FLORIDA
STANDARD JURY INSTRUCTIONS
IN CRIMINAL CASES

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Brice Aikens
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Judge Andrew Atkinson
Amy Casanova-Ward
Judge Meredith Charbula
Lisa Lawlor
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Peter Overstreet
Judge Susan St. John
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REVISION HISTORY, MARCH 2020-PRESENT

DATE	INSTRUCTIONS AMENDED
October 9, 2026	3.7, 3.21; 7.7(a), 7.8, 7.8(a), 7.11, 7.15; 8.3; 11.17, 11.20; 16.7, 16.8, 16.9, 16.10, 16.11, 16.14, 16.15, 16.16; 21.10, 21.11; 25.14, 25.15, 25.16; 28.1(a), 28.3, 28.4, 28.13, 28.15, 28.17; 31.4
June 12, 2026	3.6(o), 3.7; 6.4, 6.6; 7.4, 7.7, 7.8, 7.8(a); 8.9; 10.5; 28.1(a), 28.2, 28.3, 28.13, 28.14, 28.15, 28.16, 28.17, 28.23
March 20, 2026	3.19; 8.22(a)-(b), 8.26, 8.34; 9.1, 9.2, 9.4; 9.5 (formerly 29.25), 9.6 (formerly 29.10), 9.7; 10.15(b), 10.22; 11.14(a), 11.14(d), 11.14(h), 11.15(g), 11.15(*l*), 11.15(n), 11.23, 11.23(a)-(b), 11.31, 11.32; 12.13; 13.5(b); 14.12; 16.7, 16.8, 16.9, 16.10,16.11; 20.30; 21.20, 21.24, 21.25, 21.26; 28.19, 28.21, 28.22, 28.24, 28.25; 32.9, 32.10, 32.11
Jan 8, 2026	8.10, 8.11, 8.12, 8.13
Dec. 12, 2025	9.3(a), 9.3(b); 28.1
Nov. 13, 2025	10.2; 28.7, 28.8, 28.8(a)
Sept. 12, 2025	3.3(b), 3.6(e)(1), 3.12; 6.1; 7.1, 7.3, 7.3(a), 7.3(b), 7.4, 7.6, 7.7, 7.7(a), 7.9, 7.10, 7.11; 12.4(d); 16.5,16.6; 21.22; 28.20; 29.13 (renumbered as 32.1), 29.13(d)-(f) (renumbered as 32.5-32.7)
Sept. 5, 2025	3.4; 10.15(b); 13.4, 13.5(a); 20.26; 21.2, 21.13; 28.4(a), 28.5(b), 28.12; 29.16(b) (renumbered as 30.9), 29.29 (renumbered as 31.2), 29.30 (renumbered as 31.3), 29.31 (renumbered as 34.3)
June 27, 2025	11.13(a)-(h), 11.14, 11.14(a), 11.14(b), 11.14(e), 11.14(f), 11.14(h), 11.14(j), 11.15(b), 11.15(h), 11.15(i), 11.15(j), 11.15(l), 11.30; 12.10,12.11, 12.12; 13.8; 20.19, 20.19(a), 20.28, 20.29; 21.23; 28.9, 28.11, 28.11(a), 28.11(b)
Feb. 21, 2025	3.16, 3.17, 3.18, 3,19, 3.20; 5.1; 7.3(a); 8.34; 10.14; 12.4(d); 14.1, 14.4; 16.14; 20.23, 20.24, 20.25, 20.26, 20.27; 21.22; 25.18, 25.23; 28.5(a); 29.4 (renumbered as 30.3), 29.28 (renumbered as 31.1), 29.29 (renumbered as 31.2);
Dec. 6, 2024	3.9(b); 10.1
Sept. 20, 2024	2.4 2.4(a); 3.8(a), 3.8(b); 8.20; 11.10(g), 11.14, 11.15, 11.15(a), 11.27; 27.1

FLORIDA STANDARD JURY INSTRUCTIONS IN CRIMINAL CASES
REVISION HISTORY, MARCH 2020-PRESENT

DATE	**INSTRUCTIONS AMENDED**
Aug. 2, 2024	2.1; 3.8(e)
May 21, 2024	3.6(f), 3.6(g), 3.7; 6.6; 7.3(a); 8.8, 8.33; 11.28, 11.29; 14.9(a) (renumbered as 33.5); 25.22
March 8, 2024	1.1; 2.1; 3.3(j), 3.13; 8.5(a), 8.5(b), 8.6, 8.7(a), 8.7(b), 8.7(c), 8.7(d), 8.10, 8.11, 8.12, 8.13, 8.27; 11.5, 11.7(a), 11.7(b), 11.17(a), 11.17(c), 11.27; 14.1, 14.9 (renumbered as 33.4); 21.1(a); 25.9; 29.16(b) (renumbered as 30.9); Grand Jury Handbook
Dec. 15, 2023	2.14; 3.5(a), 3.5(b), 3.6(k), 3.15; 5.1; 6.2, 6.3, 6.3(a), 6.4, 6.6; 7.8, 7.14; 8.22, 8.22(a), 8.22(b), 8.23; 10.1, 10.2, 10.4; 25.14, 25.15, 25.16; 28.4, 28.4(a), 28.4(b), 28.8(b), 28.8(c), 28.8(d); 28.8(e), 28.9; 29.9 (renumbered as 34.1), 29.10 (renumbered as 9.6)
Sept. 8, 2023	7.11; 8.32; 11.6(a); 12.4(c); 13.5(c); 29.15 (renumbered as 30.6)
June 23, 2023	3.12(e); 7.10, 7.11, 7.12
May 5, 2023	3.6(f);, 3.6(g); 8.22; 10.15(b)
April 25, 2023	2.1(c); 8.31; 11.27; 14.4; 21.10, 21.11, 21.21; 28.5; 29.8
Jan 6, 2023	8.22
Dec. 21, 2022	8.30; 11.1, 11.2, 11.3, 11.4, 11.5, 11.6, 11.6(a), 11.7, 11.7(a), 11.10(a), 11.10(b), 11.10(c), 11.10(d), 11.10(e), 11.10(f), 11.10(g), 11.11, 11.17(a), 11.17(b), 11.17(c), 11.17(d), 11.18, 11.20, 11.21, 11.22, 11.23, 11.24, 11.25, 11.26; 13.1, 13.7; 16.7, 16.8, 16.9, 16.10, 16.11; 21.8; 23.1, 23.2, 23.3, 23.4, 23.5, 23.6, 23.7; 25.6; 28.5(a), 28.11(a); 29.13(c) (renumbered as 32.4), 29.19
Oct. 7, 2022	3.12; 7.3(a); 28.1(a), 28.2, 28.3; Grand Jury Handbook
June 6, 2022	8.18, 8.19, 8.24, 8.25, 8.27
April 1, 2022	3.3(i); 10.15, 10.15(a); 27.1; 28.4, 28.4(a) & (b), 28.8(b) & (d)
March 7, 2022	8.29; 13.6

FLORIDA STANDARD JURY INSTRUCTIONS IN CRIMINAL CASES
REVISION HISTORY, MARCH 2020-PRESENT

DATE	**INSTRUCTIONS AMENDED**
Jan. 7, 2022	8.22(a); 28.13, 28.13(a); 29.24 (renumbered as 9.8), 29.25 (renumbered as 9.5)
Dec. 15, 2021	6.2; 8.6, 8.7(a)-8.7(d), 8.22; 11.1-11.4, 11.6, 11.6(a), 11.9, 11.10(c)-11.10(f); 12.14(a) & (b); 13.2; 16.13; 21.4; 25.6; 29.27
July 9, 2021	10.9, 10.10, 10.15
April 5, 2021	8.22(a); 11.6, 11.6(a); 13.3; 14.11
Jan. 29, 2021	10.1; 11.21
Nov. 20, 2020	10.6; 11.1, 11.2, 11.3, 11.4, 11.6, 11.6(a), 11.10(c)-(f), 11.9; 29.1 (renumbered as 30.1)
Oct. 2, 2020	7.8, 7.9; 11.14(h), 11.15(l); 14.1, 14.5, 14.6; 15.2; 16.9, 16.12; 25.17, 25.18, 25.20, 25.21; 28.1, 28.1(a), 28.2, 28.3, 28.4, 28.4(a), 28.4(b), 28.5, 28.5(a), 28.6, 28.7, 28.8, 28.8(a)-(e), 28.9, 28.9(a), 28.10, 28.11, 28.11(a)-(b), 28.12, 28.13, 28.18
Aug. 4, 2020	7.3(a)
May 22, 2020	13.3, 13.4; 14.4; 15.1, 15.2, 15.3
April 3, 2020	6.1; 7.1; 8.2, 8.4, 8.12, 8.13, 8.14, 8.15; 9.1; 10.1, 10.2, 10.3, 10.5, 10.11, 10.15, 10.15(a), 10.21; 11.2, 11.16; 13.1, 13.5; 15.4; 16.1; 21.20; 25.17, 25.18, 25.20, 25.21; 29.21 (renumbered as 33.2)
April 1, 2020	7.7(b); 28.9, 28.9(a), 28.11, 28.11(a), 28.11(b), 28.12
March 5, 2020	11.3

ORDERS OF SUPREME COURT OF FLORIDA REVISING STANDARD JURY INSTRUCTIONS IN CRIMINAL CASES 1981–FEB. 2020

OPINIONS	INSTRUCTIONS AMENDED
431 So. 2d 594 (Fla. 1981)	1981 Revision
431 So. 2d 599 (Fla. 1981)	Lesser Included Offenses Schedule (LIOS)
403 So. 2d 979 (Fla. 1981)	LIOS
431 So. 2d 600 (Fla. 1982)	3.6(a) (formerly 3.04(b))
477 So. 2d 985 (Fla. 1985)	Former 2.06 deleted, 3.6(f) (formerly 3.04(d)), 3.6(g) (formerly 3.04(e)), 3.6(h) (formerly 3.04(f)), 7.3, 7.5, 7.7, 7.8, 7.11, 9.1, 9.2, 10.9, 10.10, 11.10, 13.1, 13.3, 13.4, 14.1, 15.1, 16.3, 25.10, 25.11, LIOS
483 So. 2d 428 (Fla. 1986)	3.6(a) (formerly 3.04(b))
508 So. 2d 1221 (Fla. 1987)	3.5(c), 3.6(d) (formerly 3.04(g)), 3.6(j) (formerly 3.04(c)), 7.8, 11.1, 11.2, 11.3, 11.4, 11.5, 11.6, 11.10, 14.1, 17.3, 17.4, 25.17, LIOS
509 So. 2d 917 (Fla. 1987)	25.9, 25.10, 25.11, 25.12, 25.13
543 So. 2d 1205 (Fla. 1989)	3.6(h) (formerly 3.04(f)), 3.6(j) (formerly 3.04(c)), 7.11, 8.4, 10.1, 10.3, 10.6, 10.7(a), 10.8, 10.14, 10.15, 12.3, 13.2, 14.1, 14.2, 14.3, 15.1, 16.3, 16.4, 21.2, 22.14, 25.2, 25.3, 25.4, 25.6, 25.7, 25.9, 25.10, 25.11, 25.12, 25.13, 25.17, 26.1, 26.2, 26.3, 26.4, 26.5, 26.6, 26.7, 26.8, LIOS
573 So. 2d 306 (Fla. 1990)	7.1
575 So. 2d 1276 (Fla. 1991)	30, 31
579 So. 2d 75 (Fla. 1991)	7.11
603 So. 2d 1175 (Fla. 1992)	3.3(c) (formerly 3.05(c)), 3.3(d) (formerly 3.05(d)), 3.5(a) (formerly 3.01), 3.5(b) (formerly 3.01(a)), 3.6(g) (formerly 3.04(e)), 3.9(c) (formerly 2.04(c)), 7.1, 7.3, 7.6, 7.7, 7.8, 7.10, 7.11, 8.10, 8.11, 8.12, 8.13, 10.3, 10.7(a), 10.7(b), 10.7(c), 10.7(d), 10.12, 10.15, 11.3, 11.10, 12.1, 12.2, 12.4, 14.1, 16.4, 17.4, 18.1, 22.2, 25.14, 28.2, 28.3, LIOS

ORDERS OF SUPREME COURT OF FLORIDA REVISING STANDARD JURY INSTRUCTIONS IN CRIMINAL CASES 1981–FEB. 2020

OPINIONS	**INSTRUCTIONS AMENDED**
636 So. 2d 502 (Fla. 1994)	3.6(a) (formerly 3.04(b)), 3.6(c), 6.1, 6.2, 6.3, 6.4, 7.7
639 So. 2d 602 (Fla. 1994)	6.1, 6.5, 7.1
657 So. 2d 1152 (Fla. 1995)	2.5 (formerly 3.10), 8.6, 8.7, 8.10, 8.11, 8.12, 8.13, 11.1, 11.2, 11.3, 11.4, 11.5, 11.6, 11.11, 21.1, 21.2
665 So. 2d 212 (Fla. 1995)	3.5(a) (formerly 3.01), 3.10 (formerly 2.05), 3.12 (formerly 2.08), 6.3, 6.5, 7.8, 7.11, 13.2, 15.1, 25.1, 28.2, 28.3, 28.4
678 So. 2d 1224 (Fla. 1996)	7.11
690 So. 2d 1263 (Fla. 1997)	7.11
697 So. 2d 84 (Fla. 1997)	3.3(e) (formerly 3.05(e)), 3.3(f) (formerly 3.05(f)), 3.5(b) (formerly 3.01(a)), 3.6(b) (formerly 3.04(b)(2)), 3.6(l) (formerly 3.04(h)), 3.7 (formerly 2.03), 6.4, 7.2, 7.4, 8.1, 8.14, 8.15, 8.16, 8.17, 11.5, 11.6, 11.9, 13.1, 15.2, 15.3, 25.9, 25.10, 25.11, 25.12, 25.13, 25.14, 25.15
723 So. 2d 123 (Fla. 1998)	3.6(j) (formerly 3.04(c)(2)), 3.6(k) (formerly 3.04(i)), 7.8, 7.11, 9.2, 11.7, 28.2, 28.3, LIOS
732 So. 2d 1044 (Fla. 1999)	3.6(f) (formerly 3.04(d))
765 So. 2d 692 (Fla. 2000)	2.4 (formerly 3.08), 3.3(f) (formerly 3.05(f)), 8.5, 8.8, 10.19, 11.13, 25.6, 25.18, 28.1, 28.6, 28.7, 28.8, 29.14 (renumbered as 32.8)
777 So. 2d 366 (Fla. 2000)	3.13 (formerly 2.09), 32
789 So. 2d 954 (Fla. 2000)	3.6(f) (formerly 3.04(d))
795 So. 2d 50 (Fla. 2001)	3.7 (formerly 2.03)
824 So. 2d 881 (Fla. 2002)	2.6, 16.1, 16.3, 16.5, 16.6, 30, 31
850 So. 2d 1272 (Fla. 2003)	3.13 (formerly 2.09), 8.20, 11.2, 11.3, 11.4, 13.1, 14.1, 26.2, 26.3, 26.4, 26.5, 26.6, 26.7, 26.8

ORDERS OF SUPREME COURT OF FLORIDA REVISING STANDARD JURY INSTRUCTIONS IN CRIMINAL CASES 1981–FEB. 2020

OPINIONS	**INSTRUCTIONS AMENDED**
869 So. 2d 1205 (Fla. 2004)	3.6(h) (formerly 3.04(f)) Deletion of obsolete drug abuse instruction
911 So. 2d 1220 (Fla. 2005)	7.7
911 So. 2d 766 (Fla. 2005)	3.6(f) (formerly 3.04(d)), 3.6(g) (formerly 3.04(e)), 3.10 (formerly 2.05), 14.1, 16.1, 19.1, 19.2, 19.3, 19.4, 19.5, 19.6, 30, 31
915 So. 2d 609 (Fla. 2005)	14.1
930 So. 2d 612 (Fla. 2006)	3.6(f), 3.6(g)
937 So. 2d 1092 (Fla. 2006)	2.8, 2.9, 2.10, 2.12
939 So. 2d 1052 (Fla. 2006)	3.6(a), 3.6(b), 3.6(d)
946 So. 2d 1061 (Fla. 2006)	7.7, 7.8, 7.9
947 So. 2d 1159 (Fla. 2007)	3.6(g)
953 So. 2d 495 (Fla. 2007)	8.6, 8.7(a), 8.7(b), 8.8, 10.15, 13.2, 13.21
958 So. 2d 361 (Fla. 2007)	28.9, 28.9(a), 28.11, 28.11(a)
962 So. 2d 310 (Fla. 2007)	6.3, 6.3(a),8.4, 8.4(a), 8.10, 8.11, 8.12, 8.13, 8.14, 10.16, 11.1, 13.1, 13.5(a), 13.4(b), 14.2, 14.3, 20.14, 20.15, 20.16, 20.18, 26.1
969 So. 2d 245 (Fla. 2007)	25.2, 25.3, 25.4, 25.5, 25.6, 25.7, 25.8, 25.9, 25.10, 25.11, 25.12, 25.13, 25.14, 25.15, 25.16. 11.10(a), 11.10(b)
965 So. 2d 811 (Fla. 2007)	2.4, 2.7, 3.3(f), 3.8(a), 8.18, 8.19, 11.11, 14.5, 14.6, 21.5, 21.6, 28.13
973 So. 2d 432 (Fla. 2008)	28.4, 28.82, 28.84
976 So. 2d 1081 (Fla. 2008)	3.6(f), 3.6(g), 11.10, 28.6, 28.7, 28.8, 28.81, 28.83, 28.85, 29.13 (renumbered as 32.1), 29.15 (renumbered as 30.6), 29.16 (renumbered as 30.7)
978 So. 2d 802 (Fla. 2008)	2.11

