17.00
CANNABIS AND CONTROLLED SUBSTANCES

DISPOSITION TABLE

Showing where the Pattern Instructions in the Third Edition are covered in the Fourth Edition.

3d ed. Instruction Number	4th ed. Instruction Number
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INTRODUCTION

Generally, the jury need not be instructed as to the definitions of words which are contained or defined in the Statute. There will, however, be situations in which a definition will be necessary. One example would be a prosecution for the possession or delivery of a substance containing cannabis (720 ILCS 550/4 and 550/5), when there is evidence that raises an issue as to the nature of the substance involved. In this particular example, give the definition of cannabis (720 ILCS 550/3(a)) to the jury.

When the need for a definitional instruction arises, and the particular word is not defined in these Pattern Instructions, the Committee recommends that the jury be given an instruction which defines the term involved as set out in the appropriate section of the Statute (720 ILCS 550/3; 720 ILCS 570/102), with inapplicable language deleted, to avoid confusing the jury.

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.

17.02
Issues In Possession Of Cannabis

To sustain the charge of possession of cannabis [when the substance containing the cannabis weighed [(more than ____ grams) (more than ____ grams but not more than ____ grams)]], the State must prove the following proposition[s]:

That the defendant knowingly possessed a substance containing cannabis.

[or]

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

Second Proposition: That the weight of the substance possessed was [(more than ____ grams) (more than ____ grams but not more than ____ grams)].

If you find from your consideration of all the evidence that [(this) (each one of these)] proposition[s] has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that [(this) (any of these)] proposition[s] has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

Instruction and Note Approved January 26, 2018

720 ILCS 550/4 (West 2017).

Give Instruction 17.01; for discussion and examples, see the Committee Note to that instruction.

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.

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

17.03
Definition Of Subsequent Offense Of Possession Of Cannabis

A person commits the offense of subsequent offense of possession of cannabis when he, having been convicted of the offense of ____, knowingly possesses a substance containing cannabis and that substance containing the cannabis weighs more than [(30) (100)] grams.

Committee Note

Instruction and Note Approved January 26, 2018

720 ILCS 550/3(*l*), 550/4(c), and 550/4(d) (West 2017).

Give Instruction 17.04.

The first conviction must precede the *conduct* constituting the subsequent offense. *See People v. Phillips*, 56 Ill.App.3d 689, 371 N.E.2d 1214 (5th Dist. 1978); *People v. Miller*, 115 Ill.App.3d 592, 450 N.E.2d 767 (2d Dist. 1983).

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 (1987); *People v. Palmer*, 104 Ill.2d 340, 472 N.E.2d 795 (1984); *People v. Mays*, 80 Ill.App.3d 340, 399 N.E.2d 718, (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 classification 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 presented to the jury and this instruction should not be used. *See People v. Kennard*, 204 Ill.App.3d 641, 561 N.E.2d 1188 (1st Dist.1990). For offenses occurring after June 30, 1990, use Instruction 17.01.

Subsequent offense enhancement for possession applies only when a defendant is charged with possessing (1) more than 30 grams but less than 100 grams, or (2) more than 100 grams but less than 500 grams. 720 ILCS 550/4.

When possession of more than 30 or 100 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 determine this element, use the bracketed weight in this instruction and in Instruction 17.04.

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, (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,. 188 (2d Dist. 1983).

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). However, to ensure clarity, the Committee recommends that each verdict form contain the same quantity language used in the definitional and issues instructions supporting the verdict.

See Committee Note to Instruction 17.01, concerning verdict forms and disputes of weight.

Insert in the blank the prior conviction.

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.

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 [(30) (100)] 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 [(30) (100)] 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

Instruction and Note Approved January 26, 2018

720 ILCS 550/3(*l*), 550/4(c), and 550/4(d) (West 2017).

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 30 grams but less than 100 grams, or (2) more than 100 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.

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

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.

17.05
Definition Of Manufacture Or Delivery Of Cannabis

A person commits the offense of [(manufacture of) (delivery of) (possession with intent to deliver) (possession with intent to manufacture)] cannabis when he knowingly [(manufactures) (delivers) (possesses with intent to deliver) (possesses with intent to manufacture)] a substance containing cannabis [and the 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 550/5 (West 2017).

Give Instruction 17.06.

In many cases it will be necessary to give other instructions defining terms used in this instruction. See Instruction 17.05A, defining "deliver"; Instructions 4.15 and 4.16, defining "possession"; and 720 ILCS 550/3(h), defining the term"manufacture."

When manufacture or delivery 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 17.06.

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 (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 (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 manufacture and 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 in dispute.

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

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.

17.05A
Definition Of Deliver

[1] The word "deliver" means to transfer possession or to attempt to transfer possession.

[2] The word "deliver" includes a constructive transfer of possession which occurs without an actual physical transfer. When the conduct or declarations of the person who has the right to exercise control over a thing is such as to effectively relinquish the right of control to another person, so that the other person is then in constructive possession, there has been a delivery.

[3] A delivery may occur with or without the transfer or exchange of money, or with or without the transfer or exchange of other consideration.

Committee Note

720 ILCS 550/3(d) and 570/102(h) (West, 1999).

Generally, when the offense involves a delivery (720 ILCS 550/5, 550/5.1, 550/7, and 550/9; 720 ILCS 570/401, 570/405, 570/407, and 570/407.1) and the evidence indicates that the delivery in question was an actual physical transfer of possession, no definition of the term need be given to the jury. The term, in this sense, is commonly understood by laymen. People v. Monroe, 32 Ill.App.3d 482, 335 N.E.2d 783 (3d Dist.1975).

Give Paragraph [1] when there is some evidence that the delivery in question consisted of an attempt to transfer possession.

Give Paragraphs [1] and [2] when there is some evidence that the delivery in question involved a constructive transfer of possession.

Paragraph [3] may be given when the Court believes it would help the jury understand the issues.

It may be necessary, in situations in which the possession of the defendant or the person who received delivery is either constructive or joint, to give appropriate paragraphs contained in Instructions 4.15 and 4.16 relating to possession.

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

For an example of the use of this instruction, see Sample Set 27.07.

17.06
Issues In Manufacture Or Delivery Of Cannabis

To sustain the charge of [(manufacture of) (delivery of) (possession with intent to deliver) (possession with intent to manufacture)] cannabis [when the substance containing the cannabis weighed [(more than ____ grams) (more than ____ grams but not more than ____ grams)]], the State must prove the following proposition[s]:

That the defendant knowingly [(manufactured) (delivered) (possessed with intent to manufacture) (possessed with intent to deliver)] a substance containing cannabis.

[or]

First Proposition: That the defendant knowingly [(manufactured) (delivered) (possessed with intent to manufacture) (possessed with intent to deliver)] a substance containing cannabis; and

Second Proposition: That the weight of the substance [(manufactured) (delivered) (possessed)] was [(more than ____ grams) (more than ____ grams but not more than ____ grams)].

If you find from your consideration of all the evidence that [(this) (each one of these)] proposition[s] has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that [(this) (any one of these)] proposition[s] has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

Instruction and Note Approved January 26, 2018

720 ILCS 550/5 (West 2017)

Give Instruction 17.05.

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.

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.

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.

17.07
Definition Of Cannabis Trafficking

A person commits the offense of cannabis trafficking when he knowingly [(brings) (causes to be brought)] into this State [(for the purpose of manufacture) (for the purpose of delivery) (with the intent to manufacture) (with the intent to deliver)] 2,500 grams or more of cannabis in this State or any other state or country.

Committee Note

Instruction and Note Approved January 26, 2018

720 ILCS 550/5.1 (West 2017), added by P.A. 85-1388, effective January 1, 1989.

Give Instruction 17.08.

Although the prosecution must prove the quantity was 2,500 grams or more, 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; *People v. Ziehm*, 120 Ill.App.3d 777, 458 N.E.2d 588 (2d Dist. 1983).

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

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

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.

17.08
Issues In Cannabis Trafficking

To sustain the charge of cannabis trafficking, the State must prove the following propositions:

First Proposition: That the defendant knowingly [(brought cannabis) (caused cannabis to be brought)] into this State; and

Second Proposition: That the cannabis brought into Illinois weighed 2,500 grams or more; and

Third Proposition: That the defendant did so [(for the purpose of the manufacture of) (for the purpose of the delivery of) (with the intent to manufacture) (with the intent to deliver)] the cannabis in this State or any other state or country.

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

Instruction and Note Approved January 26, 2018

720 ILCS 550/5.1 (West 2017) (formerly Ill.Rev.Stat. ch. 561/2, §705.1), added by P.A. 85-1388, effective January 1, 1989.

Give Instruction 17.07.

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.

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.

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

Instruction and Note Approved January 26, 2018

720 ILCS 550/7 (West 2017) (formerly Ill.Rev.Stat. ch. 561/2, §707).

Give Instruction 17.10.

When delivery 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, 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 (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 (1st Dist. 1979); *People v. Ziehm*, 120 Ill.App.3d 777, 458 N.E.2d 588 (2d Dist. 1983).

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). However, to ensure 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 720 ILCS 550/3.

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.

17.10
Issues In Delivery Of Cannabis--Enhancing Factors Based Upon Age

To sustain the charge of the delivery of cannabis to a person under 18 years of age [when the substance containing the cannabis weighed [(more than ____ grams) (more than ____ grams but not more than ____ grams)]], the State must prove the following propositions:

First Proposition: That the defendant was 18 years of age or older on the date in question; and

Second Proposition: That the defendant knowingly delivered a substance containing cannabis; and

Third Proposition: That the person to whom the substance was delivered by the defendant was under 18 years of age and at least 3 years junior to the defendant on the date in question.

[or]

Third Proposition: That the person to whom the substance was delivered by the defendant was under 18 years of age and at least 3 years junior to the defendant on the date in question; and

Fourth Proposition: That the weight of the substance delivered was [(more than ____ grams) (more than ____ grams but not more than ____ grams)].

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

Instruction and Note Approved January 26, 2018

720 ILCS 550/7 (West 2017) (formerly Ill.Rev.Stat. ch. 561/2, §707).

Give Instruction 17.09.

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.

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.

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.

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

Instruction and Note Approved January 26, 2018

720 ILCS 550/3(j) and 550/8 (West 2017) 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 (1st Dist. 1979); *People v. Ziehm*, 120 Ill.App.3d 777, 458 N.E.2d 588 (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 term "possession."

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

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.

17.12
Issues In Production Or Possession Of Cannabis Sativa Plant

To sustain the charge of [(production) (possession)] of [(a) (more than ____) (more than ____ but not more than ____)] cannabis sativa plant[s], the State must prove the following proposition:

That the defendant knowingly [(produced) (possessed)] [(a) (more than ____) (more than ____ but not more than ____)] cannabis sativa plant[s].

If you find from your consideration of all the evidence that this proposition has been proved beyond a reasonable doubt, you should find the defendant guilty.

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

Committee Note

Instruction and Note Approved January 26, 2018

720 ILCS 550/3(j) and 550/8 (West 2017) (formerly Ill.Rev.Stat. ch. 561/2, §§703(j) and 708).

Give Instruction 17.11.

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.

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.

17.13
Definition Of Calculated Criminal Cannabis Conspiracy

A person commits the offense of calculated criminal cannabis conspiracy when he knowingly [(possesses) (produces) (delivers) (manufactures) (possesses with intent to deliver) (possesses with intent to manufacture)] more than [(30 grams of any substance containing cannabis) (20 cannabis sativa plants)], and he does so as part of an agreement undertaken and carried on with two or more other persons, and he

[1] obtains anything of value greater than $500 from the [(possession) (production) (delivery) (manufacture) (possession with intent to deliver) (possession with intent to manufacture) (agreement)].

[or]

[2] organizes, directs, or finances the [(possession) (production) (delivery) (manufacture) (possession with intent to deliver) (possession with intent to manufacture) (agreement)].

Committee Note

720 ILCS 550/9 (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, §709).

Give Instruction 17.14.

For a decision concerning the evidence required to prove a calculated drug conspiracy, see People v. Harmison, 108 Ill.2d 197, 483 N.E.2d 508, 91 Ill.Dec. 162 (1985).

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

See Instruction 17.13A, regarding the word “agreement.”

