

IN THE SUPREME COURT OF FLORIDA

IN RE: STANDARD JURY

**INSTRUCTIONS IN CRIMINAL CASES —
REPORT 2018-10**

CASE NO.: SC18-

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

This report, proposing seven amended instructions to the Florida Standard Jury Instructions in Criminal Cases, is filed pursuant to Article V, section 2(a), Florida Constitution.

	<u>Instruction #</u>	<u>Title</u>
Proposal 1	10.20	[Care] [Custody] [Possession] [Control] of [A Firearm] [Ammunition] While a Final Injunction for [Domestic Violence] [Stalking] [Cyberstalking] is in Effect
Proposal 2	14.1	Unlawful Possession of a Stolen [Credit] [Debit] Card
Proposal 3	16.11	[Possession] [Control] [Intentional Viewing] of Material Including Sexual Conduct by a Child
Proposal 4	20.18(a)	Unlawful Possession of the Personal Identification Information of Another Person
Proposal 5	22.10	Possessing a Lottery Ticket
Proposal 6	22.11	Possessing Rundown Sheets, etc.
Proposal 7	22.15	[Manufacturing] [Owning] [Storing] [Keeping] [Possession of] [Permitting the Operation of] [Selling] [Leasing] [Transporting] a Slot Machine

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. The proposals were published in the Florida *Bar News* on August 15, 2018. No comments were received.

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INITIAL NOTE

In March 2018, the Court promulgated a new format to explain the concept of “possession” to jurors. *In Re: Standard Jury Instructions in Criminal Cases - Report 2017-03*, 238 So. 3d 182 (Fla. 2018). The new format is as follows:

Possession.

To prove (defendant) “possessed” *item x*, the State must prove beyond a reasonable doubt that [he] [she] a) knew of the existence of *item x*; and b) intentionally exercised control over it.

Give if applicable.

Control can be exercised over *item x* whether it is carried on a person, near a person, or in a completely separate location. Mere proximity to *item x* does not establish that the person intentionally exercised control over it in the absence of additional evidence. Control can be established by proof that (defendant) had direct personal power to control *item x* or the present ability to direct its control by another.

Joint possession.

Possession of *item x* may be sole or joint, that is, two or more persons may possess it.

The seven proposals in this report have been amended to make the explanation of “possession” consistent throughout the standard criminal jury instructions. For proposals #2, #4, #5, #6, and #7, there are no substantive changes other than the insertion of the new “possession” format.

All proposals passed unanimously. No comments were received. Upon final review, the Committee voted unanimously to file the proposals in Appendix A with the Court.

Proposals #1 and #3 contain minor revisions that are discussed below.

PROPOSAL #1: INSTRUCTION 10.20

There is one substantive change other than the insertion of the new explanation of “possession.” The Committee concluded that the Legislature intended to exclude antique firearms from the definition of a firearm unless the antique firearm was used to commit another crime, not the weapons offense itself. Therefore, the Committee is changing — in appropriate places — “**a crime**” to “**another crime**” for the explanation of antique firearm within the definition of

“firearm.” In those appropriate places, the relevant sentence should read: **[The term “firearm” does not include an antique firearm unless the antique firearm is used in the commission of another crime.]** Because the crime covered by this instruction involves a weapons offense (defendant possesses a firearm after possession has been prohibited by court order), the Committee thought it appropriate to change “a crime” to “another crime” within the definition of “a firearm” in instruction 10.20.

PROPOSAL #3: INSTRUCTION 16.11

The Committee proposes three substantive changes for this instruction, which covers the crime of Possession of Material Including Sexual Conduct by a Child: (1) within the definition of “sexual battery,” the Committee added a definition of “bona fide” as meaning genuine, which would make this instruction consistent with other pending sexual battery proposals; (2) the Committee added the statutory definition of “intentionally view;” and, (3) the new format for the explanation of “possession” requires the State to prove the defendant knew the nature of the material in the photo, motion picture, etc., in order to make this instruction consistent with existing instruction 16.10 (Possession of Material Including Sexual Conduct by a Child with Intent to Promote). The non-substantive changes involve adding italicized headings above definitions so that everyone can see where those definitions can be found in the statutes.

CONCLUSION

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

Respectfully submitted this 18th day of
October, 2018.

s/ Judge F. Rand Wallis
The Honorable F. Rand Wallis
Chair, Supreme Court Committee on
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CERTIFICATE OF FONT COMPLIANCE

I hereby certify that this 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).

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