ORDERS OF SUPREME COURT OF FLORIDA REVISING STANDARD JURY INSTRUCTIONS IN CRIMINAL CASES 1981–FEB. 2020

OPINIONS	**INSTRUCTIONS AMENDED**
980 So. 2d 1054 [April 17, 2008]	11.16, 11.16(a)
980 So. 2d 1056 [April 24, 2008]	20.13, 20.17
982 So. 2d 1160 [May 15, 2008]	10.19, 11.13, 11.13(a)-(b), 11.13(c)-(d), 11.13(e)-(g), 14.7, 15.1, 15.2, 15.3
983 So. 2d 531 [May 22, 2008]	11.14, 11.14(a)-(h), 11.15, 11.15(a)-(l)
986 So. 2d 563 [July 10, 2008]	13.1, 14.1
994 So. 2d 1038 [Oct. 16, 2008]	7.2, 7.4, 7.9, 8.5(a), 8.10, 8.11, 8.12, 8.13, 29.13(a) (renumbered as 32.2)
995 So. 2d 476 [Oct. 30, 2008]	8.7(b), 11.2, 11.3, 11.6, 23.1, 23.2, 23.3, 23.4, 23.5, 23.6, 23.7, 23.8, 23.9
995 So. 2d 489 [Oct. 30, 2008]	3.3(d), 3.5(c), 16.7, 16.8, 16.9, 16.10, 16.11, 21.7
996 So. 2d 854 [Nov. 26, 2008]	3.12(a), 3.12(c), 3.12(d)
996 So. 2d 851 [Nov. 26, 2008]	21.1
997 So. 2d 403 [Dec. 11, 2008]	7.7
998 So. 2d 1138 [Dec. 18, 2008]	11.10(c), 11.10(d). 11.10(e), 11.10(f)
3 So. 3d 1172 [Feb. 26, 2009]	16.12, 25.19, 29.13(b) (renumbered as 32.3)
6 So. 3d 574 [Feb. 26, 2009]	7.8, 7.8(a), 10.18, 11.17(a), 11.17(b), 11.17(c), 11.17(d), 15.4, 28.1, 28.1(a), 28.2, 28.3, 28.5(a), 28.14, 28.15, 28.16, 28.17
18 So. 3d 523 [July 9, 2009]	28.1(a)
22 So. 3d 17 [Oct. 29, 2009]	7.11
27 So. 3d 640 [Jan. 7, 2010]	3.3(g), 3.6(f), 3.6(g), 3.6(h), 11.14(e)
41 So. 3d 853 [April 8, 2010]	7.7

ORDERS OF SUPREME COURT OF FLORIDA REVISING STANDARD JURY INSTRUCTIONS IN CRIMINAL CASES 1981–FEB. 2020

OPINIONS	**INSTRUCTIONS AMENDED**
44 So. 3d 565 [July 1, 2010]	10.6(a), 12.4, 12.6, 12.7, 12.8, 21.8
48 So. 3d 41 [Oct. 7, 2010]	11.8, 11.9, 11.10, 11.11, 23.1, 23.2, 23.3, 23.4, 23.5, 23.6, 23.7
52 So. 3d 595 [Oct. 21, 2010]	Qualifications Instruction, 1.1, 2.1, 3.13
53 So. 3d 1017 [Jan. 6, 2011]	7.3
73 So. 3d 136 [Sept. 8, 2011]	28.6, 28.7, 28.8, 28.81, 28.82, 28.83, 28.84, 28.85, 3.3(a), 3.3(b), 3.3(c), 3.3(e), 3.3(f)
75 So. 3d 210 [Oct. 13, 2011]	7.7
75 So. 3d 207 [Oct. 13, 2011]	16.3
87 So. 3d 679 [Feb. 9, 2012]	2.13, 3.8(a), 3.10, 13.3, 13.4, 14.8, 16.4(a), 24.6, 28.14, 28.15, 28.16, 28.17, 29.14 (renumbered as 32.8)
85 So. 3d 1090 [March 29, 2012]	11.14, 11.14(a), 11.14(b), 11.14(c), 11.14(d), 11.14(e), 11.14(f), 11.14(g), 11.14(h), 11.14(i), 11.15(a), 11.15(b), 11.15(c), 11.15(d), 11.15(e), 11.15(f), 11.15(g), 11.15(h), 11.15(i), 11.15(j), 11.15(k), 11.15(l)
95 So. 3d 868 [May 17, 2012]	Qualifications Instruction, 1.001, 1.01, 2.08, 3.6(k), 3.9, 3.10, 6.4, 10.15(a),11.17, 28.5(a)
95 So. 3d 868 [May 17, 2012, Revised]	3.10
141 So. 3d 132 [Nov. 21, 2012]	3.6(m), 3.6(n), 3.9(f), 3.13
109 So. 3d 721 [Feb. 14, 2013]	11.10(c), 13.1, 14.1
112 So. 3d 1211 [April 18, 2013]	25.9, 25.10, 25.11, 25.12, 25.13
141 So. 3d 132 [April 25, 2013] Revised	3.6(n)

ORDERS OF SUPREME COURT OF FLORIDA REVISING STANDARD JURY INSTRUCTIONS IN CRIMINAL CASES 1981–FEB. 2020

OPINIONS	**INSTRUCTIONS AMENDED**
113 So. 3d 754 [May 9, 2013]	11.14, 11.14(g), 11.14(h), 11.15(b), 11.15(i), 11.15(k), 11.15(l)
132 So. 3d 1124 [May 30, 2013]	6.6
116 So. 3d 1223 [June 20, 2013]	11.16(a)
121 So. 3d 520 [Aug. 29, 2013]	14.2
122 So. 3d 302 [Sept. 4, 2013]	2.2, 2.3, 3.3(h), 3.6(d), 3.6(e)(1), 3.6(e)(2), 3.9, 3.9(a), 3.9(b), 3.9(c), 4.4, 21.16, 22.15, 23.1, 23.2, 23.3, 23.4, 23.5, 23.6, 23.7, 23.8
122 So. 3d 263 [Sept. 4, 2013]	11.13, 11.13(a), 11.13(b), 11.13(c), 11.13(d), 11.13(e), 11.13(f), 11.13(g), 11.13(h), 11.17(a), 11.17(b), 11.17(c), 11.17(d), 13.5, 15.1, 15.2, 15.3, 15.4, 16.1, 16.2, 16.3, 16.5, 16.6
123 So. 3d 54 [Sept. 26, 2013]	19.7, 26.9
126 So. 3d 248 [Nov. 14, 2013]	8.21
131 So. 3d 692 [Nov. 21, 2013]	28.5, 28.9, 28.9(a), 28.10, 28.11, 28.11(a), 28.13, 29.20 (renumbered as 33.1), 29.21 (renumbered as 33.2), 29.22 (renumbered as 33.3), 29.23 (renumbered as 34.2), 29.24 (renumbered as 9.8), 29.25 (renumbered as 9.5)
131 So. 3d 720 [Dec. 5, 2013]	2.14, 3.6(o), 8.22, 10.1, 10.5, 10.15, 11.10(g), 12.1, 14.8, 16.11, 19.3, 19.4, 19.5, 19.6, 20.19, 21.9, 21.10, 21.11, 21.12, 21.13, 28.3, 28.4(a), 28.12, 29.13(c) renumbered as 32.4), 29.17 (renumbered as 30.10)
131 So. 3d 755 [Dec. 5, 2013]	2.4, 3.8(a), 8.2, 8.6, 8.7(a), 8.7(b), 8.7(c), 8.7(d), 8.12, 8.15, 8.24, 10.6, 14.9 (renumbered as 33.4), 16.12, 21.8, 21.14, 21.15, 28.5(a), 29.18
132 So. 3d 1124 [Feb. 6, 2014] Revised	6.6

ORDERS OF SUPREME COURT OF FLORIDA REVISING STANDARD JURY INSTRUCTIONS IN CRIMINAL CASES 1981–FEB. 2020

OPINIONS	**INSTRUCTIONS AMENDED**
137 So. 3d 995 [April 24, 2014]	6.2, 6.3, 6.3(a), 7.2, 7.4
140 So. 3d 992 [June 5, 2014]	14.2
141 So. 3d 1201 [June 26, 2014]	8.25
143 So. 3d 893 [July 10, 2014]	2.7, 3.6(k), 8.23, 21.1, 21.2, 21.4, 21.5, 21.6, 22.5, 25.15(a), 29.13 (renumbered as 32.1), 29.13(a) (renumbered as 32.2)
146 So. 3d 1110 [Aug. 28, 2014]	7.3, 7.5, 7.6, 7.11, 11.18, 12.1, 12.2, 12.9, 14.10, 28.14, 28.15, 28.16, 28.17, 29.3 (renumbered as 30.2)
148 So. 3d 1204 [Aug. 28, 2014]	6.1, 10.20, 10.21, 11.14, 11.14(a), 11.14(b), 11.14(c), 11.14(d), 11.14(e), 11.14(f), 11.14(g), 11.15, 11.15(a), 11.15(b), 11.15(c), 11.15(d), 11.15(e), 11.15(f), 11.15(g), 11.15(h), 11.15(i)
152 So. 3d 475 [Sept. 11, 2014]	11.15(j), 11.15(k), 11.19, 20.20, 22.15
152 So. 3d 529 [Dec. 4, 2014]	9.1, 9.2, 16.1, 16.2, 16.3, Grand Jury Handbook, Grand Jury Instructions
153 So. 3d 192 [Dec. 11, 2014]	Qualifications Instruction, 1.1, 2.1, 3.13, Qualifications Instruction, 1.001, 1.01, 2.08
156 So. 3d 495 [Jan. 22, 2015]	25.2, 25.3, 25.4, 25.5, 25.6, 25.7, 25.8, 25.9, 25.10, 25.11, 25.12, 25.13, 25.14, 25.15, 25.16, 25.17, 25.18, 29.20, 25.21
157 So. 3d 1027 [Feb. 5, 2015]	1.6, 2.1(a), 2.1(b), 2.1(d), 2.5, 8.10-8.13, 29.16(a) (renumbered as 30.8)
163 So. 3d 478 [April 30, 2015]	3.8(b), 11.7, 11.10(a), 11.10(b), 11.10(c), 11.10(d), 11.10(e), 11.11, 11.13, 11.17(a), 11.17(b), 11.20, 11.21, 15.5
166 So. 3d 161 [June 2, 2015]	28.4, 28.6, 28.7, 28.8, 28.8(a), 28.8(b), 28.8(c), 28.8(d), 28.8(e), 28.18

ORDERS OF SUPREME COURT OF FLORIDA REVISING STANDARD JURY INSTRUCTIONS IN CRIMINAL CASES 1981–FEB. 2020

OPINIONS	**INSTRUCTIONS AMENDED**
175 So. 3d 782 [Sept. 24, 2015]	20.3, 20.4, 20.5, 20.6, 20.7, 20.8, 20.9, 20.10, 20.11, 20.12, 22.16
176 So. 3d 938 [Oct. 8, 2015]	7.9, 11.10(f), 11.10(g), 13.1, 14.9 (renumbered as 33.4), 20.15, 20.16, 20.21, 22.5, 22.6, 22.7, 22.8, 22.9, 22.10, 22.11, 23.8, 29.24 (renumbered as 9.8), 29.25 (renumbered as 9.5)
195 So. 3d 1088 [April 7, 2016]	11.14, 11.14(a)-(i), 11.15, 11.15(b), 11.15(c), 11.15(d), 11.15(e), 11.15(g), 11.15(h), 11.15(i), 11.15(l), 11.15(m)
190 So. 3d 614 [April 14, 2016]	10.6, 14.1, 14.2, 14.3, 16.1, 16.3, 20.18(a)
190 So. 3d 1055 [April 14, 2016]	7.8, 7.8(a), 11.1, 11.2, 11.3, 11.4, 11.5, 11.6, 11.6(a)
191 So. 3d 411 [May 5, 2016]	3.6(f), 3.6(g)
192 So. 3d 1190 [May 12, 2016]	28.1, 28.1(a), 28.2, 28.3, 28.4, 28.4(b), 28.8(b), 28.8(c), 28.8(d), 28.8(e), 28.14, 28.15, 28.16, 28.17
191 So. 3d 291 [May 19, 2016]	25.2, 25.3, 25.4, 25.5, 25.6, 25.7, 25.8, 25.9, 25.10, 25.11, 25.11(a), 25.11(b), 25.12, 25.13, 25.13(a)-(e), 25.14
195 So. 3d 356 [June 23, 2016]	2.1, 8.2, 8.10, 8.12, 8.15, 10.5, 11.17(c), 11.17(d), 16.4
194 So. 3d 1007 [July 7, 2016]	8.3, 21.16, 29.20 (renumbered as 33.1), 29.21 (renumbered as 33.2), 29.22 (renumbered as 33.3)
199 So. 3d 234 [Aug. 25, 2016]	2.8, 3.12, 11.22, 20.22, 22.17, 22.18, 27.1
200 So. 3d 754 [Sept. 15, 2016]	29.24 (renumbered as 9.8)
202 So. 3d 830 [Oct. 27, 2016]	2.13, 20.13, 20.14, 201.5, 20.16, 20.17, 20.18, 20.21 Jimmy Ryce – 2.08
206 So. 3d 14 [Dec. 8, 2016]	3.3(f), 3.6(c), 8.18, 8.19, 8.24

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OPINIONS	**INSTRUCTIONS AMENDED**
217 So. 3d 965 [Feb. 9, 2017]	8.22(a), 10.9, 10.10, 13.1, 21.7
210 So. 3d 626 [Feb. 9, 2017]	20.6, 20.6(a)
211 So. 3d 995 [Feb. 23, 2017]	7.8, 7.8(a), 9.1, 9.2, 18.3 (deleted), 28.18
213 So. 3d 680 [March 9, 2017]	3.6(a), 3.6(p), 5.1, 5.2, 5.3, 6.6, 7.7, 7.7(a), 8.25,
214 So. 3d 1290 [April 13, 2017]	19.1, 19.2, 19.3, 19.4, 19.5, 19.6, 19.7
214 So. 3d 1236 [April 13, 2017]	3.12(e), 7.11, 7.11(a), 7.12
216 So. 3d 497 [April 27, 2017]	25.2, 25.3, 25.4, 25.5, 25.6, 25.7, 25.8, 25.9, 25.10, 25.11, 25.11(a), 25.11(b), 25.12, 25.13, 25.13(a)-(e), 25.14, 25.15, 25.16, 25.17, 25.18, 25.20, 25.21
216 So. 3d 1281 [April 27, 2017]	21.15, 29.26
228 So. 3d 87 [Oct. 12, 2017]	3.6(o), 11.17(a)-(d)
229 So. 3d 295 [Oct. 26, 2017]	23.1, 23.2, 23.3, 23.4, 23.5, 23.6, 23.7
231 So. 3d 384 [Nov. 30, 2017]	10.4(deleted), 10.8, 14.4, 25.15(a), 28.11
236 So. 3d 282 [Feb. 8, 2018]	6.2, 6.3, 6.3(a), 6.4, 6.6, 6.7, 7.2, 7.3, 7.4, 7.5, 7.6, 7.7, 7.7(a), 7.13
236 So. 3d 244 [Feb. 8, 2018]	28.4, 28.4(a)-(b), 28.6, 28.7, 28.8, 28.8(a)-(e)
238 So. 3d 192 [March 8, 2018]	2.13, 3.9(c), 6.1, 8.26, 21.10, 21.12, 25.13(f), 28.19
238 So. 3d 182 [March 8, 2018]	16.10, 25.7
242 So. 3d 327 [May 10, 2018]	29.25 (renumbered as 9.5)
244 So. 3d 172 [May 24, 2018]	3.12(e), 7.10, 7.11, 7.12