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

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

Use applicable paragraphs and bracketed material.

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

17.13A
Agreement Implied From Conduct

An agreement may be implied from the conduct of the parties although they acted separately or by different means and did not come together or enter into an express agreement.

Committee Note

This instruction may be given in a conspiracy case when it would help the jury understand the issues.

See People v. Heard, 48 Ill.2d 356, 270 N.E.2d 18 (1971); People v. Collins, 70 Ill.App.3d 413, 387 N.E.2d 995, 26 Ill.Dec. 165 (1st Dist.1979).

17.14
Issues In Calculated Criminal Cannabis Conspiracy

To sustain the charge of calculated criminal cannabis conspiracy, the State must prove the following propositions:

First Proposition: That the defendant knowingly [(possessed) (produced) (manufactured) (delivered) (possessed with intent to deliver) (possessed with intent to manufacture)] more than [(30 grams of any substance containing cannabis) (20 cannabis sativa plants)]; and

Second Proposition: That the defendant did so as part of an agreement undertaken or carried on with two or more other persons; and

Third Proposition: That the defendant obtained something of value greater than $500 from such [(possession) (production) (manufacture) (delivery) (possession with intent to deliver) (possession with intent to manufacture) (agreement)].

[or]

Third Proposition: That the defendant organized, directed, or financed such [(possession) (production) (delivery) (manufacture) (possession with intent to deliver) (possession with intent to manufacture) (agreement)].

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 550/9 (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, §709).

Give Instruction 17.13.

The Committee cautions against using normal principles of accountability. The defendant himself must receive the benefit or perform the acts contained in either of the Third Propositions, see People v. Holmes, 41 Ill.App.3d 585, 353 N.E.2d 396 (3d Dist.1976), but there is no clear answer to the question of whether the defendant himself must have performed the acts in the First Proposition. See People v. Vincent, 92 Ill.App.3d 446, 415 N.E.2d 1147, 47 Ill.Dec. 834 (1st Dist.1980).

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.

See Instruction 17.13A, regarding the word “agreement.”

Use applicable paragraphs and bracketed material.

17.15
Definition Of Subsequent Offense Of Calculated Criminal Cannabis Conspiracy

A person commits a subsequent offense of calculated criminal cannabis conspiracy when he, having been convicted of the offense of ____, knowingly [(possesses) (produces) (delivers) (manufactures) (possesses with intent to deliver) (possesses with intent to manufacture)] more than [(30 grams of any substance containing cannabis) (20 cannabis sativa plants)], and he does so as part of an agreement undertaken and carried on with two or more other persons, and he

[1] obtains anything of value greater than $500 from the [(possession) (production) (delivery) (manufacture) (possession with intent to deliver) (possession with intent to manufacture) (agreement)].

[or]

[2] organizes, directs, or finances the [(possession) (production) (delivery) (manufacture) (possession with intent to deliver) (possession with intent to manufacture) (agreement)].

Committee Note

720 ILCS 550/9 (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, §709).

Give Instruction 17.16.

The first conviction must precede the *conduct* constituting the subsequent offense. See People v. Phillips, 56 Ill.App.3d 689, 371 N.E.2d 1214, 14 Ill.Dec. 161 (5th Dist.1978); People v. Miller, 115 Ill.App.3d 592, 450 N.E.2d 767, 71 Ill.Dec. 79 (2d Dist.1983).

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 classification 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 presented to the jury and this instruction should not be used. See People v. Kennard, 204 Ill.App.3d 641, 561 N.E.2d 1188, 149 Ill.Dec. 492 (1st Dist.1990). For offenses occurring after June 30, 1990, use Instruction 17.13.

For a decision concerning the evidence required to prove a calculated drug conspiracy, see People v. Harmison, 108 Ill.2d 197, 483 N.E.2d 508, 91 Ill.Dec. 162 (1985).

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

See Instruction 17.13A, regarding the word “agreement.”

See 720 ILCS 550/9(a) for the prior offense that will aggravate the penalty.

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.

Insert in the blank the prior conviction.

Use applicable paragraphs and bracketed material.

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

17.16
Issues In Subsequent Offense Of Calculated Criminal Cannabis Conspiracy

To sustain the charge of subsequent offense of calculated criminal cannabis conspiracy, the State must prove the following propositions:

First Proposition: That the defendant had been convicted of the offense of ____; and

Second Proposition: That, after the date of such conviction, the defendant knowingly [(possessed) (produced) (manufactured) (delivered) (possessed with intent to deliver) (possessed with intent to manufacture)] more than [(30 grams of any substance containing cannabis) (20 cannabis sativa plants)]; and

Third Proposition: That the defendant did so as part of an agreement undertaken or carried on with two or more other persons; and

Fourth Proposition: That the defendant obtained something of value greater than $500 from such [(possession) (production) (manufacture) (delivery) (possession with intent to deliver) (possession with intent to manufacture) (agreement)].

[or]

Fourth Proposition: That the defendant organized, directed, or financed such [(possession) (production) (delivery) (manufacture) (possession with intent to deliver) (possession with intent to manufacture) (agreement)].

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 550/9 (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, §709).

Give Instruction 17.15.

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 classification 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 presented to the jury and this instruction should not be used. See People v. Kennard, 204 Ill.App.3d 641, 561 N.E.2d 1188, 149 Ill.Dec. 492 (1st Dist.1990). For offenses occurring after June 30, 1990, use Instruction 17.14.

The Committee cautions against using normal principles of accountability. The defendant himself must receive the benefit or perform the acts contained in either of the Fourth Propositions, see People v. Holmes, 41 Ill.App.3d 585, 353 N.E.2d 396 (3d Dist.1976), but there is no clear answer to the question of whether the defendant himself must have performed the acts

in the First Proposition. See People v. Vincent, 92 Ill.App.3d 446, 415 N.E.2d 1147, 47 Ill.Dec. 834 (1st Dist.1980).

See Instruction 17.13A, regarding the word “agreement.”

See Committee Note to Instruction 17.14.

Use applicable paragraphs and bracketed material.

17.17
Definition Of Manufacture Or Delivery Of Controlled Or Counterfeit Substance

A person commits the offense of [(delivery of) (manufacture of) (possession with intent to deliver) (possession with intent to manufacture)] a [(controlled) (counterfeit)] substance when he knowingly [(delivers) (manufactures) (possesses with intent to deliver) (possesses with intent to manufacture)] a substance containing a [(controlled) (counterfeit)] substance [and the substance containing the [(controlled) (counterfeit)] substance weighs [(____ grams or more) (____ grams or more but less than ____ grams)]].

Committee Note

720 ILCS 550/401 (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, §1401). P.A. 86-266 and P.A. 86-442 contain identical language and are both effective January 1, 1990. These Acts repealed Section 1401.2 and merged those enhancing provisions into a new Section 1401 and changed the weight format in portions of Section 1401 from "more than ____ grams but not more than ____ grams" to "____ grams or more but less than ____ grams." In cases alleging violations before that effective date, the Committee suggests the use of instructions from the 1989 Supplement to the Second Edition. P.A. 86-604, also effective January 1, 1990, is basically identical to former Section 1401, with slight modifications to LSD provisions, and continues to refer to the Section 1401.2 enhancing provisions repealed by the other two Acts. The Committee takes no position on the legal effect of these inconsistencies. The Section 1401 instructions in this Third Edition are based on P.A. 86-266 and P.A. 86-442. The instructions in the 1989 Supplement to the Second Edition would apply to P.A. 86-604.

Give Instruction 17.18.

It may be necessary to give other instructions defining terms used in this instruction. See Instruction 17.05A, defining the word "deliver"; Instructions 4.15 and 4.16, defining the word "possession"; Instruction 17.33A, defining the term "counterfeit substance"; 720 ILCS 570/102(z), defining the word "manufacture"; 720 ILCS 570/401, defining the term "controlled substance analog."

When manufacture or delivery of more than the statutory minimum of a substance 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 final bracketed material in this instruction and use both propositions in Instruction 17.18.

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 manufacture and delivery cases to add the phrase "... but less than ____ grams." Only when a lesser included offense instruction based upon weight is given are the statutory upper limits provided in 720 ILCS 570/401 an issue in the case.

The phrase "controlled substance analog" has been omitted because a controlled substance ordinarily includes its salts, isomers, and synthetic form. See People v. Chianakas, 114 Ill.App.3d 496, 448 N.E.2d 620, 69 Ill.Dec. 902 (2d Dist.1983); People v. Atencia, 113 Ill.App.3d 247, 446 N.E.2d 1243, 68 Ill.Dec. 846 (1st Dist.1983). However, in certain cases the nature of the chemical evidence will be such that the phrase "a controlled substance or controlled substance analog" should be used in place of the phrase "a controlled substance."

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 is an issue.

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 720.

Use applicable bracketed material.

For an example of the use of this instruction, see Sample Set 27.07.

17.18
Issues In Manufacture Or Delivery Of Controlled Or Counterfeit Substance

To sustain the charge of [(manufacture) (delivery) (possession with intent to manufacture) (possession with intent to deliver)] a [(controlled) (counterfeit)] substance [when the substance containing the [(controlled) (counterfeit)] substance weighed [(____ grams or more) (____ grams or more but less than ____ grams)]], the State must prove the following proposition[s]:

That the defendant knowingly [(manufactured) (delivered) (possessed with intent to manufacture) (possessed with intent to deliver)] a substance containing [(____, a controlled substance) (a counterfeit substance)].

[or]

First Proposition: That the defendant knowingly [(manufactured) (delivered) (possessed with intent to manufacture) (possessed with intent to deliver)] a substance containing [(____, a controlled substance) (a counterfeit substance)]; and

Second Proposition: That the weight of the substance containing the [(controlled) (counterfeit)] substance was [(____ grams or more) (____ grams or more but less than ____ grams)].

If you find from your consideration of all the evidence that [(this) (each one of these)] proposition[s] has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that [(this) (any one of these)] proposition[s] has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 570/401 (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, §1401). See Committee Note to Instruction 17.17, regarding inconsistent amendments to this section, effective January 1, 1990.

Give Instruction 17.17.

If any of the enhancing factors specified in 720 ILCS 570/407 and 570/407.1 are charged, consider the use of the appropriate Instruction from 17.20, 17.22, or 17.24.

When applicable, insert in the appropriate blanks the name of the controlled substance or the weight.

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.

For an example of the use of this instruction, see Sample Set 27.07.

17.19
Definition Of Manufacture Of, Delivery Of, Or Possession With Intent To Manufacture Or Deliver A Controlled Or Counterfeit Substance--Enhancing Factors Based Upon Location

A person commits the offense of [(delivery of) (manufacture of) (possession with intent to deliver) (possession with intent to manufacture)] a [(controlled) (counterfeit)] substance when he knowingly [(delivers) (manufactures) (possesses with intent to deliver) (possesses with intent to manufacture)] a substance containing a [(controlled) (counterfeit)] substance [and the substance containing the [(controlled) (counterfeit)] substance weighs [(____ grams or more) (____ grams or more but less than ____ grams)]] while

[1] in a school [regardless of [(the time of day) (the time of year) (whether classes were currently in session at the time)]].

[or]

[2] on the real property comprising a school [regardless of [(the time of day) (the time of year) (whether classes were currently in session at the time)]].

[or]

[3] on a public way within 1000 feet of the real property comprising a school [regardless of [(the time of day) (the time of year) (whether classes were currently in session at the time)]].

[or]

[4] on any conveyance [(owned) (leased) (contracted)] by a school to transport students to and from [(school) (a school related activity)].

[or]

[5] in residential property owned, operated, and managed by a public housing agency.

[or]

[6] on the real property comprising residential property owned, operated, and managed by a public housing agency.

[or]

[7] on a public way within 1000 feet of the real property comprising residential property owned, operated, and managed by a public housing agency.

[or]

[8] in a public park.

[or]

[9] on the real property comprising a public park.

[or]

[10] on a public way within 1000 feet of the real property comprising a public park.

[or]

[11] on the real property comprising a church, synagogue, or other building, structure, or place used primarily for religious worship.

[or]

[12] on a public way within 1000 feet of the real property comprising a church, synagogue, or other building, structure, or place used primarily for religious worship.

