

25.23 RECKLESS EXPOSURE CAUSING AN OVERDOSE OR SERIOUS BODILY INJURY

§ 893.132, Fla. Stat.

To prove the crime of Reckless Exposure to (name(s) of enumerated controlled substance(s))* **Causing an Overdose or Serious Bodily Injury to a[n]** (type of first responder) **in the Course of Unlawful Possession of the** (name(s) of enumerated controlled substance(s))* **, the State must prove the following five elements beyond a reasonable doubt:**

1. (Defendant) **unlawfully possessed** (name(s) of enumerated controlled substance(s)).
2. **In the course of [his] [her] unlawful possession of** (name(s) of enumerated controlled substance(s)), (defendant) **recklessly exposed** (victim) **to the** (name(s) of enumerated controlled substance(s)).
3. **At the time of the reckless exposure,** (victim) **was acting in [his] [her] official capacity as a[n] [law enforcement officer] [correctional officer] [correctional probation officer] [firefighter] [emergency medical technician] [paramedic].**
4. **The reckless exposure resulted in an overdose or serious bodily injury to** (victim).
5. **At the time of the reckless exposure,** (defendant) **was 18 years of age or older.**

(Name(s) of enumerated controlled substance(s)) **[is] [are] [a] controlled substance[s]. The Court instructs you that it is unlawful to possess** (name(s) of enumerated controlled substance(s))* **without a valid prescription.**

To prove (defendant) **possessed** (name(s) of enumerated controlled substance(s)), **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 the 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. 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.

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 crime. 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 of this crime.

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 this crime.

“Recklessly” means a willful or wanton disregard for the safety of other persons.

“Exposed” or “exposure” means to cause any of the following, including, but not limited to, ingestion, inhalation, needlestick injury, or absorption through skin or mucous membranes.

Give as applicable.

A law enforcement officer is defined as (insert language from § 943.10(1), Fla. Stat.)

A correctional officer is defined as (insert language from § 943.10(2), Fla. Stat.)

A correctional probation officer is defined as ((insert language from § 943.10(3), Fla. Stat.).

A firefighter is defined as (insert language from § 633.102, Fla. Stat.).

An emergency medical technician is defined as (insert language from § 401.23, Fla. Stat.).

A paramedic is defined as (insert language from § 401.23, Fla. Stat.)

“Overdose or serious bodily injury” means drug toxicity or a physical condition that creates a substantial risk of death or substantial loss or impairment of the function of any bodily member or organ.

Lesser Included Offenses

RECKLESS EXPOSURE CAUSING AN OVERDOSE OR SERIOUS BODILY INJURY — 893.132

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS.NO.
Possession of a controlled substance		893.13	25.7
	Culpable negligence (inflicting injury)	784.05(2)	8.9
	Culpable negligence (exposing another to injury)	784.05(1)	8.9

Comments

*The enumerated controlled substance(s) must be alfentanil; carfentanil; fentanyl; sufentanil; a fentanyl derivative as described in § 893.03(1)(a)63.; a controlled substance analog as described in § 893.0356, Fla. Stat. of alfentanil, carfentanil, fentanyl, sufentanil, or a fentanyl derivative; or a mixture containing any of these substances.

The instruction indicates that the State must prove the defendant unlawfully possessed the enumerated controlled substance. However, as of January 2025, there was no case law that determined whether the State must prove the possession was unlawful, or whether the defendant must provide evidence, as an affirmative defense, that the possession was lawful. If lawfulness of the possession is an affirmative defense, the trial judge must determine which party has the burden of persuasion and what that burden is (preponderance of the evidence, clear and convincing, or beyond a reasonable doubt).

This instruction was adopted on February 21, 2025.