ORDERS OF SUPREME COURT OF FLORIDA REVISING STANDARD JURY INSTRUCTIONS IN CRIMINAL CASES 1981–FEB. 2020

OPINIONS	**INSTRUCTIONS AMENDED**
244 So. 3d 157 [May 24, 2018]	3.12, 3.12(a), 3.12(c), 3.12(d), 3.12(f)
249 So. 3d 544 [July 12, 2018]	11.14, 11.14(b), 11.14(e), 11.14(g), 11.14(h), 11.15(b), 11.15(c), 11.15(d), 11.15(e), 11.15(h), 11.15(i), 11.15(l)
253 So. 3d 1040 [Sept. 27, 2018]	10.1, 10.5, 10.6(b), 13.5
253 So. 3d 1024 [Sept. 27, 2018]	10.13, 10.14, 10.15, 10.15(a)
253 So. 3d 995 [Sept. 27, 2018]	20.13, 20.14, 20.15, 20.16, 20.17, 20.18, 20.21
256 So. 3d 316 [Oct. 25, 2018]	2.1(d), 14.1, 21.17, 21.18, 29.5 (renumbered as 30.4)
257 So. 3d 370 [Nov. 15, 2018]	11.7, 11.10, 11.10(a)-(g), 11.11, 11.12, 11.18, 11.21, 29.13(c) (renumbered as 32.4)
257 So. 3d 925 [Nov. 21, 2018]	12,1, 13.1, 13.3, 13.4, 13.21
257 So. 3d 908 [Nov. 21, 2018]	3.6(f), 3.6(g)
259 So. 3d 743 [Dec. 13, 2018]	3.6(o), 3.9(c), 8.27, 8.28
259 So. 3d 765 [Dec. 13, 2018]	10.20, 14.8, 16.11, 20.18(a), 22.10, 22.11, 22.15
260 So. 3d 754 [Dec. 13, 2018]	7.3, 7.4, 10.7(d)
260 So. 3d 941 [Dec. 20, 2018]	15.1, 15.2, 15.3, 26.9
260 So. 3d 930 [Dec. 20, 2018]	8.3, 8.4(a), 8.5, 8.11, 8.16, 8.20
260 So. 3d 1024 [Dec. 20, 2018]	3.13, 8.22, 11.14(h), 11.15(l), 21.11
262 So. 3d 59 [Jan. 4, 2018]	7.8, 7.9, 16.12, 28.1, 28.1(a), 28.2, 28.3, 28.4, 28.4(a), 28.4(b) 28.5, 28.5(a), 28.6, 28.7, 28.8, 28.8(a)-(e), 28.13, 28.18

ORDERS OF SUPREME COURT OF FLORIDA REVISING STANDARD JURY INSTRUCTIONS IN CRIMINAL CASES 1981–FEB. 2020

OPINIONS	**INSTRUCTIONS AMENDED**
267 So. 3d 980 [April 11, 2019]	3.3(d), 8.5(a), 16.5, 21.14, 29.24 (renumbered as 9.8)
272 So. 3d 243 [May 30, 2019]	3.6(m), 3.6(n), 25.2, 25.3, 25.4, 25.5, 25.6, 25.7(a), 25.8, 25.14, 25.15, 25.17, 25.18, 25.19, 25.20, 25.21
272 So. 3d 1210 [June 6, 2019]	3.6(a), 3.6(e)(1), 3.6(e)(2), 3.6(j), 3.14, 7.7(c)
285 So. 3d 1248 [Dec. 19, 2019]	3.6(f), 3.6(g)
285 So. 3d 1265 [Dec. 19, 2019]	7.3, 7.5, 7.6
285 So. 3d 1281 [Dec. 19, 2019]	10.7(a)-(c), 10.13
286 So. 3d 195 [Dec. 19, 2019]	10.18, 26.2, 26.3, 26.4, 26.5, 26.6, 26.7, 26.8
285 So. 3d 1227 [Dec. 19, 2019]	22.5, 22.6, 22.7, 22.8, 22.9, 22.10, 22.11
285 So. 3d 1242 [Dec. 19, 2019]	3.3(a), delete 3.3(b)
288 So. 3d 515 [Jan. 16, 2020]	28.6, 28.7, 28.8, 28.8(a)
288 So. 3d 530 [Jan. 16, 2020]	8.6, 8.7(a)-(d)
288 So. 3d 540 [Jan. 16, 2020]	11.10(g), 14.1, 21.16, 25.7, 25.14
290 So. 3d 52 [Feb. 6, 2020]	25.13(f)-(h)
290 So. 3d 864[Feb. 27, 2020]	3.12; 8.26; 11.21; 27.1
290 So. 3d 879 [Feb. 27, 2020]	21.19(a)-(c)

HOW TO USE THE INSTRUCTIONS

Boldface type, brackets, parentheses, and italics have been used to give certain directions. These are as follows:

Boldface type is used exclusively to identify passages the trial judge should speak aloud to the jury. A paragraph typeset as follows, for example, should be read aloud.

The defendant is charged with the crime of Kidnapping. To prove this charge the State must **prove the following elements beyond a reasonable doubt.**

Brackets are used exclusively to express variables within the text that is to be spoken aloud to the jury. In a sentence typeset as follows, for example, only the applicable variables enclosed in brackets should be read aloud.

The defendant reasonably believed [a danger] [an emergency] threatened significant harm to [himself] [herself].

Bracketed material will almost always appear in boldface because some or all of the enclosed words must be spoken aloud with the instruction.

Parentheses are used exclusively to signify the need to insert a proper name, a specific crime, or some other variable that must be supplied by the trial judge. For example, in the following sentence the designations in parentheses should be replaced with the proper name of the defendant and the name of the crime charged.

It is not entrapment if (defendant) **had the predisposition to commit** (crime charged)**.**

To avoid confusion, the material enclosed in parentheses is not typeset in bold. The words in parentheses are not spoken aloud with the text; they merely serve as signals to insert names, titles, or other words that should be spoken aloud.

Italics are used exclusively to give directions to the trial judge. For example, in the following sentence, the words in italics direct the judge to give only one of several choices that follow:

Give 3(a), (b), or (c) as applicable.

Every word or phrase set in italics is essentially a note or instruction to the judge. Italics are used to indicate that the material is explanatory and that it should not be read to the jury.

PART ONE: GENERAL INSTRUCTIONS

CHAPTER 1 — INSTRUCTION BEFORE TRIAL

1.0 QUALIFICATIONS INSTRUCTION

Many of you have electronic devices such as cell phones, smartphones, tablets, and laptops. Even though you have not yet been selected as a juror, there are some strict rules that you must follow about electronic devices.

When you are called to a courtroom, the judge will give you specific instructions on the use of electronic devices. These rules are so important that the judge may tell you that you must turn off your cell phone or other electronic devices completely or that you cannot have your cell phone or electronic devices in the courtroom. If someone needs to contact you in case of an emergency, the judge will provide you with a phone number where you can receive messages.

If the trial judge allows you to keep your cell phones, computers, or other electronic devices, you cannot use them to take photographs, video recordings, or audio recordings of the proceedings in the courtroom or your fellow jurors. You must not use them to search the Internet or to find out anything related to any cases in the courthouse.

Why is this restriction imposed? This restriction is imposed because jurors must decide the case without distraction and only on the evidence presented in the courtroom. I know that, for some of you, these restrictions affect your normal daily activities and may require a change in the way you are used to communicating and perhaps even in the way you are used to learning.

If you investigate, research, or make inquiries on your own, the trial judge has no way to make sure that the information you obtain is proper for the case. The parties likewise have no opportunity to dispute or challenge the accuracy of what you find. Any independent investigation by a juror unfairly and improperly prevents the parties from having that opportunity our judicial system promises.

Between now and when you have been discharged from jury duty by the judge, you must not discuss any information about your jury service with anyone, including friends, co-workers, and family members. You may tell those who need to know where you are that you have been called for jury duty. If you are picked for a jury, you may tell people that you have been picked for a jury and how long the case may take. However, you must not give anyone any information about the case itself or the people involved in the case. You must also warn people not to try to say anything to you or write to you about your jury service or the case. This includes face-to-face, phone or computer communications.

I want to stress that you must not use electronic devices or computers to talk about this case, including tweeting, texting, blogging, e-mailing, posting information on a website or chat room, or any other means at all. Do not send or accept any messages, including e-mail and text messages, about your jury service. You must not disclose your thoughts about your jury service or ask for advice on how to decide any case.

The judge will tell you when you are released from this instruction. Remember, these rules are designed to guarantee a fair trial. It is important that you understand the rules as well as the impact on our system of justice if you fail to follow them. If it is determined that any one of you has violated this rule, and conducted any type of independent research or investigation, it may result in a mistrial. A mistrial would require the case to be tried again at great expense to the parties and the judicial system. If you violate these rules, you may be held in contempt of court, and face sanctions, such as serving time in jail, paying a fine or both. All of us are depending on you to follow these rules, so that there will be a fair and lawful resolution of every case.

Notes On Use

This instruction should be given in addition to and at the conclusion of the instructions normally given to the prospective jurors. The portion of this instruction dealing with communication with others and outside research may need to be modified to include other specified means of communication or research as technology develops.

This instruction was adopted in 2010 [52 So. 3d 595] and amended in 2014.

1.1 INTRODUCTION

To be given when jurors are in courtroom, prior to voir dire.

To have a fair and lawful trial, there are rules all jurors must follow. A basic rule is jurors must decide the case only on the evidence presented in the courtroom. You must not communicate with anyone, including friends and family members, about this case, the people and places involved, or your jury service. You must not disclose your thoughts about this case or ask for advice on how to decide this case.

I want to stress this rule means you must not use electronic devices or cell phones to communicate about this case, including posting information on the internet, e-mailing, or any other means. Do not send or accept any messages to or from anyone about this case or your jury service. In addition, your cell phone or electronic device must be turned completely off while you are in the courtroom.

You must not do any research or look up words, names, maps, or anything else that may have anything to do with this case. This includes reading newspapers, watching television, or using a computer, cell phone, the internet, any electronic device, or any other means, to get information related to this case or the people and places involved in this case. This applies whether you are in the courthouse, at home, or anywhere else.

All of us are depending on you to follow these rules, so there will be a fair and lawful resolution to this case. Unlike questions you may be allowed to ask in court, which will be answered in court in the presence of the judge and the parties, if you investigate, research, or make inquiries on your own outside of the courtroom, the trial judge has no way to assure they are proper and relevant to the case. The parties likewise have no opportunity to dispute the accuracy of what you find or to provide rebuttal evidence to it. That is contrary to our judicial system, which assures every party the right to ask questions about and rebut the evidence being considered in this courtroom and to present argument with respect to that evidence. Non-court inquiries and investigations unfairly and improperly prevent the parties from having that opportunity our judicial system promises. Any juror who violates these restrictions jeopardizes the fairness of these proceedings, and a mistrial could result that would require the entire trial process to start over. A mistrial is a tremendous expense and inconvenience to the parties, the court, and the taxpayers. If you violate these rules, you may be held in contempt of court, and face sanctions, such as serving time in jail, paying a fine, or both. If you become aware of any violation of these instructions or any

other instruction I give in this case, you must tell me by giving a note to the [court deputy] [bailiff].

Comments

The portion of this instruction dealing with communication with others and outside research may need to be modified to include other specified means of communication or research as technology develops.

This instruction was adopted in 2010 [52 So. 3d 595] and amended in 2014 [152 So. 2d 529], and on March 8, 2024.

1.2 JURY SELECTION [RESERVED]

1.3 CHALLENGES TO JURORS [RESERVED]

1.4 STATEMENT OF THE CHARGE [RESERVED]

1.5 QUESTIONING IN CAPITAL CASES [RESERVED]

1.6 PRO SE DEFENDANT

(Defendant) **has the right to be represented by an attorney or to represent [himself] [herself] in this trial, as do all criminal defendants in this country. [He] [She] has exercised [his] [her] constitutional right to act as [his] [her] own attorney. This decision should not affect your consideration of this case.**

Comment

This instruction was adopted in 2013 [131 So. 3d 720] and 2015.

CHAPTER 2 — INSTRUCTIONS DURING TRIAL

2.1 PRELIMINARY INSTRUCTIONS

Members of the jury:

You have been selected and sworn as the jury to try the case of State of Florida v. (defendant)**.**

This is a criminal case. (Defendant) **is charged with** (crime(s) charged). **The definition of** (crime(s) charged) **will be explained to you later.**

You must decide this case based on the evidence presented and the law that I give you. "Evidence" consists of the sworn testimony of witnesses, exhibits admitted into evidence, and anything else that I tell you to consider as evidence. The State's charging document, which is called an [information] [indictment], is not evidence and is not to be considered by you as any proof of guilt.

It is my responsibility to explain the law to you. It is your solemn responsibility to determine if the State proved its accusation beyond a reasonable doubt against (defendant) **in accordance with the law that I provide to you. Thus, the province of the jury and the province of the court are well defined, and they do not overlap. This is one of the fundamental principles of our system of justice.**

Before proceeding further, it will be helpful if you understand how a trial is conducted.

At the beginning of the trial, the attorneys will have an opportunity, if they wish, to make an opening statement. The opening statement gives the attorneys a chance to tell you what evidence they believe will be presented during the trial. What the lawyers say is not evidence, and you are not to consider it as such.

Following the opening statements, witnesses will be called to testify under oath. They will be examined and cross-examined by the attorneys. Documents and other exhibits may be introduced as evidence.

The trial judge should select one of the following two alternatives regarding how final instructions are presented pursuant to Fla. R. Crim. P. 3.390(a).

Alternative A: **After the evidence has been presented, the attorneys will have the opportunity to make their closing arguments.**

Following the closing arguments by the attorneys, the court will instruct you on the law applicable to the case.

Alternative B: **After the evidence has been presented, the court will give you instructions on the law.**

The attorneys will then have the opportunity to make their closing arguments.

Following the closing arguments by the attorneys, the court will conclude with the final instructions.

Resume with the paragraph below.

After the final instructions are given, [the alternate juror[s] will be released and] you will retire to consider your verdict.

You should not form any definite or fixed opinion on the merits of the case until you have heard all the evidence, the argument of the lawyers, and the instructions on the law that I give you. Until that time, you should not discuss the case among yourselves.

Your verdict must be based solely on the evidence, or lack of evidence, and the law.

Jurors must decide the case without distraction and only on the evidence presented in the courtroom. Jurors must not conduct any investigation on their own. This includes reading newspapers, watching television, or using a computer, cell phone, the internet, any electronic device, or any other means at all, to get information related to this case or the people and places involved in this case. You may not visit places mentioned in the trial or use the internet to look at maps or pictures to see any place discussed during the trial. If you investigate, research, or make inquiries on your own, I have no way to make sure that the information you obtain is proper for the case. The parties likewise have no opportunity to dispute or challenge the accuracy of what you find. This is contrary to our judicial system, which assures every party the right to ask questions about and challenge the evidence being considered against it and to present argument with respect to that evidence. Any independent investigation by a juror unfairly and improperly prevents the parties from having that opportunity our judicial system promises.

You are also not permitted to communicate about this case with anyone, including your spouse, family members, friends, neighbors, and even your fellow jurors. No communication includes no in-person, telephonic, or electronic communication, such as e-mailing, text messaging, posting information on social media or a website, or any other form of communication.

During the trial, the court may take recesses, and you will be permitted to separate and go about your personal affairs. It is important to remember that the prohibition on communicating about this case applies during these recesses, whether you are in the courthouse or elsewhere. If at any time, you find yourself in a situation where others are discussing the case in your presence, leave that situation at once and immediately report the matter to the [court deputy] [bailiff], who will advise me.

The trial judge should select one of the following two alternative instructions explaining the rules governing jurors' use of electronic devices, as explained in the Comment section.

Alternative A: **All cell phones, computers, tablets, or other types of electronic devices must be turned off while you are in the courtroom. Turned off means that the phone or other electronic device is actually off and not in a silent or vibrating mode. You may use these devices during recesses, but even then, you may not use your cell phone or electronic device to find out any information about the case or communicate with anyone about the case or the people involved in the case. Do not take photographs, video recordings or audio recordings of the proceedings or of your fellow jurors. After each recess, please double check to make sure your cell phone or electronic device is turned off. At the end of the case, while you are deliberating, you must not communicate with anyone outside the jury room. You cannot have in the jury room any cell phones, computers, or other electronic devices. If someone needs to contact you in an emergency, the court can receive messages and deliver them to you without delay. A contact phone number will be provided to you.**

Alternative B: **You cannot have any cell phones, tablets, laptops, or other electronic devices in the courtroom. You may use these devices during recesses, but even then, you may not use your cell phone or electronic device to find out any information about the case or communicate with anyone about the case or the people involved in the case. Do not take photographs, video recordings or audio recordings of the proceedings or your fellow jurors. At the end of the case, while you are deliberating, you must not communicate with anyone outside the jury room. If someone needs to contact you in an emergency, the court can receive messages and deliver them to you without delay. A contact phone number will be provided to you.**

Any juror who violates these restrictions jeopardizes the fairness of these proceedings and a mistrial could result that would require the entire trial process to start over. A mistrial is a tremendous expense and inconvenience to the parties, the court, and the taxpayers. If you violate

these rules, you may be held in contempt of court, and face sanctions, such as serving time in jail, paying a fine, or both.

Give if defendant requests.

In every criminal proceeding, a defendant has the absolute right to remain silent. At no time is it the duty of a defendant to prove [his] [her] innocence. From the exercise of a defendant's right to remain silent, a jury is not permitted to draw any inference of guilt, and the fact that a defendant did not take the witness stand must not influence your verdict in any manner whatsoever.

The attorneys are trained in the rules of evidence and trial procedure, and it is their duty to make all objections they feel are proper. When an objection is made, you should not speculate on the reason why it is made; likewise, when an objection is sustained, or upheld, by me, you must not speculate on what might have occurred had the objection not been sustained, nor what a witness might have said had the witness been permitted to answer.

During the trial, it may be necessary to confer with the attorneys out of your hearing to discuss matters that require consideration by me alone. It is impossible to predict when such a conference may be required or how long it will last. When such conferences occur, they will be conducted to consume as little of your time as is necessary for a fair and orderly trial of the case.