Committee Note

720 ILCS 570/407(b) and 407(c) (West, 1992) (formerly Ill.Rev.Stat. ch. 561/2, §1407(b) and (c) (1991)), added by P.A. 84-1075, effective December 2, 1985, amended by P.A. 85-616, effective January 1, 1988; P.A. 86-946, effective January 1, 1990; P.A. 87-524, effective January 1, 1992; and P.A. 89-451, effective January 1, 1997.

Give Instruction 17.20.

Use the bracketed material regarding the time of day, time of year, or whether classes were currently in session at the time of the events in question for alternatives [1] through [3] only when the time of day, time of year, or whether classes were currently in session becomes a potential issue.

720 ILCS 570/407(b), as established by P.A. 84-1075 and as amended by P.A. 85-616, P.A. 86-946, P.A. 87-524, and P.A. 89-451, sets forth geographical factors enhancing the penalties for violations of 720 ILCS 570/401 (West, 1992) (formerly Ill.Rev.Stat. ch. 561/2, §1401 (1991)) as listed in the above alternatives numbered [1] through [12]. Select the alternative that corresponds to the location in the charge. Before January 1, 1990, as a general rule, Section 407 raised the classification for a violation on or within 1000 feet of certain locations one grade higher than the classification would normally be for the violation elsewhere. Effective January 1, 1990, 720 ILCS 570/401 was amended by three Public Acts, two consistent and one inconsistent. The Committee takes no position as to the legal effects the inconsistent

amendments to the predicate offenses have on these Section 570/407(b) cases. See also Committee Note to Instruction 17.17.

When more than the statutory minimum of a substance is charged, weight then determines the penalty for the offense and becomes an essential element to be decided by the jury. See People v. Hill, 169 Ill.App.3d 901, 524 N.E.2d 604, 120 Ill.Dec. 574 (1st Dist.1988); People v. Kadlec, 21 Ill.App.3d 289, 313 N.E.2d 522 (3d Dist.1974). When the jury must decide the weight of the substance, use the final bracketed material in the first paragraph of this instruction and use all three propositions in Instruction 17.20.

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. Ziehm, 120 Ill.App.3d 777, 458 N.E.2d 588, 76 Ill.Dec. 188 (2d Dist.1983); People v. Cortez, 77 Ill.App.3d 448, 395 N.E.2d 1177, 32 Ill.Dec. 796 (1st Dist.1979).

Similarly, when the prosecution must prove one of the enhancing factors based upon location as an element of the offense, it need not prove that the defendant knew he was at such a location. People v. Brooks, 271 Ill.App.3d 570, 573, 648 N.E.2d 626, 628, 207 Ill.Dec. 926, 928 (4th Dist.1995).

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 manufacture and delivery cases to add the phrase "... but less than ____ grams." Only when a lesser included offense instruction based upon weight is given are the statutory upper limits provided in 720 ILCS 570/401 an issue in the case.

This instruction does not include language for a look-alike substance offense charged under 720 ILCS 570/407(b)(3) (formerly Ill.Rev.Stat. ch. 561/2, §1407(b)(3) (1991)) with 720 ILCS 570/404(b) (formerly Ill.Rev.Stat. ch. 561/2, §1404(b) (1991)) as the predicate offense. For that offense, see Instruction 17.35.

For a case involving the relationship between the predicate offense and the enhanced offense under Section 407(b), see People v. Lipscomb, 173 Ill.App.3d 416, 527 N.E.2d 704, 123 Ill.Dec. 241 (4th Dist.1988).

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 is an issue.

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

See Instruction 17.33A, defining the term "counterfeit substance."

If other terms used in this instruction need to be defined, see the definitions contained in the Illinois Controlled Substances Act, 720 ILCS 570/100 *et seq.* (West, 1992).

Use applicable bracketed material.

17.20
Issues In Manufacture Of, Delivery Of, Or Possession With Intent To Manufacture Or Deliver A Controlled Or Counterfeit Substance--Enhancing Factors Based Upon Location

To sustain the charge of [(delivery of) (manufacture of) (possession with intent to deliver) (possession with intent to manufacture)] a [(controlled) (counterfeit)] substance [when the substance containing the [(controlled) (counterfeit)] substance weighed [(____ grams or more) (____ grams or more but less than ____ grams)]] while

[1] in a school, the State must prove the following propositions:

[or]

[2] on the real property comprising a school, the State must prove the following propositions:

[or]

[3] on a public way within 1000 feet of the real property comprising a school, the State must prove the following propositions:

[or]

[4] on any conveyance [(owned) (leased) (contracted)] by a school to transport students to and from [(school) (a school related activity)], the State must prove the following propositions:

[or]

[5] in residential property owned, operated, and managed by a public housing agency, the State must prove the following propositions:

[or]

[6] on the real property comprising residential property owned, operated, and managed by a public housing agency, the State must prove the following propositions:

[or]

[7] on a public way within 1000 feet of the real property comprising residential property owned, operated, and managed by a public housing agency, the State must prove the following propositions:

[or]

[8] in a public park, the State must prove the following propositions:

[or]

[9] on the real property comprising a public park, the State must prove the following propositions:

[or]

[10] on a public way within 1000 feet of the real property comprising a public park, the State must prove the following propositions:

[or]

[11] on the real property comprising a church, synagogue, or other building, structure, or place used primarily for religious worship, the State must prove the following propositions:

[or]

[12] on a public way within 1000 feet of the real property comprising a church, synagogue, or other building, structure, or place used primarily for religious worship, the State must prove the following propositions:

First Proposition: That the defendant knowingly [(delivered) (manufactured) (possessed with intent to deliver) (possessed with intent to manufacture)] a substance containing [(____, a controlled substance) (a counterfeit substance)]; and

Second Proposition: That the [(delivery) (manufacture) (possession with intent to deliver) (possession with intent to manufacture)] took place

[1] in a school [regardless of the [(time of day) (time of year) (whether classes were currently in session at the time)]]; and

[or]

[2] on the real property comprising a school [regardless of the [(time of day) (time of year) (whether classes were currently in session at the time)]]; and

[or]

[3] on a public way within 1000 feet of the real property comprising a school [regardless of the [(time of day) (time of year) (whether classes were currently in session at the time)]]; and

[or]

[4] on any conveyance [(owned) (leased) (contracted)] by a school to transport students to and from [(school) (a school related activity)]; and

[or]

[5] in residential property owned, operated, and managed by a public housing agency; and

[or]

[6] on the real property comprising residential property owned, operated, and managed by a public housing agency; and

[or]

[7] on a public way within 1000 feet of the real property comprising residential property owned, operated, and managed by a public housing agency; and

[or]

[8] in a public park; and

[or]

[9] on the real property comprising a public park; and

[or]

[10] on a public way within 1000 feet of the real property comprising a public park; and

[or]

[11] on the real property comprising a church, synagogue, or other building, structure, or place used primarily for religious worship; and

[or]

[12] on a public way within 1000 feet of the real property comprising a church, synagogue, or other building, structure, or place used primarily for religious worship; and

Third Proposition: That the weight of the substance containing the [(controlled) (counterfeit)] substance was [(____ grams or more) (____ grams or more but less than ____ grams)].

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 570/407(b) and 407(c) (West, 1992) (formerly Ill.Rev.Stat. ch. 561/2, §1407(b) and (c) (1991)), added by P.A. 84-1075, effective December 2, 1985, and amended by P.A. 85-616, effective January 1, 1988; P.A. 86-946, effective January 1, 1990; P.A. 87-524, effective January 1, 1992; and P.A. 89-451, effective January 1, 1997.

Give Instruction 17.19 and see Committee Note to that instruction.

Use the bracketed material regarding the time of day, time of year, or whether classes were currently in session at the time of the events in question for alternatives [1] through [3] only when the time of day, time of year, or whether classes were currently in session becomes a potential issue.

The bracketed numbers [1] through [12] under the opening paragraph and the Second Proposition correspond to the alternatives of the same number in Instruction 17.19, the definitional instruction for this offense. Select the corresponding alternatives under the opening paragraph and the Second Proposition that correspond to the alternative selected from the definitional instruction.

Use the bracketed Third Proposition and the bracketed language in the first paragraph regarding the weight of the substance when the jury must decide the weight of the substance.

This instruction does not include language for a look-alike substance offense charged under 720 ILCS 570/407(b)(3) (formerly Ill.Rev.Stat. ch. 561/2, §1407(b)(3) (1991)) with 720 ILCS 570/404(b) (formerly Ill.Rev.Stat. ch. 561/2, §1404(b) (1991)) as the predicate offense. For that offense, see Instruction 17.36.

See Committee Notes to Instructions to 17.01 and 17.18.

When applicable, insert in the appropriate blanks the name of the controlled substance or the weight.

Use applicable paragraphs and 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.

17.21
Definition Of Delivery Of Controlled, Counterfeit, Or Look-Alike Substance--Enhancing Factors Based Upon Age

A person commits the offense of delivery of a [(controlled) (counterfeit) (look-alike)] substance to a person under 18 years of age when he, being 18 years of age or older, knowingly delivers a [(substance containing a controlled) (substance containing a counterfeit) (look-alike)] substance to a person under 18 years of age [and the substance containing the [(controlled) (counterfeit)] substance weighs [(____ grams or more) (____ grams or more but less than ____ grams)]].

Committee Note

720 ILCS 570/407(a) (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, §1407(a)).

Give Instruction 17.22.

When delivery of more than the statutory minimum of a substance 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 final bracketed material in this instruction and use all four propositions in Instruction 17.22.

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 less than ____ grams." Only when a lesser included offense instruction based upon weight is given are the statutory upper limits provided in Section 570/401 an issue in the case.

Although Section 570/407(a) incorporates by reference violations of Sections 570/401 and 570/404(b), by its own specific language it is limited to acts of delivery and not other acts proscribed by those predicate Sections.

The Committee intentionally did not include the term "look-alike" in the bracketed material after the word "age" because weight is never an issue in look-alike cases.

See Committee Note to Instruction 17.19, regarding inconsistent amendments to the predicate offense, Section 570/401.

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 is an issue.

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

See Instructions 17.33A and 17.33B, defining the terms “counterfeit substance” and “look-alike substance” respectively.

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

Use applicable bracketed material.

17.22
Issues In Delivery Of Controlled, Counterfeit, Or Look-Alike Substance--Enhancing Factors Based Upon Age

To sustain the charge of delivery of a [(controlled) (counterfeit) (look-alike)] substance to a person under 18 years of age, the State must prove the following propositions:

First Proposition: That the defendant was 18 years of age or older on the date in question; and

Second Proposition: That the defendant knowingly delivered [(a substance containing ____, a controlled substance) (a counterfeit substance) (a look-alike substance)]; and

Third Proposition: That the person to whom the substance was delivered by the defendant was under 18 years of age on the date in question.

[or]

Third Proposition: That the person to whom the substance was delivered by the defendant was under 18 years of age on the date in question; and

Fourth Proposition: That the weight of the substance delivered was [(____ grams or more) (____ grams or more but less than ____ grams)].

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 570/407(a) (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, §1407(a)).

Give Instruction 17.21.

The Fourth Proposition should not be given in a look-alike case because weight is not an issue.

See Committee Notes to Instructions 17.01, 17.19, and 17.18.

When applicable, insert in the appropriate blanks the name of the controlled substance or the weight.

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.

17.23
Definition Of Delivery Of Controlled, Counterfeit, Or Look-Alike Substance--Enhancing Factors Based Upon Use Of Youths In Commission Of Offense

A person commits the offense of delivery of a [(controlled) (counterfeit) (look-alike)] substance involving the use of another under 18 years of age when he, being 18 years of age or older, [(delivers) (manufactures) (possesses with intent to deliver) (possesses with intent to manufacture)] a [(substance containing a controlled) (substance containing a counterfeit) (look-alike)] substance and, in so doing, [(uses) (engages) (employs)] a person under 18 years of age to deliver a [(substance containing a controlled) (substance containing a counterfeit) (look-alike)] substance [and the substance containing the [(controlled) (counterfeit)] substance weighs [(____ grams or more) (____ grams or more but less than ____ grams)]].

Committee Note

720 ILCS 570/407.1 (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, §1407.1), added by P.A. 84-1475, effective February 5, 1987.

