

17.01
Definition Of Possession Of Cannabis

A person commits the offense of possession of cannabis when he knowingly possesses a substance containing cannabis [and that substance containing the cannabis weighs [(more than ____ grams) (more than ____ grams but not more than ____ grams)]]].

Committee Note

Instruction and Note Approved January 26, 2018

720 ILCS 550/4 (West 2017).

Give Instruction 17.02.

When possession of more than 10 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, (1st Dist. 1988). When the jury must decide this element, use the bracketed material in this instruction and use both propositions in Instruction 17.02.

Particular care must be taken when disputes about weight support lesser included offenses. See example in this Committee Note, below, and *People v. Smith*, 67 Ill.App.3d 952, 385 N.E.2d 707, (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, - (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, (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 possession 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 550/4(b) through (d) an issue in the case.

If the evidence concerning the weight of the substance containing cannabis is in dispute, then separate issues and definitional instructions and verdict forms should be given to permit the jury to resolve that dispute with its verdict. For example, if a defendant is charged with possession of more than 500 grams of a substance containing cannabis (720 ILCS 550/4(e)), a Class 3 felony, the defendant may claim that the substance weighed only 480 grams, thereby reducing the offense to a Class 4 felony.

Under these circumstances, the jury should receive instructions and verdicts for both the greater and lesser offenses.

The first definitional instruction should read as follows:

“A person commits the offense of possession of cannabis when he knowingly possesses a substance containing cannabis and that substance containing the cannabis weighs more than 500 grams.”

The second definitional instruction should read as follows:

“A person commits the offense of possession of cannabis when he knowingly possesses a substance containing cannabis and that substance containing the cannabis weighs more than 100 grams but not more than 500 grams.”

The first issues instruction should read as follows:

“To sustain the charge of possession of cannabis when the substance containing the cannabis weighed more than 500 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 500 grams.”

Then the standard concluding two paragraphs should be added.

The second issues instruction should read as follows:

“To sustain the charge of possession of cannabis when the substance containing the cannabis weighed more than 100 grams but not more than 500 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 100 grams but not more than 500 grams.”

Then the standard concluding two paragraphs should be added.

Finally, the three verdict forms should repeat the appropriate language from the lead-in paragraph of each issues instruction. In this example, the verdict forms would read as follows:

“We the jury find the defendant guilty of possession of cannabis when the substance containing the cannabis weighed more than 500 grams.”

“We the jury find the defendant guilty of possession of cannabis when the substance containing the cannabis weighed more than 100 grams but not more than 500 grams.”

“We the jury find the defendant not guilty.”

If the defendant is being tried on other charges and a general not guilty verdict form cannot be used, it should read:

“We the jury find the defendant not guilty of possession of cannabis when the substance containing the cannabis weighed more than 500 grams and not guilty of possession of cannabis when the substance containing the cannabis weighed more than 100 grams but not more than 500 grams.”

Additional instructions should be given for each specific weight level (720 ILCS 550/4(a) through (e)) constituting a different class offense that, based upon the evidence in the case, the jury will be permitted to consider. In other words, if the dispute concerning weight reaches as far down as less than 100 grams, then other instructions should be given permitting the jury to find the defendant guilty of the lesser included Class A misdemeanor.

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

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

See generally Instructions 26.01Q through 26.01X, regarding verdicts in lesser included offense situations.

Use applicable bracketed material.

The brackets are present solely for the guidance of court and counsel and should not be included in the instruction submitted to the jury.