Comments

Florida Rule of General Practice and Judicial Administration 2.451 directs trial judges to instruct jurors on the use of cell phones and other electronic devices. During the trial, the trial judge may remove the jurors' cell phones or other electronic devices. The trial judge also has the option to allow the jurors to keep the cell phones and electronic devices during trial until the jurors begin deliberations. Rule 2.451 prohibits jurors from using the cell phones or electronic devices to find out information about the case or to communicate with others about the case. The jurors also cannot use the electronic devices to record, photograph, or videotape the proceedings. In recognition of the discretion rule 2.451 gives trial judges, this instruction provides two alternatives: (A) requiring jurors to turn off electronic devices during court proceedings and removing their cell phones and electronic devices during deliberations; or (B) removing the cell phones and electronic devices during all proceedings and deliberations. These instructions may be modified to fit the practices of a trial judge in a particular courtroom. These instructions

are not intended to limit the discretion of the trial court to control the proceedings.

The portion of this instruction dealing with communication with others and outside research may need to be modified to include other specified means of communication or research as technology develops.

This instruction was adopted in 1981 and amended in 2010 [52 So. 3d 595], 2014 [152 So. 3d 529], 2016 [195 So. 3d 356], on March 8, 2024, and on August 2, 2024.

2.1(a) NOTE-TAKING BY JURORS

If you would like to take notes during the trial, you may do so. On the other hand, of course, you are not required to take notes if you do not want to. That will be left up to you individually.

You will be provided with a note pad and a pen for use if you wish to take notes. Any notes that you take will be for your personal use. However, you should not take them with you from the courtroom. During recesses, the [bailiff] [court deputy] will take possession of your notes and will return them to you when we reconvene. After you have completed your deliberations, the [bailiff] [court deputy] will deliver your notes to me. They will be destroyed. No one will ever read your notes.

If you take notes, do not get so involved in note-taking that you become distracted from the proceedings. Your notes should be used only as aids to your memory.

Whether or not you take notes, you should rely on your memory of the evidence and you should not be unduly influenced by the notes of other jurors. Notes are not entitled to any greater weight than each juror's memory of the evidence.

Note On Use

The court should furnish all jurors with the necessary pads and pens for taking notes. Additionally, it may be desirable for jurors to be furnished with envelopes to place the notes in for additional privacy.

Comment

This instruction was adopted in 2007 [967 So. 2d 178] and was amended in 2015.

2.1(b) JURY TO BE GUIDED BY OFFICIAL ENGLISH TRANSLATION/INTERPRETATION PRELIMINARY INSTRUCTIONS

(Language used) **may be used during this trial.**

The evidence you are to consider is only that provided through the official court [interpreters] [translators]. Although some of you may know (language used)**, it is important that all jurors consider the same evidence. Therefore, you must accept the English [interpretation] [translation]. You must disregard any different meaning.**

If, however, during the testimony there is a question as to the accuracy of the English interpretation, you should bring this matter to my attention immediately by raising your hand. You should not ask your question or make any comment about the interpretation in the presence of the other jurors, or otherwise share your question or concern with any of them. I will take steps to see if your question can be answered and any discrepancy resolved. If, however, after such efforts a discrepancy remains, I emphasize that you must rely only upon the official English interpretation as provided by the court interpreter and disregard any other contrary interpretation.

Comments

This instruction should be given as part of the preliminary instructions to the jury. See *United States v. Franco*, 136 F.3d 622, 626 (9th Cir. 1998); *United States v. Fuentes-Montijo*, 68 F.3d 352, 355-56 (9th Cir. 1995).

This instruction was adopted in 2006 [937 So. 2d 1092] and amended in 2015.

2.1(c) QUESTIONS BY JURORS

To be given only if the judge permits jury questions.

During the trial, you will be permitted to ask questions of witnesses in case you missed something, you did not understand something, or you need to clarify a pertinent issue.

The rules of evidence apply regardless of whether a question is asked by the attorneys, by me, or by you. Therefore, there may be a legal reason why I will not ask your question. If I do not ask your question, you must not hold that against any of the parties, you must not discuss it with the other jurors, and please do not take it personally.

If you have a question, you should ask it before the witness leaves the witness stand.

Subject to these understandings, this is how we will proceed: *(Two possible procedures are outlined below. Give only one. The second alternative is designed to ensure anonymity).*

1. **When the attorneys have finished asking their questions, please raise your hand to get my attention. I will give you time to write your question[s] on a clean piece of paper and give the paper to the [bailiff] [court deputy]. I will then confer privately with the attorneys. If I ask your question[s], the witness will answer and the attorneys may follow up if they choose. The questioning of witnesses is the primary responsibility of the attorneys. If your question[s] is [are] not asked, you must not discuss it with other jurors or hold it against either party. You are not obligated to ask any questions, but if it will help your understanding of the case, you may do so.**

2. **When the attorneys have finished asking their questions, I will ask each of you to write something down on a clean piece of paper. If you do not have a question, please write – "no questions." If you have [a] question[s], please write the question[s] on the paper. Please do not put your name on the paper because I do not want anyone to know which juror is submitting a question. Please then fold the paper in half and give it to the [bailiff] [court deputy]. I will then confer privately with the attorneys. If I ask the question[s], the witness will answer and the**

attorneys may follow up if they choose. The questioning of witnesses is the primary responsibility of the attorneys. If your question[s] is [are] not asked, you must not discuss it with other jurors or hold it against either party. You are not obligated to ask any questions, but if it will help your understanding of the case, you may do so.

Comment

This instruction was adopted in 2007 [967 So. 2d 178] and amended in 2012 [87 So. 3d 679], 2015 [157 So. 3d 1027}, and on April 25, 2023.

2.1(d) PSYCHOTROPIC MEDICATION

If the defendant's ability to proceed to trial is dependent on the use of psychotropic medication, give if requested by the defense, at the beginning of the trial and in the charge to the jury. See Fla. R. Crim. P. 3.215(c).

(Defendant) **currently is being administered psychotropic medication under medical supervision for a mental or emotional condition.**

Psychotropic medication is any drug or compound affecting the mind or behavior, intellectual functions, perception, moods, or emotion and includes anti-psychotic, anti-depressant, anti-manic, and anti-anxiety drugs.

You shall not allow the defendant's present condition in court or any apparent side effect from the medication that you may observe in court to affect your deliberations.

Comment

This instruction was adopted in 2015 [157 So. 3d 1027] and amended in 2018.

2.2 INSTRUCTION ON EDITED RECORDING

Members of the jury, you are about to [view] [listen to] a[n] [video] [audio] recording. The Court instructs you that the recording has been edited to eliminate irrelevant portions that would not add to your understanding of the case. The fact that the recording has been edited should not concern you in any way and must not impact the way you [view] [listen to] and consider this evidence.

Comment

This instruction was adopted in 2013.

2.3 STIPULATIONS

When [lawyers] [parties] agree that certain facts are true, that is called a stipulation of fact. You must accept stipulated facts as having been proven. However, the significance of these facts, as with all facts, is for you to decide. In this case, the stipulated fact[s] that you must accept as true [is] [are] [insert stipulation[s]].

Comment

This instruction was adopted in 2013.

2.4 EVIDENCE OF OTHER CRIMES, WRONGS, OR ACTS

§ 90.404(2)(a), Fla. Stat.

To be given at the time the evidence is admitted, if requested.

The evidence you are about to receive concerning other crimes, wrongs, or acts allegedly committed by the defendant may be considered by you, but only for the limited purpose of proving [motive] [opportunity] [intent] [preparation] [plan] [knowledge] [identity] [the absence of mistake or accident] [(other relevant factor)**]. However, the defendant is not on trial for a crime, wrong, or act that is not included in the [information] [indictment].**

Comments

This instruction and instruction 3.8(a) should be given in cases involving "Williams Rule" evidence admissible under § 90.404(2)(a), Fla. Stat.

Instructions 2.4(a) and 3.8(b) should be given for cases involving evidence of other acts of child molestation or a sexual offense admissible under § 90.404(2)(b) or (2)(c), Fla. Stat.

This instruction was adopted in 1981 and was amended in 2000 [765 So. 2d 692], 2007 [965 So. 2d 811], 2013 [131 So. 3d 755], and on September 20, 2024.

2.4(a) EVIDENCE OF OTHER CRIMES, WRONGS, OR ACTS [OF CHILD MOLESTATION] [INVOLVING A SEXUAL OFFENSE]

§ 90.404(2)(b) and (2)(c), Fla. Stat.

To be given at the time the evidence is admitted, if requested.

The evidence you are about to receive concerning other crimes, wrongs, or acts [of child molestation] [involving [a] sexual offense[s]] allegedly committed by the defendant may be considered by you for its bearing on any matter to which it is relevant. However, the defendant is not on trial for a crime, wrong, or act that is not included in the [information] [indictment].

Comments

§ 90.404(2)(b)2., Fla. Stat, explains the term "child molestation" and § 90.404(2)(c)2., Fla. Stat. explains the term "sexual offense" for purposes of the statute. Collateral crime evidence qualifying under § 90.404(2)(b) or (2)(c), Fla. Stat., may be admissible to show propensity. *Whisby v. State,* 262 So. 3d 228 (Fla. 1st DCA 2018).

This instruction was adopted on September 20, 2024.

2.5 CONVICTION OF CERTAIN CRIMES AS IMPEACHMENT

§§ 90.107, 90.610(1), Fla. Stat.

To be given at the time the evidence is admitted, if requested.

The evidence that you are about to receive that [(witness)**] [**(defendant)**] has been convicted of a crime should be considered by you only in weighing the credibility of [**(witness's)**] [**(defendant's)**] testimony and not for any other purpose.**

Comment

This instruction was adopted in 1995 [657 So. 2d 1152] and amended in 2015.

2.6 USE OF TRANSCRIPTS OF RECORDINGS

You are about to hear recorded conversations. These recorded conversations are proper evidence and you may consider them just as any other evidence.

You are also being furnished transcripts of the recorded conversations.

The recordings are the evidence and the transcripts are provided to you only as a guide to help you follow as you listen to the recordings. The transcripts are not evidence of what was actually said or who said it.

If you notice any difference between what you hear on the recordings and what you read in the transcripts, you must rely on what you hear not what you read.

Comment

This instruction is not intended to apply to a recording of a conversation in any language other than English. In case of disputed transcripts, see *Martinez v. State*, 761 So.2d 1074 (Fla. 2000).

This instruction was adopted in June 2002.

2.7 CLOSING ARGUMENT

§ 918.19, Fla. Stat.

Both the State and the defendant have now rested their case.

The attorneys now will present their final arguments. Please remember that what the attorneys say is not evidence or your instruction on the law. However, do listen closely to their arguments. They are intended to aid you in understanding the case. Each side will have equal time, but the State is entitled to divide this time between an opening argument and a rebuttal argument after the defense has given its closing argument.

Comment

This instruction was approved in 1981 and amended in 2007 [965 So. 2d 811] and 2014.

2.8 RECORDED INTERVIEW (EFFECT OF LAW ENFORCEMENT STATEMENTS ON THE DEFENDANT)

Police opinions and statements regarding guilt are generally inadmissible and must be redacted from recordings introduced into evidence unless redaction would render the defendant's relevant admissions incomprehensible. If a recorded interview cannot be appropriately redacted, the trial judge must, upon request, give the following limiting instruction immediately before the recorded interview is played for the jury.

You are about to [hear] [watch] a recorded interview that contains opinions and statements by (name of law enforcement officer(s)) **to** (defendant)**. These opinions and statements are pertinent only to explain the reactions and responses they elicit. You are not to consider these opinions and statements by the police officer as true, but only to establish the context of** (defendant's) **reactions and responses.**

Jackson v. State, 107 So. 3d 328 (Fla. 2012); Sheppard v. State, 151 So. 3d 1154 (Fla. 2014); Dubria v. Smith, 224 F.3d 995 (9th Cir. 2000); Jackson v. State, 18 So. 3d 1016 (Fla. 2009); and McWatters v. State, 36 So. 3d 613 (Fla. 2010).

Comment

This instruction was adopted in 2016.

2.9 JURY TO BE GUIDED BY OFFICIAL ENGLISH TRANSLATION/INTERPRETATION INSTRUCTIONS DURING TRIAL

The law requires that the court appoint a qualified interpreter to assist a witness who does not readily speak or understand the English language in testifying. The interpreter does not work for either side in this case. [He] [She] is completely neutral in the matter and is here solely to assist us in communicating with the witness. [He] [She] will repeat only what is said and will not add, omit, or summarize anything. The interpreter in this case is (insert name of interpreter)**. The oath will now be administered to the interpreter.**

Oath to Interpreter

Do you solemnly swear or affirm that you will make a true interpretation to the witness of all questions or statements made to [him] [her] in a language which that person understands, and interpret the witness's statements into the English language, to the best of your abilities, So Help You God.

Foreign Language Testimony

You are about to hear testimony of a witness who will be testifying in [language used]**. This witness will testify through the official court interpreter. Although some of you may know** [language used], **it is important that all jurors consider the same evidence. Therefore, you must accept the English translation of the witness's testimony. You must disregard any different meaning.**

If, however, during the testimony there is a question as to the accuracy of the English interpretation, you should bring this matter to my attention immediately by raising your hand. You should not ask your question or make any comment about the interpretation in the presence of the other jurors, or otherwise share your question or concern with any of them. I will take steps to see if your question can be answered and any discrepancy resolved. If, however, after such efforts a discrepancy remains, I emphasize that you must rely only upon the official English interpretation as provided by the court interpreter and disregard any other contrary interpretation.

Comment

This instruction should be given to the jury immediately before the testimony of a witness who will be testifying through the services of an official court interpreter. *Cf. United States v. Franco*, 136 F.3d 622, 626 (9th Cir. 1998) (jury properly instructed that it must accept translation of foreign language

tape-recording where the accuracy of the translation is not in issue); *United States v. Fuentes-Montijo*, 68 F.3d 352, 355-56 (9th Cir. 1995).

This instruction was adopted in 2006.

2.10 JURY TO BE GUIDED BY OFFICIAL ENGLISH TRANSLATION/INTERPRETATION TRANSCRIPT OF RECORDING IN FOREIGN LANGUAGE (ACCURACY NOT IN DISPUTE)

You are about to listen to a tape recording in [language used]**. Each of you has been given a transcript of the recording which has been admitted into evidence. The transcript is a translation of the foreign language tape recording.**

Although some of you may know [language used]**, it is important that all jurors consider the same evidence. Therefore, you must accept the English translation contained in the transcript and disregard any different meaning.**

If, however, during the testimony there is a question as to the accuracy of the English translation, you should bring this matter to my attention immediately by raising your hand. You should not ask your question or make any comment about the translation in the presence of the other jurors, or otherwise share your question or concern with any of them. I will take steps to see if your question can be answered and any discrepancy resolved. If, however, after such efforts a discrepancy remains, I emphasize that you must rely only upon the official English translation as provided by the court interpreter and disregard any other contrary translation.

Comment

This instruction is appropriate immediately prior to the jury hearing a tape-recorded conversation in a foreign language if the accuracy of the translation is not an issue. See, e.g., *United States v. Franco*, 136 F.3d 622, 626 (9th Cir. 1998); *United States v. Fuentes-Montijo*, 68 F.3d 352, 355-56 (9th Cir. 1995).

This instruction was adopted in 2006.

2.11 JURY TO BE GUIDED BY OFFICIAL ENGLISH TRANSLATION/INTERPRETATION TRANSCRIPT OF RECORDING IN FOREIGN LANGUAGE (ACCURACY IN DISPUTE)

You are about to listen to a tape recording in [language used]. **Each of you has been given a transcript of the recording. The transcripts were provided to you by [the State] [the defendant] so that you could consider the content of the recordings. The transcript is an English translation of the foreign language tape recording.**

Whether a transcript is an accurate translation, in whole or in part, is for you to decide. In considering whether a transcript accurately describes the meaning of a conversation, you should consider the testimony presented to you regarding how, and by whom, the transcript was made. You may consider the knowledge, training, and experience of the translator, as well as the nature of the conversation and the reasonableness of the translation in light of all the evidence in the case. You should not rely in any way on any knowledge you may have of the language spoken on the recording; your consideration of the transcripts should be based on the evidence introduced in the trial.

Comment

This instruction is appropriate immediately prior to the jury hearing a tape-recorded conversation in a foreign language if the accuracy of the translation is an issue. *See, e.g., United States v. Jordan*, 223 F.3d 676, 689 (7th Cir. 2000). *See also* Seventh Circuit Federal Criminal Jury Instructions, § 3.18.

2.12 JURY TO BE GUIDED BY OFFICIAL ENGLISH TRANSLATION/INTERPRETATION CLOSING INSTRUCTIONS

[Language used] **has been used during this trial.**

The evidence you are to consider is only that provided through the official court [interpreters] [translators]. Although some of you may know [language used]**, it is important that all jurors consider the same evidence. Therefore, you must base your decision on the evidence presented in the English [interpretation] [translation]. You must disregard any different meaning.**

If, during the testimony there was a question as to the accuracy of the English interpretation and steps were taken to resolve any discrepancies and despite these efforts a discrepancy remains, I emphasize that you must rely only upon the official English interpretation as provided by the court interpreter and disregard any other contrary interpretation.

Comment

See United States v. Franco, 136 F.3d 622, 626 (9th Cir. 1998); *United States v. Rrapi*, 175 F.3d 742, 748 (9th Cir. 1999); *United States v. Fuentes-Montijo*, 68 F.3d 352, 355-56 (9th Cir. 1995).

This instruction was adopted in 2006.

2.13 PRIOR INCONSISTENT STATEMENT AS IMPEACHMENT

To be given if applicable and if requested.