Give Instruction 17.24.

Give Instruction 17.33A, defining the term "counterfeit substance" when appropriate.

Give Instruction 17.33B, defining the term "look-alike substance" when appropriate.

When more than the statutory minimum of a substance 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 final bracketed material in this instruction and use all four propositions in Instruction 17.24.

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 less than ____ grams." Only when a lesser included offense instruction based upon weight is given are the statutory upper limits provided in Section 570/401 an issue in the case.

Although Section 570/407.1 incorporates by reference violations of Sections 570/401, 570/404, and 570/405, by its own specific language it is limited to acts of delivery and not other acts proscribed by those predicate Sections.

If the predicate offense is a calculated criminal drug conspiracy under Section 570/405, this instruction must be modified to conform to the language of the charging document.

The Committee intentionally did not include the term "look-alike" in the bracketed material after the word "age" because weight is never an issue in look-alike cases.

See Committee Note to Instruction 17.19, regarding inconsistent amendments to the predicate offense, Section 570/401.

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 is an issue.

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 720.

Use applicable bracketed material.

17.24
Issues In Delivery Of Controlled, Counterfeit, Or Look-Alike Substance--Enhancing Factors Based Upon Use Of Youths In Commission Of Offense

To sustain the charge of delivery of a [(controlled) (counterfeit) (look-alike)] substance involving the use of another under 18 years of age, the State must prove the following propositions:

First Proposition: That the defendant was 18 years of age or older on the date in question; and

Second Proposition: That the defendant knowingly [(delivered) (manufactured) (possessed with intent to deliver) (possessed with intent to manufacture)] a [(substance containing ____, a controlled substance) (substance containing a counterfeit substance) (look-alike substance)]; and

Third Proposition: That the defendant [(used) (engaged) (employed)] a person under 18 years of age to deliver a [(controlled) (counterfeit) (look-alike)] substance.

[or]

Third Proposition: That the defendant [(used) (engaged) (employed)] a person under 18 years of age to deliver a [(controlled) (counterfeit) (look-alike)] substance; and

Fourth Proposition: That the weight of the substance containing the [(controlled) (counterfeit)] substance was [(____ grams or more) (____ grams or more but less than ____ grams)].

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 570/407.1 (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, §1407.1), added by P.A. 84-1475, effective February 5, 1987.

Give Instruction 17.23.

The Fourth Proposition should not be given in a look-alike case because weight is not an issue.

See Committee Notes to Instructions 17.17, 17.18, and 17.20.

When applicable, insert in the appropriate blanks the name of the controlled substance or the weight.

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.

17.25
Definition Of Delivery Of Controlled Substance--Enhancing Factors Based Upon Pregnant Woman Recipient

A person commits the offense of delivery of a controlled substance to a pregnant woman when he knowingly delivers a substance containing a controlled substance to a woman he knows to be pregnant [and the substance containing the controlled substance weighs [(____ grams or more) (____ grams or more but less than ____ grams)]].

Committee Note

720 ILCS 570/407.2 (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, §1407.2), added by P.A. 86-1459, effective January 1, 1991.

Give Instruction 17.26.

When delivery of more than the statutory minimum of a substance 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 issue, use the bracketed material in this instruction and use all three propositions in Instruction 17.26.

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 less than ____ grams." Only when a lesser included offense instruction based upon weight is given are the statutory upper limits provided in Section 570/401 an issue in the case.

Although Section 570/407.2 incorporates by reference violations of Section 570/401, by its own specific language it is limited to acts of delivery and not other acts proscribed by the predicate section, and it is limited to controlled substances and not counterfeit substances.

See Committee Note to Instruction 17.19, regarding inconsistent amendments to the predicate offense, Section 570/401.

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 is an issue.

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

Use applicable bracketed material.

17.26
Issues In Delivery Of Controlled Substance--Enhancing Factors Based Upon Pregnant Woman Recipient

To sustain the charge of delivery of a controlled substance to a pregnant woman [when the substance containing the controlled substance weighed [(____ grams or more) (____ grams or more but less than ____ grams)]], the State must prove the following propositions:

First Proposition: That the defendant knowingly delivered a substance containing ____, a controlled substance; and

Second Proposition: That the person to whom the substance was delivered was known by the defendant to be pregnant on the date in question.

[or]

Second Proposition: That the person to whom the substance was delivered was known by the defendant to be pregnant on the date in question; and

Third Proposition: That the weight of the substance delivered was [(____ grams or more) (____ grams or more but less than ____ grams)].

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 570/407.2 (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, §1407.2), added by P.A. 86-1459, effective January 1, 1991.

Give Instruction 17.25 and see the Committee Note to that instruction.

See Committee Notes to Instructions 17.01, 17.18, and 17.19.

When applicable, insert in the appropriate blanks the name of the controlled substance or the weight.

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.

17.27
Definition Of Possession Of Controlled Or Counterfeit Substance

A person commits the offense of possession of a [(controlled) (counterfeit)] substance when he knowingly possesses a substance containing a [(controlled) (counterfeit)] substance [and the substance containing the [(controlled) (counterfeit)] substance weighs [(____ grams or more) (____ grams or more but less than ____ grams)]].

Committee Note

720 ILCS 570/402 (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, §1402). P.A. 86-266 and P.A. 86-442 contain identical language and are both effective January 1, 1990. These Acts repealed Section 1402.1 and merged those enhancing provisions into a new Section 1402. P.A. 86-604, also effective January 1, 1990, is basically identical to former Section 1402 with slight modifications to LSD provisions. The Committee takes no position on the legal effect of these inconsistencies. These Section 1402 instructions in this Third Edition are worded to accommodate all three Acts.

Give Instruction 17.28.

When possession of more than the statutory minimum of a substance is charged, weight then determines the penalty for the offense and becomes 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 final bracketed material in this instruction and use both propositions in Instruction 17.28.

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 possession cases to add the phrase "... but less than ____ grams." Only when a lesser included offense instruction based upon weight is given are the statutory upper limits provided in 720 ILCS 570/402 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 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.

17.28
Issues In Possession Of Controlled Or Counterfeit Substance

To sustain the charge of possession of a [(controlled) (counterfeit)] substance [when the substance containing the [(controlled) (counterfeit)] substance weighed [(____ grams or more) (____ grams or more but less than ____ grams)]], the State must prove the following proposition[s]:

That the defendant knowingly possessed a substance containing [(____, a controlled substance) (a counterfeit substance)].

[or]

First Proposition: That the defendant knowingly possessed a substance containing [(____, a controlled substance) (a counterfeit substance)]; and

Second Proposition: That the weight of the substance possessed was [(____ grams or more) (____ grams or more but less than ____ grams)].

If you find from your consideration of all the evidence that [(this) (each one of these)] proposition[s] has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that [(this) (any one of these)] proposition[s] has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

Committee Note

720 ILCS 570/402 (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, §1402).

Give Instruction 17.27 and see Committee Note to that instruction.

When applicable, insert in the appropriate blanks the name of the controlled substance or the weight.

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.

17.29
Definition Of Calculated Criminal Drug Conspiracy

A person commits the offense of calculated criminal drug conspiracy when he knowingly

[1] [(manufactures) (delivers) (possesses with intent to manufacture) (possesses with intent to deliver)] ____ grams or more of a substance containing ____, a controlled substance;

[or]

[2] possesses ____ grams or more of a substance containing ____, a controlled substance;

[or]

[3] [(manufactures) (delivers) (possesses with intent to manufacture) (possesses with intent to deliver)] ____, a controlled substance;

and he does so as part of an agreement undertaken or carried on with two or more other persons; and

[1] he obtains anything of value greater than $500 from the [(possession) (delivery) (manufacture) (possession with intent to deliver) (possession with intent to manufacture)] or the agreement.

[or]

[2] he organizes, directs, or finances the [(possession) (delivery) (manufacture) (possession with intent to deliver) (possession with intent to manufacture)] or the agreement.

Committee Note

720 ILCS 570/405 (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, §1405).

Give Instruction 17.30.

Section 570/405 incorporates by reference subsections (a) and (c) of Section 1401 and subsection (a) of Section 1402. See the first paragraph to the Committee Notes to Instructions 17.17 and 17.18 regarding inconsistent Public Acts effective January 1, 1990. The Committee takes no position on the legal effect of those acts on Section 570/405 cases.

For a decision concerning the evidence required to prove a calculated criminal drug conspiracy, see People v. Harmison, 108 Ill.2d 197, 483 N.E.2d 508, 91 Ill.Dec. 162 (1985).

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

See Instruction 17.13A, regarding the word “agreement.”

Insert in the appropriate blanks the name of the controlled substance and the weight.

Use applicable paragraphs and bracketed material.

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

17.30
Issues In Calculated Criminal Drug Conspiracy

To sustain the charge of calculated criminal drug conspiracy, the State must prove the following propositions:

First Proposition: That the defendant knowingly [(manufactured) (delivered) (possessed with intent to manufacture) (possessed with intent to deliver)] ____ grams or more of a substance containing ____, a controlled substance; and

[or]

First Proposition: That the defendant knowingly possessed ____ grams or more of a substance containing ____, a controlled substance; and

[or]

First Proposition: That the defendant knowingly [(manufactured) (delivered) (possessed with intent to manufacture) (possessed with intent to deliver)] ____, a controlled substance; and

Second Proposition: That the defendant did so as part of an agreement undertaken or carried on with two or more other persons; and

Third Proposition: That the defendant obtained something of value greater than $500 from such [(possession) (manufacture) (delivery) (possession with intent to manufacture) (possession with intent to deliver)] or agreement.

[or]

Third Proposition: That the defendant organized, directed, or financed such [(possession) (manufacture) (delivery) (possession with intent to manufacture) (possession with intent to deliver)] or agreement.

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 570/405 (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, §1405).

Give Instruction 17.29 and see the accompanying Committee Note.

The Committee cautions against using normal principles of accountability. The defendant himself must receive the benefit or perform the acts contained in either of the Third Propositions, see People v. Holmes, 41 Ill.App.3d 585, 353 N.E.2d 396 (3d Dist.1976), but there is no clear answer to the question of whether the defendant himself must have performed the acts in the First Proposition. See People v. Vincent, 92 Ill.App.3d 446, 415 N.E.2d 1147, 47 Ill.Dec. 834 (1st Dist.1980).

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 is an issue.

Insert in the appropriate blanks the name of the controlled substance and the weight.

Use applicable paragraphs and bracketed material.

17.31
Definition Of Criminal Drug Conspiracy

A person commits the offense of criminal drug conspiracy when he, with the intent that the offense of ____ be committed, agrees with [(another) (others)] to the commission of the offense of ____, and an act in furtherance of the agreement is performed by any party to the agreement.

To constitute the offense of criminal drug conspiracy it is not necessary that the conspirators succeed in committing the offense of ____.

Committee Note

720 ILCS 570/405.1 (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, §1405.1), added by P.A. 86-809, effective January 1, 1990.

The court must also give an instruction that defines the drug offense that is the alleged subject of the criminal drug conspiracy. See Committee Notes to that drug definition instruction and to Instruction 6.03 generally regarding conspiracy principles.

P.A. 86-809 is worded in general conspiracy language from 720 ILCS 5/8-2, but it is limited to agreements to commit a violation of 720 ILCS 570/401, 570/402, or 570/407.

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

See Instruction 17.13A, regarding the word “agreement.”

Insert in the blanks the name of the offense that is the subject of the alleged criminal drug conspiracy.

Use applicable bracketed material.

17.32
Issues In Criminal Drug Conspiracy

To sustain the charge of criminal drug conspiracy, the State must prove the following propositions:

First Proposition: That the defendant agreed with ____ to the commission of the offense of ____; and

Second Proposition: That the defendant did so with the intent that the offense of ____ be committed; and

Third Proposition: That an act in furtherance of the agreement was performed by any party to the agreement.

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 570/405.1 (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, §1405.1), added by P.A. 86-809, effective January 1, 1990.

Give Instruction 17.31.

The court must also give an instruction that defines the drug offense that is the alleged subject of the criminal drug conspiracy. See Committee Notes to that drug definition instruction and to Instruction 6.03 generally regarding conspiracy principles.

