

17.04
Issues In Subsequent Offense Of Possession Of Cannabis

To sustain the charge of subsequent offense of possession of cannabis when the substance containing the cannabis weighed more than [(10) (30)] grams, the State must prove the following propositions:

First Proposition: That the defendant knowingly possessed a substance containing cannabis; and

Second Proposition: That the weight of the substance possessed was more than [(10) (30)] grams; and

Third Proposition: That at the time of the possession the defendant had been convicted of the offense of ____.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 550/3(l), 550/4(c), and 550/4(d) (West, 1999).

Give Instruction 17.03 and see Committee Note to 17.03.

Generally, when the degree or class of an offense depends on a prior conviction, the State must prove the existence of that prior conviction as an element of the offense. See *People v. Hicks*, 119 Ill.2d 29, 518 N.E.2d 148, 115 Ill.Dec. 623 (1987); *People v. Palmer*, 104 Ill.2d 340, 472 N.E.2d 795, 84 Ill.Dec. 658 (1984); *People v. Mays*, 80 Ill.App.3d 340, 399 N.E.2d 718, 35 Ill.Dec. 652 (3d Dist.1980). However, 725 ILCS 5/111-3(c), as amended by P.A. 86-964, effective July 1, 1990, provides that a prior conviction when used to increase the grade of an offense is not an element of the crime and may not be disclosed to the jury unless otherwise permitted by the issues. As a result, after the effective date of P.A. 86-964, prior convictions will not be an element of the offense and this instruction should not be used. For offenses occurring after June 30, 1990, use Instruction 17.02.

Subsequent offense possession of cannabis applies only when a defendant is charged with possessing (1) more than 10 grams but less than 30 grams, or (2) more than 30 grams but less than 500 grams. 720 ILCS 550/4.

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 an issue.

Insert in the blank the prior conviction.

Use applicable bracketed material.

When accountability is an issue, ordinarily insert the phrase “or one for whose conduct he is legally responsible” after the word “defendant” in each proposition. See Instruction 5.03.