The evidence that a witness may have made a prior statement that is inconsistent with [his] [her] testimony in court should be considered only for the purpose of weighing the credibility of the witness's testimony and should not be considered as evidence or proof of the truth of the prior statement or for any other purpose.

Comments

This instruction should not be used for prior inconsistent statements that are admissible as substantive evidence and not merely as impeachment, e.g., prior testimony at a trial, hearing or other proceeding (§ 90.801(2)(a), Fla. Stat.) or statements by a defendant (§ 90.803(18), Fla. Stat.).

This instruction was adopted in 2018.

2.14 JUDICIAL NOTICE

§ 90.202, § 90.203, § 90.2035, Fla. Stats.

Read during the trial when the judge takes judicial notice.

When certain facts are either generally known or can be accurately determined from a reliable source, Florida law permits me to take judicial notice of those facts. When judicial notice is taken of such facts, they become part of the evidence in a trial. You may accept judicially noticed facts as proven, but you are not required to do so.

In this case, I have taken judicial notice of the following fact[s]: (insert the fact[s] judicially noticed**).**

As with all the other evidence in this case, the significance to be given to [this] [these] fact[s] is completely up to you.

Comment

This instruction was adopted on December 15, 2023.

CHAPTER 3 — FINAL CHARGE TO THE JURY

3.1 INTRODUCTION TO FINAL INSTRUCTIONS

Members of the jury, I thank you for your attention during this trial. Please pay attention to the instructions I am about to give you.

Comment

This instruction was adopted in 1981.

3.2 STATEMENT OF CHARGE

(Defendant)**, the defendant in this case, has been accused of the [crime of** (crime charged)**.] [crimes of** (crimes charged)**.]**

1. *Read charges about the specific crimes. See 5.1 through 29.14.*

2. *If there are multiple counts, the court should explain each count and the lesser included crimes related to it.*

Comment

This instruction was adopted in 1981.

3.3(a) AGGRAVATION OF (NAME OF FELONY) BY [CARRYING] [DISPLAYING] [USING] [THREATENING TO USE] [ATTEMPTING TO USE] A [FIREARM] [WEAPON]

§ 775.087(1), Fla. Stat.

If you find that (defendant) **committed** (name of felony) **and you also find beyond a reasonable doubt that during the commission of the crime, [he] [she] personally [carried] [displayed] [used] [threatened to use] [attempted to use] a [firearm] [weapon], you should find [him] [her] guilty of** (felony) **with a [firearm] [weapon].**

Definitions. Give as applicable.

§ 790.001, Fla. Stat.

A "firearm" is defined as any weapon (including a starter gun) which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; any destructive device; or any machine gun. [The term "firearm" does not include an antique firearm unless the antique firearm is used in the commission of a crime.]

A "weapon" is defined as: 1) any object readily capable of inflicting bodily harm if used in the ordinary manner contemplated by its design and construction; or 2) any other object that was [used] [or] [threatened to be used] [or] [attempted to be used] [or] [intended to be used] to inflict bodily harm.

If you find that (defendant) **committed** (name of felony)**, but you are not convinced beyond a reasonable doubt that [he] [she] personally [carried] [displayed] [used] [threatened to use] [attempted to use] a [firearm] [weapon], then you should find [him] [her] guilty only of** (name of felony)**.**

Comments

It is recommended the verdict form contain a special finding to reflect the jury's determination as to whether the State proved the defendant personally carried, displayed, used, threatened to use, or attempted to use a firearm or a weapon. A special finding format for the reclassification in § 775.087(1), Fla. Stat., can be found in instruction 3.12, example 6.

A special instruction will be necessary in cases where the weapon was an animal or a substance or something that is not commonly referred to as an "object."

This instruction should not be given in conjunction with the instructions pertaining to any felony in which the use of a weapon or firearm is an essential element. For example, Robbery with a Firearm, Robbery with a Deadly Weapon, and Robbery with a Weapon cannot be reclassified with the firearm or weapon portion of § 775.087(1), Fla. Stat. Similarly, Aggravated Battery (via use of a deadly weapon) cannot be reclassified with the firearm or weapon portion of § 775.087(1), Fla. Stat. However, Aggravated Battery (via intentionally or knowingly causing great bodily harm, permanent disability, or permanent disfigurement) can be reclassified with the firearm or weapon portion of § 775.087(1), Fla. Stat.

The requirement that the defendant personally carried, etc., the firearm or weapon comports with the holding in *State v. Rodriguez*, 602 So. 2d 1270 (Fla. 1992), that a defendant's offense may not be reclassified for a codefendant's possession of a firearm during a felony.

This instruction was adopted in 1981 and amended in 2011 [73 So. 3d 136] and 2019.

3.3(b) AGGRAVATION OF A CRIME WHEN COMMITTED BY AN UNAUTHORIZED ALIEN

§ 775.0848, Fla. Stat.

Give if the same jury that decided guilt on the underlying crime is determining in a bifurcated proceeding whether the defendant was an unauthorized alien.

Now that you have found (defendant) **committed** (insert crime[s])**, you must also determine whether the State proved beyond a reasonable doubt that the defendant was an unauthorized alien at the time [he] [she] committed [that] [those] crime[s].**

§ 908.111, Fla. Stat.

An "unauthorized alien" is a person who is unlawfully present in the United States according to the terms of the federal Immigration and Nationality Act.

The federal Immigration and Nationality Act states (insert appropriate provisions from 8 U.S.C. ss. 1101 et seq)**.**

A verdict form will be provided for you to make this determination.

Comments

A sample verdict form for this finding is provided in instruction 3.12.

This instruction was adopted on September 12, 2025.

3.3(c) AGGRAVATION OF A FELONY BY COMMITTING AN AGGRAVATED BATTERY

§ 775.087(1), Fla. Stat.

If you find that (defendant) **committed** (felony as identified by § 775.087(1), Fla. Stat.) **and you also find beyond a reasonable doubt that during the commission of the crime the defendant committed an aggravated battery, you should find the defendant guilty of** (felony) **with an aggravated battery.**

Definition.

"**Aggravated battery" is legally defined as** (adapt, as required by the allegations and evidence, from Instructions 8.4 or 8.4(a)).

If you find that (defendant) **committed** (felony, as identified in § 775.087(1), Fla. Stat.) **but you are not convinced beyond a reasonable doubt that [he] [she] committed an aggravated battery, then you should find the defendant guilty only of** (felony)**.**

Comments

This instruction should not be given in conjunction with the instructions pertaining to any felony in which the use of a weapon or firearm is an essential element.

This instruction was adopted July 1992 and amended in 2011.

3.3(d) POSSESSION OF A [FIREARM] [DESTRUCTIVE DEVICE] [AND DISCHARGE] [CAUSING [GREAT BODILY HARM] [DEATH]]

§ 775.087(2), Fla. Stat.

Give if applicable.

If you find that (defendant) **committed** (felony identified in §775.087(2)(a)3, Fla. Stat.) **and you also find beyond a reasonable doubt that during the commission of the crime, [he] [she] discharged a [firearm] [destructive device], and in doing so, caused [great bodily harm to] [the death of]** (victim)**, you should find the defendant guilty of** (felony) **with discharge of a [firearm] [destructive device] causing [great bodily harm] [death].**

Wheeler v. State, 203 So. 3d 1007 (Fla. 4th DCA 2016).

"Great bodily harm" means great as distinguished from slight, trivial, minor, or moderate harm, and as such does not include mere bruises.

Give if applicable.

If you find that (defendant) **committed** (felony identified in § 775.087(2)(a)2, Fla. Stat.) **and you also find beyond a reasonable doubt that during the commission of the crime, [he] [she] discharged a [firearm] [destructive device], you should find the defendant guilty of** (felony) **with discharge of a [firearm] [destructive device].**

If you find that (defendant) **committed** (felony listed in § 775.087(2)(a)1, Fla. Stat.) **and you also find beyond a reasonable doubt that during the commission of the crime, [he] [she] actually possessed [a firearm] [a destructive device], you should find the defendant guilty of** (felony) **with actual possession of a [firearm] [destructive device].**

§ 790.001, Fla. Stat.

A "firearm" is legally defined as any weapon, including a starter gun, which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; any destructive device; or any machine gun. [The term "firearm" does not include an antique firearm unless the antique firearm is used in the commission of a crime.]

§ 790.001, Fla. Stat., contains the definitions of "antique firearm" and "destructive device."

Give a or b or both as applicable. § 775.087(4), Fla. Stat.

To "actually possess" a firearm means that the defendant

a. carried a firearm on [his] [her] person.

or

b. had a firearm within immediate physical reach with ready access with the intent to use the firearm during the commission of the crime.

Comment

This instruction was adopted in 1992 [603 So. 2d 1175] and amended in 2008 [995 So. 2d 489], and 2019.

3.3(e) AGGRAVATION OF A FELONY BY WEARING A HOOD, MASK, OR OTHER DEVICE TO CONCEAL IDENTITY

§ 775.0845, Fla. Stat.

If you find that (defendant) **committed** (crime charged) **and you also find beyond a reasonable doubt that** (defendant) **was personally wearing a hood, mask, or other device that concealed [his] [her] identity, you should find** (defendant) **guilty of** (crime charged) **while wearing a device that concealed [his] [her] identity.**

If you find that (defendant) **committed** (crime charged) **but you are not convinced beyond a reasonable doubt that [he] [she] personally wore a hood, mask, or other device that concealed [his] [her] identity, then you should find the defendant guilty only of** (crime charged)**.**

Comments

A defendant's offense may not be reclassified under this provision unless he or she personally wore a device concealing his or her identity during the felony. See *Wright v. State*, 810 So. 2d 873 (Fla. 2002).

This instruction was adopted in July 1997 and amended in 2011.

3.3(f) AGGRAVATION OF A CRIME BY SELECTING A VICTIM BASED ON PREJUDICE

§ 775.085, Fla. Stat. and § 775.0863, Fla. Stat.

If you find that (defendant) **committed** (crime charged or a lesser included crime) **and you also find beyond a reasonable doubt that** (defendant)

1. **perceived, knew, or had reasonable ground to perceive or know** (victim's) **[race] [color] [ancestry] [ethnicity] [religion] [sexual orientation] [national origin] [homeless status] [mental or physical disability] [advanced age], and**

2. **intentionally selected** (victim) **because of that perception or knowledge,**

then you should find (defendant) **guilty of** (crime charged or lesser included crime) **aggravated by the intentional selection of** (victim) **based on prejudice.**

If you find that (defendant) **committed** (crime charged or a lesser included crime) **beyond a reasonable doubt, but you are not convinced beyond a reasonable doubt that [he] [she] did so by intentionally selecting** (victim) **based on prejudice, then you should find [him] [her] guilty of only** (crime charged or a lesser included crime)**.**

Definitions. Give if applicable.

§ 775.0863(1)(b), Fla. Stat.

"Mental or physical disability" means a condition of physical or mental incapacitation due to a developmental disability, organic brain damage, or mental illness, and has one or more physical or mental limitations that restrict the person's ability to perform the normal activities of daily living.

§ 775.085(1)(b)1, Fla. Stat.

"Advanced age" means that the person is older than 65 years of age.

§ 775.085(1)(b)2, Fla. Stat.

"Homeless status" means the person lacks a fixed, regular, and adequate nighttime residence; or has a primary nighttime residence that is either (1) a supervised publicly or privately operated shelter designed to provide temporary living accommodations or (2) a public or private place

not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

Comments

Proof that the defendant intentionally selected the victim is required by *State v. Stalder*, 630 So. 2d 1072 (Fla. 1994).

This instruction was adopted in 1997 [697 So.2d 84] and amended in 2000 [765 So. 2d 692], 2007 [965 So. 2d 811], 2011 [73 So. 3d 136], and 2016.

3.3(g) BIFURCATED TRIAL INSTRUCTION – PHASE TWO

Give in phase two of a bifurcated jury trial in which the State alleges the Defendant is guilty of a felony based upon a second or subsequent conviction. (e.g. Felony Battery; Felony DUI-BUI; Felony Driving with License Cancelled, Revoked, or Suspended; Felony Petit Theft; Felony Voyeurism; etc.)

Note to Judge: Review relevant statutes to determine whether an adjudication of guilt is necessary to constitute a conviction.

You have found (defendant) **guilty of** (insert name of charged offense). **You must now determine beyond a reasonable doubt whether:**

Give a or b as applicable.

a. (Defendant) **was previously convicted of** (insert name of charged offense) **prior to** (insert date of charged offense in this case).

b. (Defendant) **was previously convicted of** (insert name of charged offense) (insert number of prior convictions alleged in indictment or information) **times.**

Comment

The State must prove the prior conviction(s), unless waived, or stipulated to, by the defense, beyond a reasonable doubt in phase two of the bifurcated trial. The State and the court should accept the defendant's stipulation to the prior conviction(s). *State v. Harbaugh*, 754 So. 2d 691, 694 (Fla. 2000).

This instruction was adopted in 2010.

3.3(h) WILLFUL BLINDNESS

Do not give if there is no evidence supporting an inference of deliberate ignorance or if the evidence is consistent only with a theory of actual knowledge.

In some cases, the issue to be determined is whether the defendant had knowledge of a certain fact. Florida law recognizes a concept known as willful blindness, which is sometimes referred to as "deliberate avoidance of positive knowledge." Willful blindness occurs when a person has his or her suspicion aroused about a particular fact, realized its probability, but deliberately refrained from obtaining confirmation because he or she wanted to remain in ignorance. A person who engages in willful blindness is deemed to have knowledge of that fact.

Comments

See *Desilien v. State*, 595 So. 2d 1046 (Fla. 4th DCA 1992); *Hallman v. State,* 633 So. 2d 1116 (Fla. 3d DCA 1994); *Hale v. State,* 838 So. 2d 1185 (Fla. 5th DCA 2003).

This instruction was adopted in 2013.

3.3(i) DOMESTIC VIOLENCE

§ 741.281, Fla. Stat.; § 741.283(1), Fla. Stat.

Give only if § 741.281, Fla. Stat., is charged. The statute requires a minimum 1 year of probation with the batterers' intervention program as a condition of probation unless the judge states why the batterers' intervention program is inappropriate.

If you find (defendant) **guilty of committing a[n] [Assault] [Aggravated Assault] [Battery] [Aggravated Battery] [Sexual Battery] [Stalking] [Aggravated Stalking] [Kidnapping] [False Imprisonment] [or] [any crime that resulted in physical injury or death] upon** (victim)**, you must further determine if the State proved beyond a reasonable doubt that** (defendant) **was a family or household member of** (victim).

Give only if § 741.283(1)(a), Fla. Stat., is charged. The statute requires a certain number of days in jail depending on priors, however, mandatory jail is not required if the judge sentences the defendant to prison or withholds adjudication.

If you find (defendant) **guilty of committing a[n] [Assault] [Aggravated Assault] [Battery] [Aggravated Battery] [Sexual Battery] [Stalking] [Aggravated Stalking] [Kidnapping] [False Imprisonment] [or] [a crime that resulted in physical injury or death] upon** (victim)**, you must further determine if the State proved the following two elements beyond a reasonable doubt:**

1. (Defendant) **was a family or household member of** (victim)**.**

2. (Defendant) **intentionally caused bodily harm to** (victim)**.**

Give only if § 741.283(1)(b), Fla. Stat., is charged. The statute requires a certain number of days in jail depending on priors, however, mandatory jail is not required if the judge sentences the defendant to prison or withholds adjudication.

If you find (defendant) **guilty of committing a[n] [Assault] [Aggravated Assault] [Battery] [Aggravated Battery] [Sexual Battery] [Stalking] [Aggravated Stalking] [Kidnapping] [False Imprisonment] [or] [any crime that resulted in physical injury or death] upon** (victim)**, you must further determine if the State proved the following five elements beyond a reasonable doubt:**

1. (Defendant) **was a family or household member of** (victim)**.**

2. (Defendant) **intentionally caused bodily harm to** (victim)**.**

3. **The [Assault] [Aggravated Assault] [Battery] [Aggravated Battery] [Sexual Battery] [Stalking] [Aggravated Stalking] [Kidnapping] [False Imprisonment] [crime that resulted in physical injury or death] took place in the presence of** (child).

4. **At the time of the crime,** (child) **was under 16 years of age.**

5. (Child) **was a family or household member of** (victim) **or** (defendant)**.**

Give in all cases where minimum domestic violence sentence is at issue. § 741.281, Fla. Stat. or § 741.283), Fla. Stat.

"Family or household member" means spouses, former spouses, persons related by blood or marriage, persons who are presently residing together as if a family or who have resided together in the past as if a family, and persons who are parents of a child in common regardless of whether they have been married. With the exception of persons who have a child in common, the family or household members must be currently residing or have in the past resided together in the same single dwelling unit.

Comments

Alleyne v. United States, 570 U.S. 99 (2013), requires that any fact that increases the required minimum sentence must be found by the jury. Accordingly, it is necessary to have jury findings for mandatory sentencing provisions in cases where domestic violence is alleged. See Bethea v. State, 319 So. 3d 666 (Fla. 4th DCA 2021). However, because *Apprendi v. New Jersey*, 530 U.S. 466 (2000) exempts recidivism from jury fact-finding, it is unlikely that the existence of domestic violence priors, which leads to an increase in the mandatory number of days in jail, require a jury finding.

As of March 2022, the phrase "in the presence of a child" has not been interpreted for this statute. In the context of Lewd and Lascivious Act in Presence of a Child, § 800.04(3), Fla. Stat., the same phrase was interpreted to mean that the child must have seen, heard, or otherwise sensed that the act was taking place. *State v. Werner,* 609 So. 2d 585 (Fla. 1992).

