

17.09

Definition Of Delivery Of Cannabis--Enhancing Factors Based Upon Age

A person commits the offense of delivery of cannabis to a person under 18 years of age when he, being 18 years of age or older, knowingly delivers cannabis to a person under 18 years of age who is at least 3 years junior to defendant [and the substance containing the cannabis weighs [(more than ____ grams) (more than ____ grams but not more than ____ grams)]].

Committee Note

720 ILCS 550/7 (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, §707).

Give Instruction 17.10.

When delivery of more than 2.5 grams of a substance containing cannabis is charged, weight then determines the penalty for the offense and is an essential element to be decided by the jury. See *People v. Kadlec*, 21 Ill.App.3d 289, 313 N.E.2d 522 (3d Dist.1974); *People v. Hill*, 169 Ill.App.3d 901, 524 N.E.2d 604, 120 Ill.Dec. 574 (1st Dist.1988). When the jury must decide this element, use the bracketed material in this instruction and use all four propositions in Instruction 17.10.

Particular care must be taken when disputes about weight support lesser included offenses. See example in the Committee Note to Instruction 17.01 and *People v. Smith*, 67 Ill.App.3d 952, 385 N.E.2d 707, 24 Ill.Dec. 566 (5th Dist.1978).

When the prosecution must prove the quantity of the substance as an element of the offense, it need not prove that the defendant *knew* the quantity was of any specific amount. See *People v. Cortez*, 77 Ill.App.3d 448, 395 N.E.2d 1177, 32 Ill.Dec. 796 (1st Dist.1979); *People v. Ziehm*, 120 Ill.App.3d 777, 458 N.E.2d 588, 76 Ill.Dec. 188 (2d Dist.1983).

Although the quantity may not always be required in the verdict forms, *People v. Roy*, 172 Ill.App.3d 16, 526 N.E.2d 204, 122 Ill.Dec. 64 (4th Dist.1988), to insure clarity the Committee recommends that each verdict form contain the same quantity language used in the definitional and issues instructions supporting the verdict.

It should not be necessary in most delivery cases to add the phrase "... but not more than ____ grams." Only when a lesser included offense instruction based upon weight is given are the statutory upper limits provided in 720 ILCS 550/5(b) through (d) an issue in the case.

See Committee Note to Instruction 17.01, concerning verdict forms and for directions on how the jury should be instructed when the weight of the substance containing cannabis is in dispute.

See Committee Note to Instruction 17.05A if delivery is an issue.

If other terms used in this instruction need to be defined, see the definitions contained in Chapter 561/2.

Use applicable bracketed material.