P.A. 86-809 is worded in general conspiracy language from 720 ILCS 5/8-2, but it is limited to agreements to commit a violation of 720 ILCS 570/401, 570/402, or 570/407.

Insert in the blanks the name of the offense that is the subject of the alleged criminal drug conspiracy.

17.33
Definition Of Manufacture, Distribution, Advertisement Of, Or Possession With Intent To Manufacture Or Distribute A Look-Alike Substance

A person commits the offense of [(manufacturing) (distributing) (advertising) (possession with intent to manufacture) (possession with intent to distribute)] a look-alike substance when he knowingly [(manufactures) (distributes) (advertises) (possesses with intent to manufacture) (possesses with intent to distribute)] a look-alike substance.

[It is not a defense to the charge of [(manufacturing) (distributing) (advertising) (possession with intent to manufacture) (possession with intent to distribute)] a look-alike substance that the defendant believed the look-alike substance actually to be a controlled substance.]

Committee Note

720 ILCS 570/404(b) (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, §1404(b)).

Give Instruction 17.34.

Give Instruction 17.33B, defining the term “look-alike substance.”

The bracketed paragraph is based on Section 570/404(d) and should be given if there is some evidence or argument before the jury concerning the defendant's belief that the look-alike substance actually was a controlled substance. See People v. Upton, 151 Ill.App.3d 1075, 503 N.E.2d 1102, 105 Ill.Dec. 96 (5th Dist.1987).

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

See Section 570/102(r), defining the word “distribute.”

17.33A
Definition Of Counterfeit Substance

The term "counterfeit substance" means a controlled substance, which, or the container or labeling of which, without authorization bears the trademark, trade name, or other identifying mark, imprint, number or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the substance.

Committee Note

720 ILCS 570/102(g) (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, §1102(g)).

If the word "person" is an issue, prepare a definition from Section 570/102(gg), and do *not* use Instruction 4.10.

17.33B
Definition Of Look-Alike Substance

The term "look-alike substance" means

[1] a substance, other than a controlled substance, which by overall dosage unit appearance, including shape, color, size, markings or lack thereof, taste, consistency, or any other identifying physical characteristics of the substance, would lead a reasonable person to believe that the substance is a controlled substance.

[or]

[2] a substance, other than a controlled substance, which is expressly or impliedly represented to be a controlled substance or is distributed under circumstances which would lead a reasonable person to believe that the substance is a controlled substance. In determining whether a substance has been so represented or distributed you should consider all relevant factors[, including

[a] statements made by the owner or person in control of the substance concerning its nature, use or effect

[b] statements made to the buyer or recipient that the substance may be resold for profit

[c] whether the substance is packaged in a manner normally used for the illegal distribution of controlled substances

[d] whether the distribution or attempted distribution included an exchange of or demand for money or other property in return for the substance, and whether the value of the money or property was substantially greater than the reasonable retail market value of the substance].

A controlled substance is an illegal drug which it is unlawful to possess, manufacture, or deliver under the Illinois Controlled Substance Act. [____[(is a) (are)] controlled substance[s].]

Committee Note

720 ILCS 570/102(y) (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, §1102(y)).

The statutory definition of a look-alike substance contains a number of exceptions which are not included in this instruction. (Section 570/102(y).) When the evidence shows that those statutory exceptions are at issue, this instruction must be modified.

Insert in the blank the names of any controlled substance or substances which the look-alike drug is said to resemble.

Use applicable paragraphs and bracketed material.

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

17.34
Issues In Manufacture, Distribution, Advertisement Of Or Possession With Intent To Manufacture Or Distribute A Look-Alike Substance

To sustain the charge of [(manufacture of) (distribution of) (advertisement of) (possession of) (possession with intent to manufacture) (possession with intent to distribute)] a look-alike substance, the State must prove the following proposition:

That the defendant knowingly [(manufactured) (distributed) (advertised) (possessed) (possessed with intent to manufacture) (possessed with intent to distribute)] a look-alike substance.

If you find from your consideration of all the evidence that this proposition has been proved beyond a reasonable doubt, you should find the defendant guilty.

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

Committee Note

720 ILCS 570/404 (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, §1404).

Give Instructions 17.33 and 17.33B.

Separate issues and definitional instructions may have to be given, along with separate verdict forms, if the jury is to consider more than one charge under Section 570/404.

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.

17.35
Definition Of Manufacture, Distribution, Advertisement Of, Or Possession With Intent To Manufacture Or Distribute A Look-Alike Substance--Enhancing Factors Based Upon Location

A person commits the offense of [(manufacturing) (distributing) (advertising) (possession with intent to manufacture) (possession with intent to distribute)] a look-alike substance when he knowingly [(manufactures) (distributes) (advertises) (possesses with intent to manufacture) (possesses with intent to deliver)] a look-alike substance while

[1] in a school [regardless of [(the time of day) (the time of year) (whether classes were currently in session at the time)]].

[or]

[2] on the real property comprising a school [regardless of [(the time of day) (the time of year) (whether classes were currently in session at the time)]].

[or]

[3] on a public way within 1000 feet of the real property comprising a school [regardless of [(the time of day) (the time of year) (whether classes were currently in session at the time)]].

[or]

[4] on any conveyance [(owned) (leased) (contracted)] by a school to transport students to and from [(school) (a school-related activity)].

[or]

[5] in residential property owned, operated, and managed by a public housing agency.

[or]

[6] on the real property comprising residential property owned, operated, and managed by a public housing agency.

[or]

[7] on a public way within 1000 feet of the real property comprising residential property owned, operated, and managed by a public housing agency.

[or]

[8] in a public park.

[or]

[9] on the real property comprising a public park.

[or]

[10] on a public way within 1000 feet of the real property comprising a public park.

[or]

[11] on the real property comprising a church, synagogue, or other building, structure, or place used primarily for religious worship.

[or]

[12] on a public way within 1000 feet of the real property comprising a church, synagogue, or other building, structure, or place used primarily for religious worship.

Committee Note

720 ILCS 570/407(b) and 407(c) (West, 1992) (formerly Ill.Rev.Stat. ch. 561/2, §1407(b) and (c) (1991)), added by P.A. 84-1075, effective December 1, 1985; and amended by P.A. 85-616, effective January 1, 1988; P.A. 86-946, effective January 1, 1990; P.A. 87-524, effective January 1, 1992; and P.A. 89-451, effective January 1, 1997. This Section incorporates by reference 720 ILCS 570/404(b) (West, 1992) (formerly Ill.Rev.Stat. ch. 561/2, §1404(b) (1991)).

Give Instruction 17.36.

Give Instruction 17.33B, defining the term “look-alike substance.”

Use the bracketed material regarding the time of day or time of year of the events in question for alternatives [1] through [3] only when the time of day or time of year becomes a potential issue.

The bracketed numbers [1] through [12] correspond to the locations indicated in Section 407(b) as enhancing factors. Select the alternative that corresponds to the location in the charge.

When the prosecution must prove one of the enhancing factors based upon location as an element of the offense, it need not prove that the defendant knew he was at such a location. People v. Brooks, 271 Ill.App.3d 570, 573, 648 N.E.2d 626, 628, 207 Ill.Dec. 926, 928 (4th Dist.1995).

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

For a case involving the relationship between the predicate offense and the enhanced offense under Section 407(b), see People v. Lipscomb, 173 Ill.App.3d 416, 527 N.E.2d 704, 123 Ill.Dec. 241 (4th Dist.1988).

Use applicable bracketed material.

17.36
Issues In Manufacture, Distribution, Advertisement Of, Or Possession With Intent To Manufacture Or Distribute A Look-Alike Substance--Enhancing Factors Based Upon Location

To sustain the charge of [(manufacture of) (distribution of) (advertisement of) (possession with intent to manufacture) (possession with intent to distribute)] a look-alike substance while:

[1] in a school, the State must prove the following propositions:

[or]

[2] on the real property comprising a school, the State must prove the following propositions:

[or]

[3] on a public way within 1000 feet of the real property comprising a school, the State must prove the following propositions:

[or]

[4] on any conveyance [(owned) (leased) (contracted)] by a school to transport students to and from [(school) (a school-related activity)], the State must prove the following propositions:

[or]

[5] in residential property owned, operated, and managed by a public housing agency, the State must prove the following propositions:

[or]

[6] on the real property comprising residential property owned, operated, and managed by a public housing agency, the State must prove the following propositions:

[or]

[7] on a public way within 1000 feet of the real property comprising residential property owned, operated, and managed by a public housing agency, the State must prove the following propositions:

[or]

[8] in a public park, the State must prove the following propositions:

[or]

[9] on the real property comprising a public park, the State must prove the following propositions:

[or]

[10] on a public way within 1000 feet of the real property comprising a public park, the State must prove the following propositions:

[or]

[11] on the real property comprising a church, synagogue, or other building, structure, or place used primarily for religious worship, the State must prove the following propositions:

[or]

[12] on a public way within 1000 feet of the real property comprising a church, synagogue, or other building, structure, or place used primarily for religious worship, the State must prove the following propositions:

First Proposition: That the defendant knowingly [(manufactured) (distributed) (advertised) (possessed with intent to manufacture) (possessed with intent to distribute)] a look-alike substance; and

Second Proposition: That the [(manufacture) (distribution) (advertisement) (possession with intent to manufacture) (possession with intent to distribute)] took place while

[1] in a school [regardless of [(the time of day) (the time of year) (whether classes were currently in session at the time)]].

[or]

[2] on the real property comprising a school [regardless of [(the time of day) (the time of year) (whether classes were currently in session at the time)]].

[or]

[3] on a public way within 1000 feet of the real property comprising a school [regardless of [(the time of day) (the time of year) (whether classes were currently in session at the time)]].

[or]

[4] on any conveyance [(owned) (leased) (contracted)] by a school to transport students to and from [(school) (a school related activity)].

[or]

[5] in residential property owned, operated, and managed by a public housing agency.

[or]

[6] on the real property comprising residential property owned, operated, and managed by a public housing agency.

[or]

[7] on a public way within 1000 feet of the real property comprising residential property owned, operated, and managed by a public housing agency.

[or]

[8] in a public park.

[or]

[9] on the real property comprising a public park.

[or]

[10] on a public way within 1000 feet of the real property comprising a public park.

[or]

[11] on the real property comprising a church, synagogue, or other building, structure, or place used primarily for religious worship.

[or]

[12] on a public way within 1000 feet of the real property comprising a church, synagogue, or other building, structure, or place used primarily for religious worship.

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 570/407(b) and 407(c) (West, 1992) (formerly Ill.Rev.Stat. ch. 561/2, §1407(b) and (c) (1991)), added by P.A. 84-1075, effective December 1, 1985; and amended by P.A. 85-616, effective January 1, 1988; P.A. 86-946, effective January 1, 1990; P.A. 87-524, effective January 1, 1992; and P.A. 89-451, effective January 1, 1997. This Section incorporates by reference 720 ILCS 570/404(b) (West, 1992) (formerly Ill.Rev.Stat. ch. 561/2, §1404(b) (1991)).

Give Instruction 17.35.

Use the bracketed material regarding the time of day or time of year of the events in question for alternatives [1] through [3] only when the time of day or time of year becomes a potential issue.

The bracketed numbers [1] through [12] under the opening paragraph and the Second Proposition correspond to the alternatives of the same number in Instruction 17.35, the definitional instruction for this offense. Select the corresponding alternatives under the opening paragraph and the Second Proposition that correspond to the alternative selected from the definitional instruction.

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.

17.37
Definition Of Possession Of Hypodermic Syringe Or Needle

A person commits the offense of possession of [(a hypodermic syringe) (a hypodermic needle) (any instrument adapted for the use of a controlled substance or cannabis by subcutaneous injection)] when he knowingly has in his possession [(a hypodermic syringe) (a hypodermic needle) (any instrument adapted for the use of a controlled substance or cannabis by subcutaneous injection)].

Committee Note

720 ILCS 635/1 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §22-50).

Give Instruction 17.38.

Use applicable bracketed material.