This instruction was adopted on April 1, 2022.

3.3(j) AGGRAVATION OF TRAFFICKING IN [FENTANYL] [INSERT RELEVANT CONTROLLED SUBSTANCE]

§ 893.135(1)(c)4.c., Fla. Stat.

If you find that (defendant) **committed Trafficking in [Fentanyl] [**(insert relevant substance listed in § 893.13(1)(i)1.a.-f., Fla. Stat.)**], you must also determine whether the State proved the following six elements beyond a reasonable doubt:**

1. (Defendant) **knowingly sold or delivered [**(insert relevant substance listed in § 893.13(1)(i)1.a.-f., Fla. Stat.)**] [a mixture containing** (insert relevant substance listed in § 893.13(1)(i)1.a.-f., Fla. Stat.)**].**

2. **At the time of the sale or delivery,** (defendant) **was 18 years of age or older.**

3. **The sale or delivery was to a person less than 18 years of age.**

4. **At the time of the sale or delivery,** (defendant) **knew that the person that [he] [she] sold or delivered the [**(insert relevant substance listed in § 893.13(1)(i)1.a.-f., Fla. Stat.)**] [a mixture containing** (insert relevant substance listed in § 893.13(1)(i)1.a.-f., Fla. Stat.)**] to was less than 18 years of age.**

5. **The [**(insert relevant substance listed in § 893.13(1)(i)1.a.-f., Fla. Stat.)**] [mixture containing** (insert relevant substance listed in § 893.13(1)(i)1.a.-f., Fla. Stat.)**] sold or delivered by the defendant weighed 4 grams or more.**

6. **The substance or mixture sold or delivered by the defendant was in a form that resembled, or was mixed, granulated, absorbed, spray-dried, or aerosolized as or onto, coated on, in whole or in part, or solubilized with or into, a product, when such product or its packaging further had at least one of the following attributes:**

    a. **Resembled the trade dress of a branded food product, consumer food product, or logo food product; or,**

    b. **Incorporated an actual or fake registered copyright, service mark, or trademark; or,**

    c. **Resembled candy, cereal, a gummy, a vitamin, or a chewable product, such as a gum or gelatin-based product; or,**

d. Contained a cartoon character imprint.

Definitions. § 893.02, Fla. Stat. Give if applicable.

"Mixture" means any physical combination of two or more substances, including, but not limited to, a blend, an aggregation, a suspension, an emulsion, a solution, or a dosage unit, whether or not such combination can be separated into its components by physical means, whether mechanical or thermal.

"Sell" means to transfer or deliver something to another person in exchange for money or something of value or a promise of money or something of value.

"Delivery" means the actual, constructive, or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship.

Comment

The instruction was adopted on March 8, 2024.

3.4 LESSER INCLUDED CRIMES

Give before reading charges on lesser included crimes.

If the evidence does not convince you that the defendant committed the main crime[s] of which [he] [she] is accused, there may be sufficient evidence that [he] [she] committed a lesser included crime [or crimes]. In other words, if you decide the main accusation has not been proved beyond a reasonable doubt, you will need to decide if the State proved beyond a reasonable doubt that the defendant is guilty of a lesser included crime. The lesser included crime[s] of (crime charged) **[is] [are]:**

Comments

Judges must instruct on crimes listed in Category One in the chart that follows the individual instructions absent an agreement by the parties and assuming no other legal impediment such as the statute of limitations. The reason for the mandatory instruction is that Category One contains a list of those crimes that must have been committed if the greater crime was committed or that require a jury instruction because of Florida Rule of Criminal Procedure 3.490.

Prosecutors can, however, draft a charging document in a way that creates a lesser included offense for a non-Category One crime. In those cases, if crime(s) other than the main crime were charged AND if there were evidence elicited that supported the elements of any lesser crime charged, the judge must instruct on the lesser crime(s), assuming no other legal impediment such as the statute of limitations. Both prongs (crime was charged and sufficient evidence was elicited) must be met because it is improper to find guilt on a crime either not charged (unless the parties agreed to the instruction) or not supported by the evidence.

The Criminal Jury Instructions Committee has listed commonly charged lesser included crimes in the Category Two boxes. However, the Category Two list in the standard instructions is not exhaustive.

If there are no lesser included crimes, this instruction must not be given.

An instruction on attempt must not be given if the only evidence proves a completed crime. *Douglas v. State,* 239 So. 3d 157 (Fla. 162 (Fla. 3d DCA 2018).

This instruction was adopted in 1981 and amended on September 5, 2025.

3.5(a) PRINCIPALS

§ 777.011, Fla. Stat.

If the defendant helped another person or persons [commit] [attempt to commit] a crime, the defendant is a principal and must be treated as if [he] [she] had done all the things the other person or persons did if the State proved beyond a reasonable doubt:

1. **the defendant intended the crime to occur;**

   and

2. **the defendant did some act or said something that was intended to and that did incite, cause, encourage, assist, or advise the other person or persons to [actually commit] [attempt to commit] the crime.**

Give as applicable.

To be a principal, the defendant does not have to be present when the crime is [committed] [or] [attempted].

[Attempted] Homicide cases.

For [First Degree Premeditated Murder] [Attempted First Degree Premeditated Murder], the State must prove the defendant intended that the killing of (victim) **occur**.

For [First Degree Felony Murder] [Second Degree Murder] [Attempted Second Degree Murder] [Third Degree Felony Murder] [Attempted Felony Murder] [Attempted Second Degree Murder], it is not necessary for the State to prove the defendant intended the death of (victim)**.**

For cases where the criminal statute includes a higher degree because a firearm, deadly weapon, or weapon was carried during the commission of the crime, such as armed robbery, armed burglary, and armed kidnapping. Jones v. State, 648 So. 2d 1210 (Fla. 3d DCA 1995).

It is not necessary for a principal to know every detail of how a[n] (name of crime) **will be committed as long as the principal intended the** (name of crime) **to occur and did some act or said something that was intended to help and did help the** (name of crime) **occur. To be found guilty of a[n] [Attempted]** (name of crime) **with a [Firearm] [Deadly Weapon] [Weapon] as a principal, it is not necessary for the State to prove a defendant knew another participant of the [Attempted]** (name of crime) **[would be] [was] armed.**

Comment

This instruction was adopted in May 1987, and was amended in July 1990, July 1992, December 1995, and on December 15, 2023.

3.5(b) PRINCIPALS — WHEN ACTIVE PARTICIPANT HIRED BY DEFENDANT
§ 777.011, Fla. Stat.

If the defendant paid or promised to pay another person or persons to [commit] [attempt to commit] a crime, the defendant is a principal and must be treated as if [he] [she] had done all the things the person who was promised or received the money did if the State proved beyond a reasonable doubt:

1. **the defendant intended the crime to occur; and**

2. **[he] [she] made or promised the payment in exchange for the commission or promise to commit the crime or to help commit the crime; and**

3. **the [crime] [attempt] was committed by** (the other person)**.**

To be a principal, the defendant does not have to be present when the crime is [committed] [or] [attempted].

For cases where the criminal statute includes a higher degree because a firearm, deadly weapon, or weapon was carried during the commission of the crime, such as armed robbery, armed burglary, and armed kidnaping. Jones v. State, 648 So. 2d 1210 (Fla. 3d DCA 1995).

It is not necessary for a principal to know every detail of how a[n] (name of crime) **will be committed as long as the principal intended the** (name of crime) **to occur and did some act or said something that was intended to help and did help the** (name of crime) **occur. To be found guilty of a[n] [Attempted]** (name of crime) **with a [Firearm] [Deadly Weapon] [Weapon] as a principal, it is not necessary for the State to prove a defendant knew another participant of the [Attempted]** (name of crime) **[would be] [was] armed.**

Comment

This instruction was adopted in 1981 and was amended in July 1992, July 1997, and on December 15, 2023.

3.6(a) INSANITY

An issue in this case is whether (defendant) **was insane when the crime allegedly was committed.**

A person is considered to be insane when:

1. **[He] [She] had a mental infirmity, disease, or defect.**

2. **Because of this condition**

   a. **[he] [she] did not know what [he] [she] was doing or its consequences or**

   b. **although [he] [she] knew what [he] [she] was doing and its consequences, [he] [she] did not know it was wrong.**

All persons are presumed to be sane. The defendant has the burden of proving the defense of insanity by clear and convincing evidence. Clear and convincing evidence is evidence that is precise, explicit, lacking in confusion, and of such weight that it produces a firm belief, without hesitation, about the matter in issue.

In determining the issue of insanity, you may consider the testimony of expert and nonexpert witnesses. The question you must answer is not whether the defendant is insane today, or has ever been insane, but whether instead the defendant was insane at the time the crime allegedly was committed.

Give if applicable.

A defendant who believed that what [he] [she] was doing was morally right is not insane if the defendant knew that what [he] [she] was doing violated societal standards or was against the law.

Give if applicable.

Unrestrained passion or ungovernable temper is not insanity, even though the normal judgment of the person is overcome by passion or temper.

**Give if applicable and if requested.*

Although insanity is a defense, mental or psychiatric conditions not constituting insanity are not defenses to any crime in this case. Unless

there is clear and convincing evidence that (defendant) **was insane at the time of the crime(s) alleged, any evidence of mental illness, an abnormal mental condition, or diminished mental capacity may not be taken into consideration to show that [he] [she] lacked the specific intent or did not have the state of mind essential to proving that [he] [she] committed the crime[s] charged [or any lesser crime].**

Give if applicable.

If the evidence establishes that the defendant had been adjudged insane by a court, and has not been judicially restored to legal sanity, then you should assume the defendant was insane at the time of commission of the alleged crime, unless the evidence convinces you otherwise.

Give in all cases.

If you find that (defendant) **committed** (crime alleged or lesser-included crimes of the crime alleged) **but you find by clear and convincing evidence that the defendant was insane, then you should find [him] [her] not guilty by reason of insanity.**

If your verdict is that the defendant is not guilty by reason of insanity, that does not necessarily mean [he] [she] will be released from custody. I must conduct further proceedings to determine if the defendant should be committed to a mental hospital, or given other outpatient treatment or released.

Comments

*This paragraph should be read only where it is applicable and appropriate under the facts of the case. "[D]iminished capacity is not a viable defense in Florida." *Evans v. State*, 946 So. 2d 1, 11 (Fla. 2006); *Lukehart v. State*, 70 So. 3d 503, 515 (Fla. 2011). Evidence of an abnormal mental condition not constituting legal insanity is inadmissible "for the purpose of proving either that the accused could not or did not entertain the specific intent or state of mind essential to proof of the offense, in order to determine whether the crime charged, or a lesser degree thereof, was in fact committed." *Chestnut v. State*, 538 So. 2d 820 (Fla. 1989). In some cases, however, such evidence, or something that jurors might interpret as such evidence, might be admitted presumably for another purpose or might simply be obvious or apparent from the facts of the case. In such cases, it could be appropriate in the court's discretion to give this instruction to avoid the possibility of juror confusion.

See Instruction 3.6(p) for an instruction regarding abnormal mental conditions not constituting insanity.

Factual or logical inconsistencies, other than true inconsistent verdicts, are permissible in Florida. A jury may therefore find a defendant not guilty by reason of insanity for one crime and guilty for another crime, even though the two crimes were committed during the same episode. *State v. Cappalo*, 932 So. 2d 331 (Fla. 2d DCA 2006). As a result, in cases where the defense is insanity, each count should have its own place on the verdict form for the option of not guilty by reason of insanity.

This instruction was adopted in 1982 [431 So. 2d 600] and was amended in 1986 [483 So. 2d 428], 1994 [636 So. 2d 502], 2006 [939 So. 2d 1052], 2017 [213 So. 3d 680], and 2019.

3.6(b) INSANITY — HALLUCINATIONS

Give only for offenses occurring before June 19, 2000. See section 775.027, Florida Statutes.

An issue in this case is whether (defendant) was insane when the crime allegedly was committed.

A person is considered to be insane when:

1. **The person had a mental infirmity, disease, or defect.**

2. **Because of this condition, the person had hallucinations or delusions which caused the person to honestly believe to be facts things that are not true or real.**

The guilt or innocence of a person suffering from such hallucinations or delusions is to be determined just as though the hallucinations or delusions were actual facts. If the act of the person would have been lawful had the hallucinations or delusions been the actual facts, the person is not guilty of the crime.

All persons are presumed to be sane. However, if the evidence causes you to have a reasonable doubt concerning the defendant's sanity, then the presumption of sanity vanishes and the State must prove beyond a reasonable doubt that the defendant was sane.

In determining the issue of insanity, you may consider the testimony of expert and nonexpert witnesses. The question you must answer is not whether the defendant is insane today, or has ever been insane, but simply if the defendant was insane at the time the crime allegedly was committed.

Give if applicable.

Unrestrained passion or ungovernable temper is not insanity, even though the normal judgment of the person be overcome by passion or temper.

Give if applicable.

If the evidence establishes that the defendant had been adjudged insane by a court, and has not been judicially restored to legal sanity, then you should assume the defendant was insane at the time of commission of the alleged crime, unless the evidence convinces you otherwise.

If you find that (defendant) **committed the crime but have a reasonable doubt that [he] [she] was sane at that time, then you should find [him] [her] not guilty by reason of insanity.**

If your verdict is that the defendant is not guilty by reason of insanity, that does not necessarily mean [he] [she] will be released from custody. I must conduct further proceedings to determine if the defendant should be committed to a mental hospital or given other outpatient treatment or released.

Comment

If voluntary intoxication is raised by the defense, see 3.6(d). This instruction was adopted July 1997 [697 So.2d 84] and amended in 2006.

3.6(c) PSYCHOTROPIC MEDICATION

If the defendant's ability to proceed to trial is dependent on the use of psychotropic medication, give if requested by the defense, at the beginning of the trial and in the charge to the jury. See Fla. R. Crim. P. 3.215(c).

(Defendant) **currently is being administered psychotropic medication under medical supervision for a mental or emotional condition.**

Psychotropic medication is any drug or compound affecting the mind, behavior, intellectual functions, perception, moods, or emotion and includes anti-psychotic, anti-depressant, anti-manic, and anti-anxiety drugs.

You shall not allow the defendant's present condition in court or any apparent side effect from the medication that you may have observed in court to affect your deliberations.

Comment

This instruction was adopted in 1994 [636 So. 2d 502] and amended in 2016.

3.6(d) VOLUNTARY INTOXICATION

§ 775.051, Fla. Stat.

Give if applicable and if requested and only for offenses occurring on or after October 1, 1999. If there was evidence of involuntary intoxication, give instruction 3.6(e)(1) or (2), if requested and applicable.

Voluntary intoxication resulting from the use of [alcohol] [or] [a controlled substance] is not a defense to a crime. Evidence of a defendant's voluntary intoxication may not be taken into consideration to show that [he] [she] lacked the specific intent to commit any crime. A person is voluntarily intoxicated if he or she knowingly consumed a substance that he or she knew or should have known could cause intoxication.

Give only for offenses occurring before October 1, 1999.

A defense asserted in this case is voluntary intoxication by use of [alcohol] [drugs].

The use of [alcohol] [drugs] to the extent that it merely arouses passions, diminishes perceptions, releases inhibitions, or clouds reason and judgment does not excuse the commission of a criminal act.

However, where a certain mental state is an essential element of a crime, and a person was so intoxicated that [he] [she] was incapable of forming that mental state, the mental state would not exist and therefore the crime could not be committed.

As I have told you, [the intent to (specific intent charged)**] [premeditated design to kill] [**(other mental state)**] is an essential element of the crime of** (crime charged)**.**

Therefore, if you find from the evidence that the defendant was so intoxicated from the voluntary use of [alcohol] [drugs] as to be incapable of forming [the intent to (specific intent charged)**] [premeditated design to kill] [**(other mental state)**], or you have a reasonable doubt about it, you should find the defendant not guilty of** (crime charged)**.**

Give when other applicable crimes are general intent crimes.

Voluntary intoxication is not a defense to (lesser included crimes) (crimes charged in additional counts)**.**

Comment

This instruction was adopted in 1987 [508 So. 2d 1221] and amended in 2006 [939 So. 2d 1052] and 2013.

3.6(e)(1) INVOLUNTARY INTOXICATION

§ 775.051 Fla. Stat.

Voluntary intoxication is not a defense. A person is voluntarily intoxicated if he or she knowingly consumed a substance that he or she knew or should have known could cause intoxication. However, a defense asserted in this case is that the defendant was involuntarily intoxicated. This defense applies when:

a. For specific intent crimes. Lucherini v. State, 932 So. 2d 521 (Fla. 4th DCA 2006); Cobb v. State, 884 So. 2d 437 (Fla. 1st DCA 2004).

1. **(**Defendant**) was lawfully prescribed [**(name of Chapter 893 substance)**] by a practitioner.**

2. (Defendant**) [used] [consumed] [injected] [**(name of Chapter 893 substance)**] as it was prescribed and directed by the practitioner.**

3. **As a result of taking [**(name of Chapter 893 substance)**] as prescribed,** (defendant) **was so intoxicated that [he] [she] could not form [a premeditated design to kill] [the intent to** (specific intent charged)**] at the time of the offense.**

If you find that (defendant) **was involuntarily intoxicated to the extent of being incapable of forming [a premeditated design to kill] [the intent to** (specific intent charged)**], or if you have a reasonable doubt about it, you should find the defendant not guilty of** (crime charged or appropriate lesser-included offenses)**.**

b. For DUI. Carter v. State, 710 So. 2d 110 (Fla. 4th DCA 1998).

