

7.3(b) UNLAWFUL DISTRIBUTION OF (NAME(S) OF ENUMERATED CONTROLLED SUBSTANCE(S)) BY A PERSON LESS THAN 18 YEARS OF AGE CAUSING DEATH

§ 782.04(5)(b), Fla. Stat.

In the absence of an express concession that the homicide was not excusable or justified, the trial judge must also read Instruction 7.1, Introduction to Homicide.

To prove the crime of Unlawful Distribution of (name(s) of enumerated controlled substance(s)) by a Person Less Than 18 Years of Age Causing Death, the State must prove the following seven elements beyond a reasonable doubt:

1. (Defendant) **distributed a substance.**
2. **The substance was [(name of enumerated controlled substance(s))] [or] [a mixture containing ((name of enumerated controlled substance(s))].**
3. (Defendant) **knew or reasonably should have known that the substance that [he] [she] distributed contained [(name of enumerated controlled substance(s))] [or] [a mixture containing (name of enumerated controlled substance(s))].**
4. **The distribution was unlawful.**
5. **At the time of the distribution, (defendant) was less than 18 years of age.**
6. (Victim) **is dead.**
7. **The [(name(s) of enumerated controlled substance(s))] [or] [mixture containing (name(s) of enumerated controlled substance(s))] that (defendant) distributed caused or was a substantial factor in producing the death of (victim).**

***The Court instructs you that it is unlawful to distribute [(name(s) of enumerated controlled substance(s))] [a mixture containing (name(s) of enumerated controlled substance(s))].**

“Distribute” means to deliver, other than by administering or dispensing.

“Deliver” means the actual, constructive, or attempted transfer from one person to another of a substance, regardless of whether there is an agency relationship.

“Administer” means the direct application of a substance, whether by injection, inhalation, ingestion, or any other means, to the body of a person.

“Dispense” means the transfer of possession of one or more doses of a medicinal drug by a pharmacist or other licensed practitioner to the ultimate

consumer thereof or to one who represents that it is his or her intention not to consume or use the same but to transfer the same to the ultimate consumer or user for consumption by the ultimate consumer or user.

“Substantial factor” means that the use of the substance [or mixture] alone was sufficient to cause death, regardless of whether any other substance or mixture used was also sufficient to cause death.

Give if applicable. Aumuller v. State, 944 So. 2d 1137 (Fla. 2d DCA 2006) (citing Martin v. State, 377 So. 2d 706 (Fla. 1979)).

If the State proves all the elements, a person commits this crime by acting as a distributor in the drug distribution chain, and it is irrelevant that other persons are also involved in the chain.

It is not necessary for the State to prove that (defendant) intended that (victim) die.

Lesser Included Offenses

UNLAWFUL DISTRIBUTION OF (NAME(S) OF ENUMERATED CONTROLLED SUBSTANCE(S)) BY A PERSON LESS THAN 18 YEARS OF AGE CAUSING DEATH— 782.04(5)(b)			
CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS.NO.
Manslaughter		782.07	7.7
	Second degree (depraved mind) murder	782.04(2)	7.4
Non-homicide lesser**			
Delivery of a Controlled Substance**		893.13(1)	25.2

Comments

This crime can be committed only if the controlled substance is listed in § 893.135(1)(c)4.a.(I)-(VII), Fla. Stat.

*A special instruction will be necessary if there is evidence the distribution was allowed by Florida law. For example, a person who delivers a medicinal drug from a wholesaler to a pharmacy or hospital in the normal course of business might be lawfully distributing the controlled substance. Furthermore, the instruction indicates the state must prove the defendant unlawfully distributed the controlled substance. However, there was no case law that determined whether the state must prove the distribution was unlawful, or whether the defendant must provide evidence, as an affirmative defense, that the distribution was lawful. If lawfulness of the distribution 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).

**It is also unclear whether delivery of a controlled substance is a lesser included crime. A defendant can be convicted of and sentenced for both a felony murder and the underlying felony. Therefore, an underlying felony is not a necessarily lesser included offense of felony murder. *State v. Enmund*, 476 So. 2d 165 (Fla. 1985). However, § 782.04(5)(b), Fla. Stat., is listed separately from the third degree felony murders in § 782.04(4), Fla. Stat. Also, non-homicide lesser included crimes should not be given in a homicide case if causation is not an issue and there is no dispute that the victim is dead. *Carver v. State*, 348 So. 3d 1214 (Fla. 5th DCA 2022).

This instruction was adopted on September 12, 2025.