17.38
Issues In Possession Of Hypodermic Syringe Or Needle

To sustain the charge of possession of [(a hypodermic syringe) (a hypodermic needle) (any instrument adapted for the use of a controlled substance or cannabis by subcutaneous injection)], the State must prove the following proposition:

That the defendant knowingly had in his possession [(a hypodermic syringe) (a hypodermic needle) (any instrument adapted for the use of a controlled substance or cannabis by subcutaneous injection)]

If you find from your consideration of all the evidence that this proposition has been proved beyond a reasonable doubt, you should find the defendant guilty.

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

Committee Note

720 ILCS 635/1 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §22-50).

Give Instruction 17.37.

Note that Sections 635/1 and 635/5 contain exceptions.

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.

17.39
Definition Of Delivery, Sale, Or Exchange Of Hypodermic Syringe Or Needle

A person commits the offense of [(delivery) (sale) (exchange)] of [(a hypodermic syringe) (a hypodermic needle) (any instrument adapted for the use of a controlled substance or cannabis by subcutaneous injection)] when he knowingly [(delivers) (sells) (exchanges)] [(a hypodermic syringe) (a hypodermic needle) (any instrument adapted for the use of controlled substance or cannabis by subcutaneous injection)] [(to) (with)] any person.

Committee Note

720 ILCS 635/2 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §22-51).

Give Instruction 17.40.

Instruction 17.22, defining the offense of subsequent offense of possession, delivery, sale, or exchange of hypodermic syringe or needle, has been eliminated because of the infrequency with which that charge would be made.

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

Use applicable bracketed material.

17.40
Issues In Delivery, Sale, Or Exchange Of Hypodermic Syringe Or Needle

To sustain the charge of [(delivery) (sale) (exchange)] of [(a hypodermic syringe) (a hypodermic needle) (any instrument adapted for the use of a controlled substance or cannabis by subcutaneous injection)], the State must prove the following proposition:

That the defendant knowingly [(delivered) (sold) (exchanged)] [(a hypodermic syringe) (a hypodermic needle) (any instrument adapted for the use of a controlled substance or cannabis by subcutaneous injection)] [(to) (with)] another person.

If you find from your consideration of all the evidence that this proposition has been proved beyond a reasonable doubt, you should find the defendant guilty.

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

Committee Note

720 ILCS 635/2 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §22-51).

Give Instruction 17.39.

Note that Sections 635/2 and 635/5 contain exceptions.

Instruction 17.23, issues in the offense of subsequent offense of possession, delivery, sale, or exchange of hypodermic syringe or needle, has been eliminated because of the infrequency with which that charge would be made.

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 the proposition. See Instruction 5.03.

17.41
Definition Of Permitting Unlawful Use Of A Building

A person commits the offense of permitting unlawful use of a building when he controls a building and knowingly grants, permits, or makes that building available for use for the purpose of unlawfully manufacturing or delivering a controlled substance.

Control of a building means the power or authority to direct, restrict, or regulate the use of the building.

Committee Note

720 ILCS 570/406.1 (West, 1999) formerly Ill.Rev.Stat. ch. 561/2, §1406.1, added by P.A. 85-537, effective January 1, 1988.

Give Instruction 17.42.

For a discussion of the definition of "control," see People v. Parker, 277 Ill.App.3d 585, 660 N.E.2d 1296, 214 Ill.Dec. 347 (4th Dist.1996).

17.41A
Definition Of Use Of A Dangerous Place For The Commission Of A Controlled Substance Or Cannabis Offense

A person commits the offense of Use of a Dangerous Place for the Commission of a [(Controlled Substance) (Cannabis)] Offense when that person knowingly exercises control over any place with the intent to use that place to [(manufacture) (produce) (deliver) (possess with intent to deliver)] a [(controlled substance) (counterfeit substance) (controlled substance analog) (cannabis)]; and

[1] the place, by virtue of the presence of the [(substance) (substances)] [(used) (intended to be used)] to manufacture [(a controlled substance) (a counterfeit substance) (a controlled substance analog) (cannabis)] presents a substantial risk of injury to any person from [(fire) (explosion) (exposure to toxic or noxious chemicals or gas)]

[or]

[2] the place [(used) (intended to be used)] to [(manufacture) (produce) (deliver) (possess with intent to deliver)] [(a controlled substance) (a counterfeit substance) (a controlled substance analog) (cannabis)] has located [(within) (surrounding)] it [(devices) (weapons) (chemicals) (explosives)] [(designed) (hidden) (arranged)] in a manner that would cause a person to be exposed to a substantial risk of great bodily harm.

Committee Note

Chapter 720 ILCS 5/12-2.6, added by P.A. 93-0516, effective January 1, 2004.

Give Instructions 17.42A, 17.43E, and 17.43F.

Use applicable bracketed material.

Give Instruction 17.33A, defining the term “counterfeit substance”, as appropriate.

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

17.42
Issues In Permitting Unlawful Use Of A Building

To sustain the charge of permitting unlawful use of a building, the State must prove the following propositions:

First Proposition: That the defendant controlled a building; and

Second Proposition: That the defendant knowingly granted, permitted, or made that building available for use for the purpose of unlawfully manufacturing or delivering a controlled substance.

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 570/406.1 (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, §1406.1), added by P.A. 85-537, effective January 1, 1988.

Give Instruction 17.41.

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.

17.42A
Issues In Use Of A Dangerous Place For The Commission Of A Controlled Substance Or Cannabis Offense

To sustain the charge of Use of a Dangerous Place for the Commission of a [(Controlled Substance) (Cannabis)] Offense, the State must prove the following propositions:

First Proposition: That the defendant knowingly exercised control over any place with the intent to use that place to [(manufacture) (produce) (deliver) (possess with intent to deliver)] a [(controlled substance) (counterfeit substance) (controlled substance analog) (cannabis)]; and

Second Proposition: That the place

by virtue of the presence of the [(substance) (substances)] [(used) (intended to be used)] to manufacture [(a controlled substance) (a counterfeit substance) (a controlled substance analog) (cannabis)] presents a substantial risk of injury to any person from [(fire) (explosion) (exposure to toxic or noxious chemicals or gas)];

[or]

Second Proposition: That the place

[(used) (intended to be used)] to [(manufacture) (produce) (deliver) (possess with intent to deliver)] [(a controlled substance) (a counterfeit substance) (a controlled substance analog) (cannabis)] has located [(within) (surrounding)] it [(devices) (weapons) (chemicals) (explosives)] [(designed) (hidden) (arranged)] in a manner that would cause a person to be exposed to a substantial risk of great bodily harm.

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

Chapter 720 ILCS 5/12-2.6, added by P.A. 93-0516, effective January 1, 2004.

Give Instructions 17.41A, 17.43E, and 17.43F.

Use applicable paragraphs and bracketed material.

Give Instruction 17.33A, defining the term “counterfeit substance”, as appropriate.

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

17.43
Definition Of Money Laundering

A person commits the offense of money laundering when he knowingly engages or attempts to engage in a financial transaction in criminally derived property [(of a value exceeding $10,000 but not exceeding $100,000) (of a value exceeding $100,000)] [(with the intent to promote the carrying on of the unlawful activity from which the criminally derived property was obtained) (where he knows or reasonably should know that the financial transaction is designed in whole or in part to conceal or disguise the nature, location, source, ownership, or control of the criminally derived property)].

Committee Note

720 ILCS 5/29B-1(a) (West Supp.1993) (formerly Ill.Rev.Stat. ch. 38, §29B-1(a) (1991)); added by P.A. 85-675, effective January 1, 1988; amended by P.A. 86-1459, effective January 1, 1991; P.A. 88-258, effective August 9, 1993.

Give Instruction 17.44.

Give Instructions 17.43A, 17.43B, 17.43C, and 17.43D, defining the terms “financial transaction”, “financial institution”, “monetary instrument”, and “criminally derived property” respectively, as applicable.

Between January 1, 1988, and January 1, 1991, money laundering was a Class 3 felony regardless of the value of the property alleged to be criminally derived. After January 1, 1991, if the value exceeds $10,000 but not $100,000, the offense is a Class 2 felony; and, if it exceeds $100,000, the offense is a Class 1 felony. Because the value now determines the penalty, when laundering property exceeding $10,000 in value is charged, the Committee believes value is an essential element to be decided by the jury similar to substance weight in People v. Kadlec, 21 Ill.App.3d 289, 313 N.E.2d 522 (3d Dist.1974), and People v. Hill, 169 Ill.App.3d 901, 524 N.E.2d 604, 120 Ill.Dec. 574 (1st Dist.1988). See also People v. Harden, 42 Ill.2d 301, 247 N.E.2d 404 (1969); but see, People v. Jackson, 99 Ill.2d 476, 459 N.E.2d 1362, 77 Ill.Dec. 113 (1984). When the jury must decide this element, use the first bracketed material in this instruction and use all four propositions in Instruction 17.44.

Particular care must be taken with instructions and verdict forms when disputes about value support lesser included offenses. See an example regarding weight rather than value in the Committee Note to Instruction 17.01.

Use applicable bracketed material.

17.43A
Definition Of Financial Transaction

The term "financial transaction" means a purchase, sale, loan, pledge, gift, transfer, delivery or other disposition utilizing criminally derived property[, and with respect to financial institutions, includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit or other monetary instrument or any other payment, transfer or delivery by, through, or to a financial institution]. [The receipt by an attorney of bona fide fees for the purpose of legal representation is not a financial transaction.]

Committee Note

720 ILCS 5/29B-1(b)(1) (West, 1992) (formerly Ill.Rev.Stat. ch. 38, §29B-1(b)(1) (1991)); amended by P.A. 88-258, effective August 9, 1993.

Use applicable bracketed material.

17.43B
Definition Of Financial Institution

The term "financial institution" means any bank; saving and loan association; trust company; agency or branch of a foreign bank in the United States; currency exchange; credit union; mortgage banking institution; pawnbroker; loan or finance company; operator of a credit card system; issuer, redeemer, or cashier of travelers checks, checks, or money orders; dealer in precious metals, stones, or jewels; broker or dealer in securities or commodities; investment banker; or investment company.

Committee Note

720 ILCS 5/29B-1(b)(2) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §29B-1(b)(2) (1991)).

17.43C
Definition Of Monetary Instrument

The term "monetary instrument" means United States coins and currency; coins and currency of a foreign country; travelers checks; bearer negotiable instruments; bearer investment securities; or bearer securities and certificates of stock.

Committee Note

720 ILCS 5/29B-1(b)(3) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §29B-1(b)(3) (1991)).

17.43D
Definition Of Criminally Derived Property

The term "criminally derived property" means any property constituting or derived from proceeds obtained, directly or indirectly, pursuant to the commission of ____.

Committee Note

720 ILCS 5/29B-1(b)(4) (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §29B-1(b)(4) (1991)).

The Committee recommends that, at the request of either party, or *sua sponte,* the court submit to the jury a definitional instruction for each violation.

Insert in the blank the offense or offenses from the Criminal Code of 1961, the Illinois Controlled Substance Act, or the Cannabis Control Act involved in the money laundering case before the jury.

17.43E
Definition Of Place

The word "place" means a premises, conveyance, or location that offers [(seclusion) (shelter) (means) (facilitation)] for manufacturing, producing, possessing or possessing with intent to deliver [(a controlled substance) (a counterfeit substance) (a controlled substance analog) (cannabis)].

Committee Note

Chapter 720 ILCS 5/12-2.6, added by P.A. 93-0516, effective January 1, 2004.

Give Instructions 17.41A, 17.42A and 17.43F.

Use applicable bracketed material.

The Committee points out that the statute uses the word "premise" instead of "premises." However, upon inquiry, the Committee determined that the word used in the statute was a grammatically incorrect drafting error and that, in an upcoming revisory statute, the word will be corrected to read "premises."

Give Instruction 17.33A, defining the term "counterfeit substance", as appropriate.

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

17.43F
Inferences On Intended Use Of A Place

You may infer that a place was intended to be used to manufacture a [(controlled substance) (counterfeit substance) (controlled substance analog)] if a substance containing a [(controlled substance) (counterfeit substance) (controlled substance analog)] or a substance containing a chemical important to the manufacture of said substance is found at the place of the alleged illegal controlled substance manufacturing in close proximity to equipment or to a chemical used for facilitating the manufacture of said substance.

