.

“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.

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 this charge. Accordingly, the defendant is not guilty of this charge if [he] [she] did not know of the illicit nature of the controlled 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.

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 upon the grounds of a state correctional institution. 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.

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 proven, you should find [him] [her] guilty.

If you have a reasonable doubt as to whether (defendant) knew of the illicit nature of the controlled substance, you should find [him] [her] not guilty.

Affirmative defense: Authorization. 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 [Introduction] [Removal] of Contraband [into] [from] a State Correctional Institution if the defendant used regular channels and

was authorized by the officer in charge of the correctional institution to [introduce] [take] [send] the item [into] [from] the state correctional institution. 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 officer in charge of the correctional institution, 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 officer in charge of the correctional institution, you should find [him] [her] guilty, if all the elements of the charge have also been proven beyond a reasonable doubt.

Lesser Included Offenses

[INTRODUCTION] [REMOVAL] OF CONTRABAND [INTO] [FROM] A STATE CORRECTIONAL INSTITUTION — 944.47(1)(a)			
CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
*Possession of a Controlled Substance, if a controlled substance is the contraband alleged		893.13	25.7
	Possession of a Firearm or a Concealed Weapon by a Convicted Felon, if a firearm or concealed weapon is the contraband alleged and the possessor is an inmate.	790.23	10.15
	Carrying a Concealed Firearm	790.01(2)	10.1
	Carrying a Concealed Weapon	790.01(1)	10.1

Comments

*It is unclear if the courts will determine that Possession of a Controlled Substance is necessarily included in a charge of [Introduction] [Removal] of Contraband [Into] [From] a State Correctional Institution. 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).

A special instruction will be necessary in cases where the 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.

The definition of “portable communication device” excludes any device having communication capabilities which has been approved or issued by the Department of Corrections for investigative or institutional security purposes or for conducting other state business. *See* § 944.47(1)(a)6., Fla. Stat. As of September 2020, it was unclear if the exclusion 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 exclusion 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 state correctional institution. *See* §§ 944.47(1)(a)6., (1)(a)7., 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 2014 [153 So. 3d 192] and amended in 2016 [191 So. 3d 291], 2017 [216 So. 3d 497], 2019 [272 So. 3d 243], on April 3, 2020, and on October 2, 2020.