

**25.18 CONTRABAND IN A JUVENILE [DETENTION FACILITY]
[COMMITMENT PROGRAM]**

§ 985.711, Fla. Stat.

To prove the crime of Contraband in a Juvenile [Detention Facility] [Commitment Program], 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. possessed an item while upon the grounds of a juvenile [detention facility] [commitment program].**
- b. introduced the item into or upon the grounds of a juvenile [detention facility] [commitment program].**
- c. [took] [attempted to take] [sent] [attempted to send] an item from a juvenile [detention facility] [commitment program].**
- d. [transmitted] [attempted to transmit] an item to a juvenile offender into or upon the grounds of a juvenile [detention facility] [commitment program].**
- e. [caused] [attempted to cause] an item to be [transmitted to] [received by] a juvenile offender upon the grounds of a juvenile [detention facility] [commitment program].**

- 3. The item was:**

Give as applicable.

- a. an unauthorized article of food or clothing given or transmitted, or intended to be given or transmitted, to any youth in a [juvenile detention facility] [commitment program].**
- b. a beverage that causes or may cause an intoxicating effect.**
- c. a controlled substance. (Name of controlled substance alleged) is a controlled substance.**
- d. marijuana.**
- e. hemp.**
- f. industrial hemp.**

- g. a prescription or nonprescription drug that has a hypnotic, stimulating, or depressing effect.
- h. a firearm.
- i. a weapon of any kind.
- j. an explosive substance.
- k. any [cellular telephone] [or] [portable communication device] intentionally and unlawfully introduced inside the secure perimeter of a juvenile [detention facility] [commitment program].
- l. any vapor-generating electronic device intentionally and unlawfully introduced inside the secure perimeter of a juvenile [detention facility] [commitment program].
- m. any currency or coin given or transmitted, or intended to be given or transmitted, to any youth in a [juvenile detention facility] [commitment program].
- n. any cigarettes or tobacco products given, or intended to be given, to any youth in a [juvenile detention facility] [commitment program].

Definitions. Give as applicable.

§ 985.03(19), Fla. Stat.

A “juvenile detention facility” is a facility used pending court adjudication or disposition or execution of a court order for the temporary care of a child alleged or found to have committed a violation of law.

A “juvenile commitment program” is a facility used for the commitment of adjudicated delinquents.

“Introduce” means to put inside or into.

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 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.

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 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 tobacco products is alleged. § 210.25(12), 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 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 possessed the object in the detention facility/commitment program or brought it into the detention facility/commitment program 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 detention facility/commitment program.

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

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 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 in a juvenile [detention facility] [commitment program]. 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 Juvenile [Detention Facility] [Commitment Program] if the defendant was authorized through program policy or operating procedure or had the permission of the facility superintendent, program director, or manager of the [detention facility] [commitment program] to [possess] [introduce] [take] [attempt to take] [send] [attempt to send] [transmit] [attempt to transmit] [cause to transmit] [attempt to cause to transmit] the contraband item [into] [from] the facility. The defendant has raised this defense.

If you have a reasonable doubt as to whether the defendant was authorized through program policy or operating procedure or had the permission of the facility superintendent, program director, or manager of the [detention facility] [commitment program], you should find [him] [her] not guilty of Contraband in a Juvenile [Detention Facility] [Commitment Program].

If the State proved beyond a reasonable doubt that the defendant did not have authorization through program policy or operating procedure or did not have the permission of the facility superintendent, program director, or manager of the [detention facility] [commitment program], 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 A JUVENILE FACILITY — 985.711

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
*Possession of a Controlled Substance if a controlled substance is the contraband alleged			
	Attempt (although some attempts are included as elements)	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 a Juvenile [Detention Facility] [Commitment Program], for elements other than #2a. 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.

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 facility superintendent, program director, or manager. See § 985.711(1)(a)5., Fla. Stat. As of January 2025, 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 state correctional institution. See §§ 985.711(1)(a)5., and 985.711(1)(a)6., Fla. Stat. As of January 2025, 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 January 2025, 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 March 2000 and amended in 2014 [153 So. 3d 192], 2016 [191 So. 3d 291], 2017 [216 So. 3d 497], 2019 [272 So. 3d 243], on April 3, 2020, on October 2, 2020, and on February 21, 2025.