

## 17.11

### Definition Of Production Or Possession Of Cannabis Sativa Plant

A person commits the offense of [ (production) (possession) ] of [ (a) (more than \_\_\_\_)  
(more than \_\_\_\_ but not more than \_\_\_\_) ] cannabis sativa plant[s] when he knowingly [ (produces) (possesses) ] [ (a) (more than \_\_\_\_) (more than \_\_\_\_ but not more than \_\_\_\_) ] cannabis sativa plant[s].

[The words “produces” and “production” mean planting, cultivating, tending, or harvesting.]

#### Committee Note

720 ILCS 550/3(j) and 550/8 (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, §§703(j) and 708).

Give Instruction 17.12.

720 ILCS 550/8 contains an exception for possession authorized by Section 550/11, but there is no burden on the State to negate that exception. (See Section 550/16.) Therefore no reference to the exception is made in the definitional or issues instructions for this offense, but it may be necessary to give additional instructions if the defendant relies on that exception.

The question of the number of plants involved in this charge must be submitted to the jury for its resolution when that number exceeds five and is the basis for increased penalties under Sections 550/8(b) through (d).

When the prosecution must prove the quantity of the plants 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).

It should not be necessary in most cases to add the phrase “... but not more than \_\_\_\_.” Only when a lesser included offense instruction is given, based upon a lesser number of plants being produced or possessed, are the statutory upper limits provided in Sections 550/8(b) and (c) 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 number of plants is an issue.

See Instructions 4.15 and 4.16, defining the word “possession.”

If other terms used in this instruction need to be defined, see the definitions contained in Chapter 720.

Use applicable bracketed material.