

IN THE SUPREME COURT OF FLORIDA

IN RE: STANDARD JURY

INSTRUCTIONS IN CRIMINAL CASES
AMENDED REPORT 2016-05

CASE NO.: SC16-1184

To the Chief Justice and Justices of the Supreme Court of Florida:

This amended report, proposing a new instruction and an amended instruction to the Florida Standard Jury Instructions in Criminal Cases, is filed pursuant to Article V, section 2(a) of the Florida Constitution.

	<u>Instruction #</u>	<u>Title</u>
Proposal 1	20.6	Welfare Fraud — [Food Assistance Identification Card] [Authorization] [Certificate of Eligibility for Medical Services] [Medicaid Identification Card],
Proposal 2	20.6(a)	Welfare Fraud – [Selling] [Attempting to Sell] an EBT Card

The proposals are in Appendix A. Words and punctuation to be deleted are shown with strike-through marks; words and punctuation to be added are underlined.

PROPOSAL #1: INSTRUCTION 20.6

The Committee revisited this Welfare Fraud instruction because the 2016 legislature amended the definition of “traffic” in section 414.39(2)(a), Florida Statutes. The only substantive change that was published was to substitute the old definition of “traffic” with the new definition, which becomes effective on October 1, 2016. The vote to amend this instruction was unanimous.

The proposal was published May 15, 2016. No comments were received. Upon post-publication review, the Committee thought it wise to add a definition of “EBT card.” The definition, which is based on section 402.82, Florida Statutes, is proposed to be:

An “EBT card” is issued by the Department of Children and Families or its agent to obtain food assistance benefits payments or temporary case assistance payments, including refugee cash assistance payments, asylum applicant payments, and child support disregard payments from the Department.

The Committee did not think re-publication was necessary for this change. The vote was unanimous to file the proposal with the Court.

PROPOSAL #2: INSTRUCTION 20.6(a)

In 2016, the legislature created a new crime of Selling or Attempting Sell an EBT Card, but only for a person who first possessed two or more EBT cards that were issued to someone else. The new misdemeanor crime, which is effective on October 1, 2016 and which is found in section 414.39(2)(c), Florida Statutes, is enhanced to a third degree felony upon a second or subsequent violation.

In order to cover the statute, the Committee created three elements: 1) D possessed two or more EBT cards; 2) The EBT cards had been issued to someone else; and 3) D sold or attempted to sell one or more of the EBT cards.

The Committee explained to “possess” as being aware of the presence of the EBT card and the exercise of control over the EBT card. This explanation is based on the elements of Possession of a Controlled Substance in Instruction 25.7. The Committee explained “attempt” as the intent to commit the crime coupled with an act toward commission of the crime that was more than mere preparation.

The vote to amend this instruction was unanimous. The proposal was published May 15, 2016. No comments were received.

Upon post-publication review, the Committee inserted its definition of “EBT card” from Instruction 20.6. The Committee also added a sentence to the Comment section that tells everyone to look to Instruction 25.7 if they want a more complete explanation of possession. Finally, the Committee deleted the part of the published proposal that instructed the jury about finding a prior violation. Instead, the committee explained in the Comment section that it is unclear whether the existence of a prior violation must be determined by the jury or may be determined by the judge.

No one thought re-publication was necessary for the post-publication changes. The vote to send the proposal to the Court was unanimous.

CONCLUSION

The Standard Jury Instructions in Criminal Cases Committee respectfully requests the Court authorize for use the proposals in Amended Appendix A.

Respectfully submitted this 31st day of August, 2016.

s/ Judge F. Rand Wallis _____
The Honorable F. Rand Wallis
Chair, Supreme Court Committee on
Standard Jury Instructions in Criminal Cases

Fifth District Court of Appeal
300 South Beach Street
Daytona Beach, Florida 32114
Florida Bar Number: 980821
WallisR@flcourts.org

CERTIFICATE OF FONT COMPLIANCE

I hereby certify that this amended report has been prepared using Times New Roman 14 point font in compliance with the font requirements of Florida Rule of Appellate Procedure 9.210(a)(2).

s/ Judge F. Rand Wallis
The Honorable F. Rand Wallis
Chair, Supreme Court Committee on
Standard Jury Instructions in Criminal
Cases
Fifth District Court of Appeal
300 South Beach Street
Daytona Beach, Florida 32114
Florida Bar Number: 980821
WallisR@flcourts.org