1. (Defendant) **unknowingly ingested a substance that caused [him] [her] to become impaired, and**

2. (Defendant) **drove [or was in actual physical control of] a vehicle without the knowledge that [he] [she] either was or would become impaired while driving [or in actual physical control of] a vehicle.**

Give if applicable.

In determining the issue of involuntary intoxication, you may consider the testimony of expert and non-expert witnesses.

§§ 775.051, 893.02, Fla. Stats.

"Practitioner" means a physician licensed under chapter 458, a dentist licensed under chapter 466, a veterinarian licensed under chapter 474, an osteopathic physician licensed under chapter 459, an advanced practice registered nurse licensed under chapter 464, a naturopath licensed under chapter 462, a certified optometrist licensed under chapter 463, a psychiatric nurse as defined in s. 394.455*, a podiatric physician licensed under chapter 461, or a physician assistant licensed under chapter 458 or chapter 459, provided such practitioner holds a valid federal controlled substance registry number.

Comments

For specific intent crimes, if the defendant claims that involuntary intoxication prevented him or her from forming a specific intent, then such a defense is an attack on an element of the crime. As such, the State retains the burden of proving the specific intent element beyond a reasonable doubt.

Daniels v. State, 313 So. 3d 247 (Fla. 1st DCA 2021) holds that involuntary intoxication is not a defense to a general intent crime. However, in *Carter v. State*, 710 So. 2d 110 (Fla. 4th DCA 1998), the Fourth District held that involuntary intoxication is a defense to DUI.

An involuntary intoxication defense would not be an attack on an element of DUI. Rather such a claim would be based on the idea that the defendant should be found not guilty because of a fact that is separate from any element of the crime. As such, involuntary intoxication is an affirmative defense in a DUI case. Because there is no statute for this affirmative defense and because there is no case law on the issue as of August 2025, trial judges must decide which party has the burden of persuasion on the affirmative defense in a DUI case. Under the common law, which may apply because of § 775.01, Fla. Stat., a defendant bears the burden of proving an affirmative defense by a preponderance of the evidence. *Dixon v. United States*, 548 U.S. 1 (2006). However, the Florida judiciary has sometimes allocated the burden of persuasion to the state to disprove an affirmative defense beyond a reasonable doubt once a defendant satisfies his or her burden of production. In sum, trial judges will need to draft a special instruction that addresses the burden of persuasion for involuntary intoxication claims in DUI trials.

*If necessary, define "psychiatric nurse" from § 394.455, Fla. Stat.

This instruction was adopted in 2013 [122 So. 3d 302] and was amended in 2019 [272 So. 3d 1210], and on September 12, 2025.

3.6(e)(2) INVOLUNTARY INTOXICATION RESULTING IN INSANITY

§ 775.051 Fla. Stat.

Voluntary intoxication is not a defense. A person is voluntarily intoxicated if he or she knowingly consumed a substance that he or she knew or should have known could cause intoxication.

However, a defense asserted in this case is that the defendant was involuntarily intoxicated to the point of insanity at the time the crime was allegedly committed. A person is considered involuntarily intoxicated to the point of insanity when:

Give a or b as applicable.

a. § 775.051, Fla. Stat.; Brancaccio v. State, 698 So. 2d 597 (Fla. 4th DCA 1997); Cobb v. State, 884 So. 2d 437 (Fla. 1st DCA 2004).

1. (Defendant**) was lawfully prescribed [**(name of Chapter 893 substance)**] by a practitioner.**

2. (Defendant**) [used] [consumed] [injected] [**(name of Chapter 893 substance)**] as it was prescribed and directed by the practitioner.**

3. As a result of taking [(name of Chapter 893 substance)**] as prescribed:**

a. (defendant) **did not know what [he] [she] was doing or its consequences or**

b. consequences, but did not know it was wrong.

b. Carter v. State, 710 So. 2d 110 (Fla. 4th DCA 1998).

1. (Defendant**), without any fault on [his] [her] part, [unknowingly ingested an intoxicating liquor, drug, or other substance] [knowingly ingested an intoxicating liquor, drug, or other substance because of force, fraud, duress, or trickery].**

2. As a result of consuming an intoxicating liquor, drug, or other substance:

a. (defendant) **did not know what [he] [she] was doing or its consequences or**

b. (defendant) **knew what [he] [she] was doing and its consequences, but did not know it was wrong.**

Give if applicable.

A defendant who believed that what [he] [she] was doing was morally right was not insane if [he] [she] knew that what [he] [she] was doing violated societal standards or was against the law.

Give if applicable.

§§ 775.051, 893.02(23) Fla. Stat.

"Practitioner" means a physician licensed pursuant to chapter 458, a dentist licensed pursuant to chapter 466, a veterinarian licensed pursuant to chapter 474, an osteopathic physician licensed pursuant to chapter 459, an advanced practice registered nurse licensed under chapter 464, a naturopath licensed pursuant to chapter 462, a certified optometrist licensed under chapter 463, a psychiatric nurse,* a podiatric physician licensed pursuant to chapter 461, or a physician assistant licensed under chapter 458 or chapter 459 provided such practitioner holds a valid federal controlled substance registry number.

In determining the issue of involuntary intoxication to the point of insanity, you may consider the testimony of expert and non-expert witnesses.

Give in all cases.

The [use of medication] [consumption of an intoxicating liquor, drug, or other substance] that merely arouses passions, diminishes perceptions, releases inhibitions, or clouds reason and judgment does not excuse the commission of a crime.

All persons are presumed to be sane. The defendant has the burden of proving the defense of involuntary intoxication to the point of insanity by clear and convincing evidence. Clear and convincing evidence is evidence that is precise, explicit, lacking in confusion, and of such weight that it produces a firm belief, without hesitation, about the matter in issue.

If you find that (defendant) **committed the crime charged [or any lesser-included offenses] but you find that [he] [she] proved by clear and convincing evidence that [he] [she] was involuntarily intoxicated to the point of insanity, you should find [him] [her] not guilty.**

Comments

The Legislature eliminated voluntary intoxication as a defense effective October 1, 1999.

*If necessary, define “psychiatric nurse” from § 394.455, Fla. Stat.

This instruction was adopted in 2013 [122 So. 3d 302] and amended in 2019.

3.6(f) JUSTIFIABLE [USE] [OR] [THREATENED USE] OF DEADLY FORCE

Trial judges must use great caution in deciding which statutes apply and which sections of this instruction should and should not be given. For example, § 782.02, Fla. Stat., and many statutes within Chapter 776 address the justifiable use or threatened use of deadly force; however, § 782.02, Fla. Stat., does not address the concept of stand-your-ground/no duty to retreat. Additionally, § 776.013(1), Fla. Stat., covers the situation where the defendant was in a dwelling and had the right to be there while §§ 776.012(1), and 776.031(2), Fla. Stats., cover other situations.

It is a defense to the crime[s] of (name[s] of relevant crime[s], including lesser-included offenses) **if the actions of** (defendant) **constituted the justifiable [use] [or] [threatened use] of deadly force.**

"Deadly force" means force likely to cause death or great bodily harm. "Great bodily harm" means great as distinguished from slight, trivial, minor, or moderate harm.

(Defendant) **does not have the burden of proving that [he] [she] was justified in [using] [or] [threatening to use] deadly force. Instead, for you to find the defendant guilty, the State must prove beyond a reasonable doubt the defendant was not justified in [using] [or] [threatening to use] deadly force.**

The law on the justifiable [use] [or] [threatened use] of deadly force is as follows:

Give if defendant is relying on § 776.012(2) or § 776.031(2), but is not relying on § 776.013(1) Fla. Stat.

If applicable, give the elements of the forcible felony listed in § 776.08, Fla. Stat., that defendant alleges victim was about to commit but omit any reference to a burden of proof. See Montijo v. State, 61 So. 3d 424 (Fla. 5th DCA 2011). The instruction may need to be modified in the event the forcible felony at issue is not a crime against a person.

(Defendant) **was justified in [using] [or] [threatening to use] deadly force if [he] [she] reasonably believed that such [force] [or] [threat of force] was necessary to prevent**

Give a. or b. or both.

a. imminent death or great bodily harm to [himself] [herself] [or] [another]

[or]

b. the imminent commission of (applicable forcible felony) **against [himself] [herself] [or] [another].**

The judge must give one, and only one, of the following two paragraphs to instruct on Florida law regarding the duty to retreat.

If it is undisputed by the parties that the defendant had no duty to retreat, give the following sentence.

(Defendant) **had no duty to retreat before [using] [or] [threatening to use] deadly force.**

If the parties dispute whether the defendant had a duty to retreat, give the following paragraph.

If (defendant) **was not committing any crime other than the alleged** (insert the charged crime(s) and any lesser included crimes for which the defendant is claiming self-defense or defense of others) **for which the defendant is claiming [self-defense] [or] [defense of others], and if [he] [she] was in a place where [he] [she] had a right to be, then the defendant had no duty to retreat before [using] [or] [threatening to use] deadly force. On the other hand, 1) if at the time** (defendant) **[used] [or] [threatened to use] deadly force, [he] [she] was committing a[n]** (insert the defendant's criminal activity, but that criminal activity cannot be the charged crime(s) for which the defendant is claiming self-defense or defense of others)**; or, 2) if at the time** (defendant) **[used] [or] [threatened to use] deadly force, [he] [she] was not in a place where [he] [she] had a right to be, then the defendant had a duty to retreat. The duty to retreat means the defendant had the legal obligation to use every reasonable means to avoid any danger before [using] [or] [threatening to use] deadly force. The law does not require the defendant to retreat if [he] [she] was placed in [imminent danger of death or great bodily harm] [or] [imminent danger of the commission of** (applicable forcible felony) **against [himself] [herself] and it would have increased [his] [her] own danger to retreat, or if retreat would have been futile. But if the defendant had a duty to retreat and if [he] [she] could have safely retreated, but did not do so, then [his] [her] [use] [or] [threatened use] of deadly force was not justifiable.**

Give if defendant is relying on § 776.013(1), Fla. Stat.

Before the existing Chapter 776 statutes became effective, case law such as De La Hoz v. State, 997 So. 2d 1198 (Fla. 3d DCA 2008) extended the Castle Doctrine to people in their place of employment while lawfully engaged in their occupations. If this extension of the Castle Doctrine is still good law, a person in

his or her place of employment while lawfully engaged in his or her occupation has no duty to retreat before using or threatening to use deadly force, even if he or she were otherwise engaged in criminal activity. The paragraph below can be modified to include a person in his or her place of employment while lawfully engaged in his or her occupation.

Give the elements of the applicable forcible felony that defendant alleges victim was about to commit but omit any reference to a burden of proof. See Montijo v. State, 61 So. 3d 424 (Fla. 5th DCA 2011). The instruction may need to be modified in the event that the forcible felony at issue is not a crime against a person.

If (defendant) **was in a [dwelling] [residence] in which [he] [she] had a right to be, [he] [she] had no duty to retreat and had the right to stand [his] [her] ground and [use] [or] [threaten to use] force, including deadly force if [he] [she] reasonably believed that such conduct was necessary to prevent**

Give a. or b. or both.

a. **imminent death or great bodily harm to [himself] [herself] [or] [another]**

   [or]

b. **the imminent commission of** (applicable forcible felony) **against [himself] [herself] [or] [another].**

Give if defendant is relying on § 782.02, Fla. Stat.

If necessary, give the elements of the felony that defendant alleges victim attempted to commit but omit any reference to a burden of proof. See Montijo v. State, 61 So. 3d 424 (Fla. 5th DCA 2011).

The use of deadly force is justifiable if (defendant) **reasonably believed that the force was necessary to prevent imminent death or great bodily harm to [himself] [herself] while resisting any attempt to**

Give a. or b. or c. or any combination.

a. **murder [him] [her].**

b. **commit** (applicable felony) **upon [him] [her].**

c. **commit** (applicable felony) **upon or in any dwelling house in which [he] [she] was present.**

Give if applicable. Force in resisting a law enforcement officer. § 776.051(1), Fla. Stat.

A person is not justified in [using force] [or] [threatening to use force] to resist an arrest by a law enforcement officer, or to resist a law enforcement officer who is engaged in the execution of a legal duty, if the law enforcement officer was acting in good faith and he or she is known, or reasonably appears, to be a law enforcement officer.

However, if an officer uses excessive force to make an arrest, then a person is justified in the [use] [or] [threatened use] of reasonable force to defend [himself] [herself] (or another)**, but only to the extent [he] [she] reasonably believes such [force] [or] [threat of force] is necessary.** *See § 776.012, Fla. Stat.; Ivester v. State, 398 So. 2d 926 (Fla. 1st DCA 1981); Jackson v. State, 463 So. 2d 372 (Fla. 5th DCA 1985).*

Give in all cases.

In deciding whether (defendant) **was justified in the [use] [or] [threatened use] of deadly force, you must consider the circumstances at the time the [force] [or] [threat of force] was used. The danger need not have been actual; however, to justify the [use] [or] [threatened use] of deadly force, the appearance of imminent danger must have been so real that the defendant actually believed the [use] [or] [threatened use] of deadly force was necessary. Moreover, to justify the [use] [or] [threatened use] of deadly force, a reasonably cautious and prudent person under the same circumstances would have believed the [use] [or] [threatened use] of deadly force was necessary.**

Presumption of fear (unlawful and forcible entry into dwelling, residence, or occupied vehicle). Give if applicable. § 776.013(2), Fla. Stat.

(Defendant) **is presumed to have held a reasonable fear of imminent peril of death or great bodily harm to [himself] [herself] [another] when [using] [or] [threatening to use] defensive force that was intended or likely to cause death or great bodily harm to another if:**

a. The person against whom the defensive force was [used] [or] [threatened to be used] was in the process of unlawfully and forcefully entering, or had unlawfully and forcibly entered, a dwelling, residence, or occupied vehicle, or if that person had removed or was attempting to remove another against that person's will from the dwelling, residence, or occupied vehicle;

and

b. (Defendant) **knew or had reason to believe that an unlawful and forcible entry or unlawful and forcible act was occurring or had occurred.**

Exceptions to Presumption of Fear. § 776.013(3)(a)-(3)(d), Fla. Stat. Give as applicable.

The presumption of reasonable fear of imminent death or great bodily harm does not apply if:

a. the person against whom the defensive force is [used] [or] [threatened to be used] has the right to be in [or is a lawful resident of the [dwelling] [residence]] [vehicle], such as an owner, lessee, or titleholder, and there is not an injunction for protection from domestic violence or a written pretrial supervision order of no contact against that person; or

b. the person or persons sought to be removed is a child or grandchild, or is otherwise in the lawful custody or under the lawful guardianship of, the person against whom the defensive force is [used] [or] [threatened to be used]; or

c. the person who [uses] [or] [threatens to use] defensive force is engaged in a criminal activity or is using the [dwelling] [residence] [occupied vehicle] to further a criminal activity; or

d. the person against whom the defensive force is [used] [or] [threatened to be used] is a law enforcement officer, who enters or attempts to enter a [dwelling] [residence] [vehicle] in the performance of [his] [her] official duties and the officer identified [himself] [herself] in accordance with any applicable law or the person [using] [or] [threatening to use] the force knew or reasonably should have known that the person entering or attempting to enter was a law enforcement officer. *If requested, give definition of "law enforcement officer" from § 943.10(14), Fla. Stat.*

§ 776.013(4), Fla. Stat. § 776.013(5), Fla. Stat. Give if applicable.

A person who unlawfully and by force enters or attempts to enter another's [dwelling] [residence] [occupied vehicle] is presumed to be doing so with the intent to commit an unlawful act involving force or violence.

"Dwelling" means a building or conveyance of any kind, including any attached porch, whether the building or conveyance is temporary or

permanent or mobile or immobile, which has a roof over it, including a tent, and is designed to be occupied by people lodging therein at night.

"Residence" means a dwelling in which a person resides either temporarily or permanently or is visiting as an invited guest.

"Vehicle" means a conveyance of any kind, whether or not motorized, which is designed to transport people or property.

Aggressor. § 776.041(1), Fla. Stat. Give if applicable and only in cases where the defendant is charged with either: a) an independent forcible felony, Martinez v. State, 981 So. 2d 449 (Fla. 2008); or b) felony murder, if the underlying felony is an independent forcible felony, Cook v. State, 192 So. 3d 681 (Fla. 2d DCA 2016).

Give the elements of the applicable forcible felony but omit any reference to a burden of proof. See Montijo v. State, 61 So. 3d 424 (Fla. 5th DCA 2011). The instruction may need to be modified in the event the forcible felony at issue is not a crime against a person.

The paragraph below should not be given if the defendant is claiming justifiable use of force for every crime charged. Woodsmall v. State, 164 So. 3d 696 (Fla. 5th DCA 2015).

However, the [use] [or] [threatened use] of deadly force is not justified if you find that (defendant) **was attempting to commit, committing, or escaping after the commission of** (applicable forcible felony listed in § 776.08, Fla. Stat.)**.**

Aggressor. § 776.041(2), Fla. Stat. Give if applicable.

Gibbs v. State, 789 So. 2d 443 (Fla. 4th DCA 2001).