You never are required to make this inference. It is for the jury to determine whether the inference should be drawn. You should consider all of the evidence in determining whether a place was intended to be used to manufacture a [(controlled substance) (counterfeit substance) (controlled substance analog)].

Committee Note

Chapter 720 ILCS 5/12-2.6(b), added by P.A. 93-0516, effective January 1, 2004.

Give Instructions 17.41A, 17.42A, and 17.43E.

Use applicable bracketed material.

Give Instruction 17.33A, defining the term "counterfeit substance," as appropriate.

The Committee points out that this Instruction permits a jury to make the inference herein but that such an inference is permissive, not mandatory. People v. Pomykala, 203 Ill.2d 198, 784 N.E.2d 784, 271 Ill.Dec 230 (2003) and People v. Funches, 212 Ill.2d 334, 818 N.E.2d 342, 288 lll.Dec. 654 (2004). Mandatory presumptions are *per se* unconstitutional in Illinois. People v. Watts, 181 Ill.2d 133, 692 N.E.2d 315, 229 Ill.Dec. 542 (1998). Consistent with the above Illinois Supreme Court decisions, the Committee drafted the second paragraph of this instruction, using IPI 23.30 (Presumptions of Being Under the Influence of Alcohol) as a model.

The statute does not include cannabis when providing for this inference at 720 ILCS 5/12-2.6(b) and, therefore, cannabis is not included in this Instruction.

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

17.44
Issues In Money Laundering

To sustain the charge of money laundering, the State must prove the following propositions:

First Proposition: That the defendant knowingly engaged or attempted to engage in a financial transaction in criminally derived property; and

Second Proposition: That when the defendant did so, he [(intended to promote the carrying on of the unlawful activity from which the criminally derived property was obtained) (knew or reasonably should have known that the financial transaction was designed in whole or in part to conceal or disguise the nature, location, source, ownership, or control of the criminally derived property)] [(.) (; and)]

[*Third Proposition:* That the value of the criminally derived property exceeded [($10,000 but did not exceed $100,000) ($100,000)].]

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 5/29B-1(a) (West, 1992) (formerly Ill.Rev.Stat. ch. 38, §29B-1(a) (1991)); added by P.A. 85-675, effective January 1, 1988; amended by P.A. 86-1459, effective January 1, 1991; P.A. 88-258, effective August 9, 1993.

Give Instruction 17.43.

Give the bracketed Third Proposition if property of a value exceeding $10,000 is at issue.

See the Committee Note to Instruction 17.43.

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.

17.45
Definition Of Controlled Substances Trafficking

A person commits the offense of controlled substances trafficking when he knowingly [(brings) (causes to be brought)] into this State a [(controlled) (counterfeit)] substance [(for the purpose of [(the manufacture of) (the delivery of)]) (with the intent to [(manufacture) (deliver)])] a [(controlled) (counterfeit)] substance in this or any other state or country [and the substance containing the [(controlled) (counterfeit)] substance weighed [(____ grams or more) (____ grams or more but less than ____ grams)]].

Committee Note

720 ILCS 570/401.1(a) and (b) (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, §1401.1(a) and (b)), added by P.A. 85-743, effective September 22, 1987, and amended by P.A. 85-1294, effective January 1, 1989, and P.A. 86-1391, effective January 1, 1991.

Give Instruction 17.46.

If the use of a cellular radio telecommunications device in trafficking is alleged, do not use this instruction; instead, use Instructions 17.47 and 17.48.

When more than the statutory minimum of a substance 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 final bracketed material in this instruction and use all three propositions in Instruction 17.46.

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 possession cases to add the phrase "... but less than ____ grams." Only when a lesser included offense instruction based upon weight is given are the statutory upper limits provided in Section 570/401 an issue in the case.

See Committee Note to Instruction 17.17, regarding inconsistent amendments to Section 570/410, effective January 1, 1991.

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 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 in Chapter 720.

Use applicable bracketed material.

17.46
Issues In Controlled Substances Trafficking

To sustain the charge of controlled substances trafficking, the State must prove the following propositions:

First Proposition: That the defendant knowingly [(brought) (caused to be brought)] into this State [(____, a controlled) (a counterfeit)] substance; and

Second Proposition: That the defendant did so [(for the purpose of the manufacture of) (for the purpose of the delivery of) (with the intent to manufacture) (with the intent to deliver)] the [(controlled) (counterfeit)] substance in this or any other state or country.

[or]

Second Proposition: That the defendant did so [(for the purpose of the manufacture of) (for the purpose of the delivery of) (with the intent to manufacture) (with the intent to deliver)] the [(controlled) (counterfeit)] substance in this or any other state or country; and

Third Proposition: That the weight of the substance containing the [(controlled) (counterfeit)] substance was [(____ grams or more) (____ grams or more but less than ____ grams)].

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 570/401.1(a) and (b) (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, §1401.1(a) and (b)), added by P.A. 85-743, effective September 22, 1987, and amended by P.A. 85-1294, effective January 1, 1989.

Give Instruction 17.45 and see Committee Note to that instruction.

When applicable, insert in the appropriate blanks the name of the controlled substance or the weight.

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.

17.47
Definition Of Controlled Substances Trafficking--Use Of A Cellular Radio Telecommunications Device

A person commits the offense of controlled substances trafficking involving the use of a cellular radio telecommunications device when he knowingly [(brings) (causes to be brought)] into this State a [(controlled) (counterfeit)] substance [(for the purpose of [(the manufacture of) (the delivery of)]) (with the intent to [(manufacture) (deliver)])] a [(controlled) (counterfeit)] substance in this or any other state or country and he knowingly uses a cellular radio telecommunications device in the furtherance of this activity.

Committee Note

720 ILCS 570/401.1(c) (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, §1401.1(c)), added by P.A. 86-1391, effective January 1, 1991.

Give Instruction 17.48.

If the use of a cellular radio telecommunications device in controlled substance trafficking is alleged, use this instruction and 17.48, and do not use Instructions 17.45 and 17.46 for that charge.

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

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

Use applicable bracketed material.

17.48
Issues In Controlled Substances Trafficking--Use Of A Cellular Radio Telecommunications Device

To sustain the charge of controlled substances trafficking involving use of a cellular radio telecommunications device, the State must prove the following propositions:

First Proposition: That the defendant knowingly [(brought) (caused to be brought)] into this State [(____, a controlled) (a counterfeit)] substance; and

Second Proposition: That the defendant knowingly used a cellular radio telecommunications device in the furtherance of that activity; and

Third Proposition: That the defendant did so [(for the purpose of the manufacture of) (for the purpose of the delivery of) (with the intent to manufacture) (with the intent to deliver)] the [(controlled) (counterfeit)] substance in this or any other state or country.

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 570/401.1(c) (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, §1401.1(c)), added by P.A. 86-1391, effective January 1, 1991.

Give Instruction 17.47.

Insert in the blank the name of the controlled substance.

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.

17.49
Definition Of Unlawful Transfer Of A Telecommunications Device To A Minor

A person commits the offense of unlawful transfer of a telecommunications device to a minor when he gives, sells, or otherwise transfers possession of a telecommunications device to a person under 18 years of age with the intent that the device be used to commit the offense of ____.

Committee Note

720 ILCS 5/44-2 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §44-2 (1991)), added by P.A. 86-811, effective January 1, 1990.

Give Instructions 17.49A and 17.50.

The statute refers to "any offense under this [the Criminal] Code, the Cannabis Control Act or the Illinois Controlled Substances Act." The Committee believes that whether the offense or offenses in question is "under" any of these three Codes is a question of law for the court to resolve. Accordingly, if the court has determined that offense or offenses in question is under any of these three Codes, then the jury should simply be given this general instruction, referring to "offense" without further qualification.

Insert in the blank the offense named in the information or indictment, and give the instruction defining that offense.

17.49A
Definition Of Telecommunications Device

The term “telecommunications device” means a device which is portable or which may be installed in a motor vehicle, boat, or other means of transportation, and which is capable of receiving or transmitting speech, data, signals, or other information, including but not limited to paging devices, cellular and mobile telephones, and radio transceivers, transmitters, and receivers, but not including radios designed to receive only standard AM and FM broadcasts.

Committee Note

720 ILCS 5/44-1 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §44-1 (1991)), added by P.A. 86-811, effective January 1, 1990.

17.50
Issues In Unlawful Transfer Of A Telecommunications Device To A Minor

To sustain the charge of unlawful transfer of a telecommunications device to a minor, the State must prove the following propositions:

First Proposition: That the defendant gave, sold, or otherwise transferred possession of a telecommunications device to another person; and

Second Proposition: That this other person was then under 18 years of age; and

Third Proposition: That the defendant did so with the intent that this other person use the device to commit 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 5/44-2 (West, 1999) (formerly Ill.Rev.Stat. ch. 38, §44-2 (1991)), added by P.A. 86-811, effective January 1, 1990.

Give Instructions 17.49 and 17.49A.

See Committee Note to Instruction 17.49.

Insert in the blank the offense named in the information or indictment.

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.

17.51-17.56
Reserved

17.57
Definition Of Sale Of Drug Paraphernalia

A person commits the offense of sale of drug paraphernalia when he knowingly [(keeps for sale) (offers for sale) (sells) (delivers for any commercial consideration)] any item of drug paraphernalia.

Committee Note

720 ILCS 600/3(a) (West, 1994) (formerly Ill.Rev.Stat. ch. 561/2, §2103(a) (1991)).

Give Instruction 17.58.

Give Instruction 17.57A, defining the term “drug paraphernalia.”

Give Instruction 17.67, defining “inference of legitimacy.”

Note that 720 ILCS 600/4 contains exemptions.

Use applicable bracketed material.

17.57A
Definition Of Drug Paraphernalia

The term "drug paraphernalia" means all equipment, products and materials of any kind which are peculiar to and marketed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body cannabis or a controlled substance.

[This term includes, but is not limited to, ____.]

Committee Note

720 ILCS 600/2 (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, §2102).

Note that Section 600/4, contains exemptions.

Insert in the blank, when appropriate, an example of an item of drug paraphernalia specifically found in paragraphs (1) through (6) of 720 ILCS 600/1(d).

Use bracketed material when appropriate.

17.58
Issues In Sale Of Drug Paraphernalia

To sustain the charge of sale of drug paraphernalia, the State must prove the following proposition:

That the defendant knowingly [(kept for sale) (offered for sale) (sold) (delivered for any commercial consideration)] any item of drug paraphernalia.

If you find from your consideration of all the evidence that this proposition has been proved beyond a reasonable doubt, you should find the defendant guilty.

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

Committee Note

720 ILCS 600/3 (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, §2103).

Give Instruction 17.57.

Note that Section 600/4, contains exemptions.

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 the proposition. See Instruction 5.03.

17.59
Definition Of Sale Of Drug Paraphernalia To A Person Under 18 Years Of Age

A person commits the offense of sale of drug paraphernalia to a person under 18 years of age when he is 18 years of age or older and knowingly [(sells) (delivers for any commercial consideration)] any item of drug paraphernalia to a person under 18 years of age.

Committee Note

720 ILCS 600/3(a) (West, 1994) (formerly Ill.Rev.Stat. ch. 561/2, §2103(a) (1991)).

Give Instruction 17.60.

Give Instruction 17.57A, defining the term “drug paraphernalia.”

Give Instruction 17.67, defining “inference of legitimacy.”

Note that 720 ILCS 600/4 contains exemptions.

Use applicable bracketed material.

17.60
Issues In Sale Of Drug Paraphernalia To A Person Under 18 Years Of Age

To sustain the charge of sale of drug paraphernalia to a person under 18 years of age, the State must prove the following propositions:

First Proposition: That the defendant knowingly [(sold) (delivered for any commercial consideration)] any item of drug paraphernalia; and

Second Proposition: That the defendant was 18 years of age or older; and

Third Proposition: That the person to whom the item was [(sold) (delivered for any commercial consideration)] was under 18 years old at the time of the [(sale) (delivery)].

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 of 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 600/3(a) (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, §2103(a)).

Give Instruction 17.59.

Note that Section 600/4, contains exemptions.

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.

17.61
Definition Of Sale Of Drug Paraphernalia To A Pregnant Woman

A person commits the offense of sale of drug paraphernalia to a pregnant woman when he knowingly [(sells) (delivers for any commercial consideration)] any item of drug paraphernalia to a woman he knows to be pregnant.

