

**3.3(j) AGGRAVATION OF TRAFFICKING IN [FENTANYL] [INSERT
RELEVANT CONTROLLED SUBSTANCE]**

§ 893.135(1)(c)4.c., Fla. Stat.

If you find that (defendant) **committed Trafficking in [Fentanyl]** [(insert relevant substance listed in § 893.13(1)(i)1.a.-f., Fla. Stat.)], **you must also determine whether the State proved the following six elements beyond a reasonable doubt:**

1. (Defendant) **knowingly sold or delivered** [(insert relevant substance listed in § 893.13(1)(i)1.a.-f., Fla. Stat.)] **[a mixture containing** (insert relevant substance listed in § 893.13(1)(i)1.a.-f., Fla. Stat.)].
2. **At the time of the sale or delivery,** (defendant) **was 18 years of age or older.**
3. **The sale or delivery was to a person less than 18 years of age.**
4. **At the time of the sale or delivery,** (defendant) **knew that the person that [he] [she] sold or delivered the** [(insert relevant substance listed in § 893.13(1)(i)1.a.-f., Fla. Stat.)] **[a mixture containing** (insert relevant substance listed in § 893.13(1)(i)1.a.-f., Fla. Stat.)] **to was less than 18 years of age.**
5. **The** [(insert relevant substance listed in § 893.13(1)(i)1.a.-f., Fla. Stat.)] **[mixture containing** (insert relevant substance listed in § 893.13(1)(i)1.a.-f., Fla. Stat.)] **sold or delivered by the defendant weighed 4 grams or more.**
6. **The substance or mixture sold or delivered by the defendant was in a form that resembled, or was mixed, granulated, absorbed, spray-dried, or aerosolized as or onto, coated on, in whole or in part, or solubilized with or into, a product, when such product or its packaging further had at least one of the following attributes:**
 - a. **Resembled the trade dress of a branded food product, consumer food product, or logo food product; or,**
 - b. **Incorporated an actual or fake registered copyright, service mark, or trademark; or,**
 - c. **Resembled candy, cereal, a gummy, a vitamin, or a chewable product, such as a gum or gelatin-based product; or,**
 - d. **Contained a cartoon character imprint.**

Definitions. § 893.02, Fla. Stat. Give if applicable.

“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.

“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.

“Delivery” means the actual, constructive, or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship.

Comment

The instruction was adopted on March 8, 2024.