Committee Note

720 ILCS 600/3(b) (West, 1994) (formerly Ill.Rev.Stat. ch. 561/2, §2103(b) (1991)), added by P.A. 86-271, effective January 1, 1991.

Give Instruction 17.62.

Give Instruction 17.57A, defining the term “drug paraphernalia.”

Give Instruction 17.67, defining “inference of legitimacy.”

Note that 720 ILCS 600/4 contains exemptions.

Use applicable bracketed material.

17.62
Issues In Sale Of Drug Paraphernalia To A Pregnant Woman

To sustain the charge of sale of drug paraphernalia to a pregnant woman, the State must prove the following propositions:

First Proposition: That the defendant knowingly [(sold) (delivered for any commercial consideration)] any item of drug paraphernalia; and

Second Proposition: That the person to whom the item was [(sold) (delivered for any commercial consideration)] was pregnant at the time of the [(sale) (delivery)]; and

Third Proposition: That the defendant knew the woman to be pregnant.

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 of 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 600/3(b) (West, 1999) (formerly Ill.Rev.Stat. ch. 561/2, §2103(b)), added by P.A. 86-271, effective January 1, 1991.

Give Instruction 17.61.

Note that Section 600/4, contains exemptions.

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.

17.63
Definition Of Manufacture Or Delivery Of Cannabis--Enhancing Factor Based On Location On School Grounds

A person commits the offense of [(manufacture of) (delivery of) (possession with the intent to manufacture) (possession with the intent to deliver)] cannabis when he knowingly [(manufactures) (delivers) (possesses with the intent to manufacture) (possesses with the intent to deliver)] a substance containing cannabis [and the substance containing cannabis weighs [(more than ____ grams) (more than ____ grams but not more than ____ grams)]] while

[1] in a school.

[or]

[2] on the real property comprising a school.

[or]

[3] on a public way within 1000 feet of the real property comprising a school.

[or]

[4] on any conveyance [(owned) (leased) (contracted)] by a school to transport students to and from [(school) (a school related activity)].

[or]

[5] on a public way within 1000 feet of any conveyance [(owned) (leased) (contracted)] by a school to transport students to and from [(school) (a school related activity)].

Committee Note

720 ILCS 550/5.2 (West, 1992) (formerly Ill.Rev.Stat. ch. 561/2, §705.2 (1991)), added by P.A. 87-544, effective September 17, 1991.

Give Instruction 17.64.

Although Section 5.2 lists “Delivery of cannabis on school grounds” as a separate offense, it incorporates and refers to violations of 720 ILCS 550/5 (West, 1992) (formerly Ill.Rev.Stat. ch. 561/2, §705 (1991)) (manufacture or delivery of cannabis) and merely enhances the penalties one class higher whenever a violation of Section 5 occurs on school property. Thus, the Committee thought it better to treat Section 5.2 as an enhancing factor rather than a separate offense.

The bracketed numbers [1] through [5] correspond to the locations indicated in Section 5.2. Select the alternative that corresponds to the location in the charge.

In many cases, it will be necessary to give other instructions defining terms used in this instruction. See Instruction 17.05A, defining the word "deliver;" Instructions 4.15 and 4.16, defining the word "possession;" and 720 ILCS 550/3(h) (West, 1992) (formerly Ill.Rev.Stat. ch. 561/2, §703(h) (1991)), defining the word "manufacture."

When manufacture or 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. Hill, 169 Ill.App.3d 901, 524 N.E.2d 604, 120 Ill.Dec. 574 (1st Dist.1988); People v. Kadlec, 21 Ill.App.3d 289, 313 N.E.2d 522 (3d Dist.1974). This is accomplished by giving the bracketed material in this instruction and all three propositions in Instruction 17.64.

Particular care must be taken when disputes of 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. Ziehm, 120 Ill.App.3d 777, 458 N.E.2d 588, 76 Ill.Dec. 188 (2d Dist.1983); People v. Cortez, 77 Ill.App.3d 448, 395 N.E.2d 1177, 32 Ill.Dec. 796 (1st Dist.1979).

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), the Committee recommends that, to ensure clarity, 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 manufacture and 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 17.05A if delivery is in dispute.

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.

If other terms used in this instruction need to be defined, see definitions contained in the Cannabis Control Act, 720 ILCS 550/1 *et seq.*

Use applicable bracketed material.

17.64
Issues In Manufacture Or Delivery Of Cannabis--Enhancing Factor Based On Location On School Grounds

To sustain the charge of [(manufacture of) (delivery of) (possession with the intent to manufacture) (possession with the intent to deliver)] cannabis

[1] in a school, the State must prove the following propositions:

[or]

[2] on the real property comprising a school, the State must prove the following propositions:

[or]

[3] on a public way within 1000 feet of the real property comprising a school, the State must prove the following propositions:

[or]

[4] on any conveyance [(owned) (leased) (contracted)] by a school to transport students to and from [(school) (a school related activity)], the State must prove the following propositions:

[or]

[5] on a public way within 1000 feet of any conveyance [(owned) (leased) (contracted)] by a school to transport students to and from [(school) (a school related activity)], the State must prove the following propositions:

First Proposition: That the defendant knowingly [(manufactured) (delivered) (possessed with the intent to manufacture) (possessed with the intent to deliver)] a substance containing cannabis; and

Second Proposition: That the [(manufacture) (delivery) (possession with the intent to manufacture) (possession with the intent to deliver)] took place while

[1] in a school; and

[or]

[2] on the real property comprising a school; and

[or]

[3] on a public way within 1000 feet of the real property comprising a school; and

[or]

[4] on any conveyance [(owned) (leased) (contracted)] by a school to transport students to and from [(school) (a school related activity)]; and

[or]

[5] on a public way within 1000 feet of any conveyance [(owned) (leased) (contracted)] by a school to transport students to and from [(school) (a school related activity)]; and

Third Proposition: That the weight of the substance containing the cannabis was [(more than ____ grams) (more than ____ grams but not more than ____ grams)]].

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, then you should find the defendant not guilty.

Committee Note

720 ILCS 550/5.2 (West, 1992) (formerly Ill.Rev.Stat. ch. 561/2, §705.2 (1991)), added by P.A. 87-544, effective September 17, 1991.

Give Instruction 17.63 and see the Committee Note to that instruction.

The bracketed numbers [1] through [5] under the opening paragraph and the Second Proposition correspond to the alternatives of the same number in Instruction 17.63, the definitional instruction for this offense. Select the corresponding alternatives under the opening paragraph and the Second Proposition that correspond to the alternative selected from the definitional instruction.

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.

When applicable, insert in the blanks the appropriate weight.

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.

17.65
Definition Of Possession Of Drug Paraphernalia

A person commits the offense of possession of drug paraphernalia when he knowingly possesses an item of drug paraphernalia with the intent to use it [(in ingesting, inhaling, or otherwise introducing [(cannabis) (a controlled substance)] into the human body) (in preparing [(cannabis) (a controlled substance)] for ingesting, inhaling, or otherwise introducing [(cannabis) (a controlled substance)] into the human body)].

Committee Note

720 ILCS 600/3.5 (West, 1994), added by P.A. 88-677, effective December 15, 1994.

Give Instruction 17.66.

Give Instruction 17.57A, defining the term “drug paraphernalia.”

Give Instruction 17.67, defining “inference of legitimacy.”

Use applicable bracketed material.

17.65A
Definition Of Inference Of Legitimacy--Possession Or Sale Of Drug Paraphernalia

The law prohibiting the [(possession) (sale)] of drug paraphernalia is intended to be used solely for suppressing the [(commercial traffic in) (possession of)] items that, within the context of [(the sale or offering for sale) (possession)], are clearly and beyond a reasonable doubt marketed for the illegal and unlawful use of cannabis or controlled substances. You should not find the defendant guilty unless the facts and circumstances proved exclude all reasonable and common-sense inferences that can be drawn in favor of the legitimacy of any [(transaction) (item)].

Committee Note

720 ILCS 600/6 (West, 1994), amended by P.A. 88-677, effective December 15, 1994.

Section 6 of the Act provides as follows:

> "This Act is intended to be used solely for the suppression of the commercial traffic in and possession of items that, within the context of the sale or offering for sale, or possession, are clearly and beyond a reasonable doubt marketed for the illegal and unlawful use of cannabis or controlled substances. To this end, all reasonable and common-sense inferences shall be drawn in favor of the legitimacy of any transaction or item."

Use applicable bracketed material.

17.66
Issues In Possession Of Drug Paraphernalia

To sustain the charge of possession of drug paraphernalia, the State must prove the following propositions:

First Proposition: That the defendant knowingly possessed an item of drug paraphernalia; and

Second Proposition: That when he did so, the defendant intended to use that item [(in ingesting, inhaling, or otherwise introducing [(cannabis) (a controlled substance)] into the human body) (in preparing [(cannabis) (a controlled substance)] for ingesting, inhaling, or otherwise introducing [(cannabis) (a controlled substance)] into the human body)].

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 600/3.5 (West, 1994), added by P.A. 88-677, effective December 15, 1994.

Give Instruction 17.65.

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.

17.67
Definition Of Streetgang Criminal Drug Conspiracy

A person commits the offense of streetgang criminal drug conspiracy when he knowingly

[1] [(manufactures) (delivers) (possesses with intent to manufacture) (possesses with intent to deliver)] ____ grams or more of a substance containing ____, a [(controlled) (counterfeit)] substance;

[or]

[2] [(manufactures) (delivers) (possesses with intent to manufacture) (possesses with intent to deliver)] ____, a [(controlled) (counterfeit)] substance;

and he does so in furtherance of the activities of an organized gang and as part of an agreement undertaken or carried out with two or more other persons; and he occupies a position of organizer, supervising person, or any other position of management over at least two or more of the same persons who were part of the agreement undertaken or carried out.

Committee Note

720 ILCS 570/405.2 (West, 1997), added by P.A. 89-498, effective June 27, 1996.

Give Instruction 17.66.

Section 405.2 incorporates by reference subsections (a) and (c) of Section 401 (720 ILCS 570/401 (West, 1997)). See the first paragraph to the Committee Notes to Instruction 17.17 regarding inconsistent Public Acts effective January 1, 1990. The Committee takes no position on the legal effect of those acts on Section 405.2.

If the definition of "organized gang" becomes an issue, use Instruction 4.30. See Section 720 ILCS 570/405.2(a)(iii) (West, 1997).

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

See Instruction 17.13A, regarding the term "agreement."

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

Insert in the appropriate blanks the name of the controlled substance and the weight.

Use applicable paragraphs and bracketed material.

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

17.67A
Definition Of Organized Gang

The phrase "organized gang" means any combination, confederation, alliance, network, conspiracy, understanding or other similar conjoining, in law or fact, of three or more persons with an established hierarchy that, through its members or agents, engages in a course or pattern of criminal activity.

Committee Note

740 ILCS 147/10, amended by P.A. 88-467, effective July 1, 1994.

17.68
Issues In Streetgang Criminal Drug Conspiracy

To sustain the charge of streetgang criminal drug conspiracy, the State must prove the following propositions:

[1] *First Proposition:* That the defendant knowingly [(manufactured) (delivered) (possessed with intent to manufacture) (possessed with intent to deliver)] ____ grams or more of a substance containing ____, a [(controlled) (counterfeit)] substance; and

[or]

[2] *First Proposition:* That the defendant knowingly [(manufactured) (delivered) (possessed with intent to manufacture) (possessed with intent to deliver)] ____, a [(controlled) (counterfeit)] substance; and

Second Proposition: That the defendant did so in furtherance of the activities of an organized gang; and

Third Proposition: That the defendant did so as part of an agreement undertaken or carried out with two or more other persons; and

Fourth Proposition: That the defendant occupied a position of organizer, supervising person, or any other position of management over at least two or more of the same persons who were part of the agreement undertaken or carried out.

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 570/405.2 (West, 1997), added by P.A. 89-498, effective June 27, 1996.

Give Instruction 17.65.

Insert in the appropriate blanks the name of the controlled substance and the weight.

Use applicable paragraphs and bracketed material.

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