However, the [use] [or] [threatened use] of deadly force is not justified if you find that (defendant) **used [force] [or] [the threat of force] to initially provoke the [use] [or] [threatened use] of force against [himself] [herself], unless:**

1. **the [force] [or] [threat of force] asserted toward the defendant was so great that [he] [she] reasonably believed that [he] [she] was in imminent danger of death or great bodily harm and had exhausted every reasonable means to escape the danger, other than [using] [or] [threatening to use] deadly force on** (victim)**.**

   [or]

2. in good faith, (defendant) **withdrew from physical contact with** (victim) **and clearly indicated to** (victim) **that [he] [she] wanted to withdraw and stop the [use] [or] [threatened use] of deadly force, but** (victim) **continued or resumed the [use] [or] [threatened use] of force.**

Prior threats. Give only if there is evidence of prior threats or difficulties.

If you find that (defendant)**, who because of prior threats or difficulties with** (victim)**, had reasonable grounds to believe that [he] [she] was in danger of death or great bodily harm at the hands of** (victim)**, you may consider this fact in determining whether the actions of** (defendant) **were those of a reasonable person.**

Specific act of victim known by defendant. Give if applicable.

If you find that at the time of the alleged (name[s] of relevant crime[s])**,** (defendant) **knew that** (victim) **had committed an act [or acts] of violence, you may consider that fact in determining whether** (defendant) **reasonably believed it was necessary for [him] [her] to [use] [or] [threaten to use] deadly force.**

Reputation of victim known by defendant. Give if applicable.

If you find that (victim) **had a reputation of being a violent and dangerous person and that [his] [her] reputation was known to** (defendant)**, you may consider this fact in determining whether the actions of** (defendant) **were those of a reasonable person in dealing with an individual of that reputation.**

Reputation of victim not necessarily known by defendant (to show victim acted in conformity with victim's character). Give if applicable.

If you find that (victim) **had a reputation of being a violent and dangerous person, you may consider this fact in determining whether [he] [she] was the initial aggressor.**

Physical abilities. Read in all cases.

In considering the issue of [self-defense] [defense of another], you may take into account the relative physical abilities and capacities of (defendant) **and** (victim)**.**

Unless the evidence establishes the force or threat of force was deadly or non-deadly as a matter of law or unless there is a stipulation that the use or threatened use of force was only deadly, instruction 3.6(g) must be given.The

discharge of a firearm, whether accidental or not, has been deemed to be the use of deadly force as a matter of law. Hosnedl v. State, 126 So. 3d 400 (Fla. 4th DCA 2013).

Comments

A defendant may have knowledge of a victim's prior specific acts of violence because he or she was present during the occurrence of the specific acts or because the defendant heard of the specific acts prior to the date of the alleged act of self-defense. *See Smith v. State*, 606 So. 2d 641 (Fla. 1st DCA 1992).

This instruction was adopted in 1981 and was amended in 1985 [477 So. 2d 985], 1999 [732 So. 2d 1044], 2000 [789 So. 2d 954], 2006 [930 So. 2d 612], 2008 [976 So. 2d 1081], 2010 [27 So. 3d 640], 2016 [191 So. 3d 411], 2018 [257 So. 3d 908], 2019 [285 So. 3d 1248], on May 5, 2023, and on May 21, 2024.

3.6(g) JUSTIFIABLE [USE] [OR] [THREATENED USE] OF NON-DEADLY FORCE

Because there are many statutes applicable to the justifiable use or threatened use of force, give only those sections of this instruction required by the evidence.

Unless the evidence establishes the force used was deadly or non-deadly as a matter of law, both 3.6(f) and 3.6(g) must be given. Mathis v. State, 863 So. 2d 464 (Fla. 1st DCA 2004). Only the discharge of a firearm, whether accidental or not, has been deemed to be the use of deadly force as a matter of law. Hosnedl v. State, 120 So. 3d 400 (Fla. 4th DCA 2013).

It is a defense to the crime[s] of (name[s] of relevant crime[s], including lesser-included offenses) **if the actions of** (defendant) **constituted the justifiable [use] [or] [threatened] of non-deadly force.**

"Non-deadly" force means force not likely to cause death or great bodily harm. "Great bodily harm" means great as distinguished from slight, trivial, minor, or moderate harm.

(Defendant) **does not have the burden of proving that [he] [she] was justified in [using] [or] [threatening to use] non-deadly force. Instead, for you to find the defendant guilty, the State must prove beyond a reasonable doubt the defendant was not justified in [using] [or] [threatening to use] non-deadly force.**

The law on the justifiable [use] [or] [threatened use] of non-deadly force is as follows:

Give if applicable. In defense of person. §§ 776.012(1), 776.013(1), Fla. Stats.

Give the elements of the applicable forcible felony listed in § 776.08, Fla. Stat., that defendant alleges victim was about to commit but omit any reference to burden of proof. See Montijo v. State, 61 So. 3d 424 (Fla. 5th DCA 2011). The instruction may need to be modified in the event the forcible felony at issue is not a crime against a person.

(Defendant**) was justified in [using] [or] [threatening to use] non-deadly force against** (victim) **and had no duty to retreat if [he] [she] reasonably believed that such conduct was necessary to defend [himself] [herself] [another] against**

Give a. and b. or both.

a. (victim's) **imminent use of unlawful force**

[or]

b. the imminent commission of (applicable forcible felony) **against [himself] [herself] [or] [another].**

Give if applicable. In defense of property. § 776.031(1), Fla. Stat.

(Defendant) **was justified in [using] [or] [threatening to use] non-deadly force against** (victim) **and had no duty to retreat if:**

1. (Victim) **[was about to trespass] [or] [was trespassing] or [was about to wrongfully interfere] [or] [was wrongfully interfering] with real property other than a dwelling or personal property;**

and

2. The real property other than a dwelling or personal property was lawfully in (defendant's) **possession, or in the possession of a member of [his] [her] immediate family or household, or in the possession of some person whose property [he] [she] was under a legal duty to protect;**

and

3. (Defendant) **reasonably believed that [his] [her] [use] [or] [threatened use] of force was necessary to prevent or terminate** (victim's) **wrongful behavior.**

Give if applicable. §§ 776.013(4), 776.013(5), Fla. Stat.

A person who unlawfully and by force enters or attempts to enter another's [dwelling] [residence] [occupied vehicle] is presumed to be doing so with the intent to commit an unlawful act involving force or violence.

"Dwelling" means a building or conveyance of any kind, including any attached porch, whether the building or conveyance is temporary or permanent or mobile or immobile, which has a roof over it, including a tent, and is designed to be occupied by people lodging therein at night.

"Residence" means a dwelling in which a person resides either temporarily or permanently or is visiting as an invited guest.

"Vehicle" means a conveyance of any kind, whether or not motorized, which is designed to transport people or property.

Give if applicable. Force in resisting a law enforcement officer. § 776.051(1), Fla. Stat.

A person is not justified in [using] [or] [threatening to use] force to resist an arrest by a law enforcement officer, or to resist a law enforcement officer who is engaged in the execution of a legal duty, if the law enforcement officer was acting in good faith and he or she is known, or reasonably appears, to be a law enforcement officer.

However, if an officer uses excessive force to make an arrest, then a person is justified in the [use] [or] [threatened use] of reasonable force to defend [himself] [herself] [another], but only to the extent [he] [she] reasonably believes such force is necessary. *See § 776.012, Fla. Stat.; Ivester v. State, 398 So. 2d 926 (Fla. 1st DCA 1981); Jackson v. State, 463 So. 2d 372 (Fla. 5th DCA 1985).*

Give in all cases.

In deciding whether (defendant) **was justified in the [use] [or] [threatened use] of non-deadly force, you must consider the circumstances at the time the [force] [or] [threat of force] was used. The danger need not have been actual; however, to justify the [use] [or] [threatened use] of non-deadly force, the appearance of imminent danger must have been so real that the defendant actually believed the [use] [or] [threatened use] of non-deadly force was necessary. Moreover, a reasonably cautious and prudent person under the same circumstances would have believed the [use] [or] [threatened use] of non-deadly force was necessary.**

Aggressor. § 776.041(1), Fla. Stat. Give if applicable and only in cases where the defendant is charged with either: a) an independent forcible felony, Martinez v. State, 981 So. 2d 449 (Fla. 2008); or b) felony murder, if the underlying felony is an independent forcible felony, Cook v. State, 192 So. 3d 681 (Fla. 2d DCA 2016).

Give the elements of the applicable forcible felony but omit any reference to a burden of proof. See Montijo v. State, 61 So. 3d 424 (Fla. 5th DCA 2011). The instruction may need to be modified in the event the forcible felony at issue is not a crime against a person.

The paragraph below should not be given if the defendant is claiming justifiable use of force for every crime charged. Woodsmall v. State, 164 So. 3d 696 (Fla. 5th DCA 2015).

However, the [use] [or] [threatened use] of non-deadly force is not justified if you find that (defendant) **was attempting to commit, committing, or escaping after the commission of a[n]** (applicable forcible felony listed in § 776.08, Fla. Stat.)**.**

Aggressor. § 776.041(2), Fla. Stat. Give if applicable.

Gibbs v. State, 789 So. 2d 443 (Fla. 4th DCA 2001).

However, the [use] [or] [threatened use] of non-deadly force is not justified if you find that (defendant) **used [force] [or] [the threat of force] to initially provoke the [use] [or] [threatened use] of force against [himself] [herself], unless:**

1. **the [force] [or] [threatened force] asserted toward** (defendant) **was so great that [he] [she] reasonably believed that [he] [she] was in imminent danger of death or great bodily harm and had exhausted every reasonable means to escape the danger, other than using non-deadly force on** (victim)**.**

   [or]

2. **in good faith,** (defendant) **withdrew from physical contact with** (victim) **and indicated clearly to** (victim) **that [he] [she] wanted to withdraw and stop the [use] [or] [threatened use] of non-deadly force, but** (victim) **continued or resumed the [use] [or] [threatened use] of force.**

Prior threats. Give only if there is evidence of prior threats or difficulties.

If you find that (defendant)**, who because of prior threats or difficulties with** (victim)**, had reasonable grounds to believe that [he] [she] was in danger of imminent use of unlawful force at the hands of** (victim)**, you may consider this fact in determining whether the actions of** (defendant) **were those of a reasonable person.**

Specific act of victim known by defendant. Give if applicable.

If you find that at the time of the alleged (name[s] of relevant crime[s])**,** (defendant) **knew that** (victim) **had committed an act [or acts] of violence, you may consider that fact in determining whether** (defendant) **reasonably believed it was necessary for [him] [her] to [use] [or] [threaten to use] non-deadly force.**

Reputation of victim known by defendant. Give if applicable.

If you find that (victim) **had a reputation of being a violent and dangerous person and that [his] [her] reputation was known to** (defendant)**, you may consider this fact in determining whether the actions of** (defendant) **were those of a reasonable person in dealing with an individual of that reputation.**

Reputation of victim not necessarily known by defendant (to show victim acted in conformity with victim's character). Give if applicable.

If you find that (victim) **had a reputation of being a violent and dangerous person, you may consider this fact in determining whether [he] [she] was the initial aggressor.**

Physical abilities. Read in all cases.

In considering the issue of [self-defense] [defense of another] [defense of property], you may take into account the relative physical abilities and capacities of (defendant) **and** (victim)**.**

Comments

Because § 776.013(2), Fla. Stat., refers only to the use or threat to use deadly force, it is not clear whether the "presumptions of fear" apply to the use or threat to use nondeadly force. As of April 2024, there was no caselaw that holds the statutory presumptions of fear are applicable when a defendant uses or threatens to use nondeadly force. Trial judges will need to decide whether to give a special instruction about the presumptions of fear and exceptions consistent with instruction 3.6(f).

A defendant may have knowledge of a victim's prior specific acts of violence because he or she was present during the occurrence of the specific acts or because the defendant heard of the specific acts prior to the date of the alleged act of self-defense. *See Smith v. State*, 606 So. 2d 641 (Fla. 1st DCA 1992).

This instruction was adopted in 1981 and was amended in 1985 [477 So. 2d 985], 1992 [603 So. 2d 1175], 2006 [930 So. 2d 612], 2007 [947 So. 2d 1159], 2008 [976 So. 2d 1081], 2010 [27 So. 3d 640], 2016 [191 So. 3d 411], 2018 [257 So. 3d 908], 2019 [285 So. 3d 1248], on May 5, 2023, and on May 21, 2024.

3.6(h) JUSTIFIABLE USE OF FORCE BY LAW ENFORCEMENT OFFICER

In making an arrest of a felon. § 776.05, Fla. Stat. Give if applicable.

A law enforcement officer, or any person [he] [she] has summoned or directed to assist [him] [her], need not retreat from or stop efforts to make a lawful arrest because of resistance or threatened resistance to the arrest. The officer is justified in the use of any force that [he] [she] reasonably believes necessary to defend [himself] [herself] or another from bodily harm while making the arrest. That force is also justifiable when necessarily used:

1. in retaking a felon who has escaped or

2. in arresting a felon who is fleeing from justice.

Force in making unlawful arrest or unlawful execution of a legal duty prohibited. § 776.051(2), Fla. Stat. Give if applicable.

Use of any force by a law enforcement officer or any person summoned or directed to assist the law enforcement officer is not justified if:

1. the [arrest] [execution of a legal duty] is unlawful and

2. it is known by the officer or the person assisting [him] [her] to be unlawful.

To prevent escape from custody. § 776.07(1), Fla. Stat. Give if applicable.

A law enforcement officer or other person who has an arrested person in [his] [her] custody is justified in the use of any force that [he] [she] reasonably believes to be necessary to prevent the escape of the arrested person from custody.

To prevent escape from penal institution. § 776.07(2), Fla. Stat. Give if applicable.

A guard or other law enforcement officer is justified in the use of any force that [he] [she] reasonably believes to be necessary to prevent an escape from a penal institution of a person the officer reasonably believes is lawfully detained.

Give if applicable.

"Deadly force" includes, but is not limited to

1. **firing a firearm in the direction of the person to be arrested, even though no intent exists to kill or inflict great bodily harm; and** *§ 776.06(1)(a), Fla. Stat.*

2. **firing a firearm at a vehicle in which the person to be arrested is riding.** *§ 776.06(1)(b), Fla. Stat.*

Definition. Give if applicable.

A "firearm" is legally defined as (adapt from § 790.001, Fla. Stat., as required by allegations)**.**

Comment

This instruction was adopted in 1981 and was amended in 1989, 2004, and 2010.

3.6(i) ALIBI

An issue in this case is whether defendant was present when the crime allegedly was committed.

If you have a reasonable doubt that the defendant was present at the scene of the alleged crime, it is your duty to find the defendant not guilty.

Comment

This instruction was adopted in 1981. When the defendant is charged only as a principal not present at the commission of the crime, the instruction may not be applicable.

3.6(j) ENTRAPMENT

§ 777.201, Fla. Stat.

The defense of entrapment has been raised. (Defendant) **was entrapped if:**

1. **[he] [she] was, for the purpose of obtaining evidence of the commission of a crime, induced or encouraged to engage in conduct constituting the crime of** (crime charged or any applicable lesser-included offense)**, and**

2. **[he] [she] engaged in such conduct as the direct result of such inducement or encouragement, and**

3. **the person who induced or encouraged [him] [her] was a law enforcement officer or a person engaged in cooperating with or acting as an agent of a law enforcement officer, and**

4. **the person who induced or encouraged [him] [her] employed methods of persuasion or inducement which created a substantial risk that the crime would be committed by a person other than one who was ready to commit it, and**

5. (defendant) **was not a person who was ready to commit the crime.**

Entrapment is not a defense to a crime if (defendant) **had the predisposition to commit that crime.** (Defendant) **had the predisposition if before any law enforcement officer or person acting for the officer persuaded, induced, or lured** (defendant)**, [he] [she] had a readiness or willingness to commit** (crime charged or any applicable lesser-included offense) **if the opportunity presented itself.**

It also is not entrapment merely because a law enforcement officer, in a good faith attempt to detect crime,

Give a, b, and/or c as applicable.

a. **provided the defendant the opportunity, means, and facilities to commit the offense, which the defendant intended to commit and would have committed otherwise.**

b. **used tricks, decoys, or subterfuge to expose the defendant's criminal acts.**

c. was present and pretending to aid or assist in the commission of the offense.

On the issue of entrapment, the defendant must prove to you by the greater weight of the evidence that a law enforcement officer or agent induced or encouraged the crime charged. Greater weight of the evidence means that evidence which is more persuasive and convincing. If the defendant does so, the State must prove beyond a reasonable doubt that the defendant was predisposed to commit the (crime charged or any applicable lesser-included offense)**. The State must prove defendant's predisposition to commit the** (crime charged or any applicable lesser-included offense) **existed prior to and independent of the inducement or encouragement.**

Definition. Farley v. State, 848 So. 2d 393 (Fla. 4th DCA 2003); Marreel v. State, 841 So. 2d 600, 603 (Fla. 4th DCA 2003).

"Inducement" is defined as any government conduct creating a substantial risk that an otherwise law-abiding citizen would commit an offense, including persuasion, fraudulent representations, threats, coercive tactics, harassment, promises of reward, or pleas based on need, sympathy or friendship. Neither mere solicitation nor the creation of opportunities to commit an offense constitutes inducement.

Give if applicable.

An informant is an agent of law enforcement for purposes of the entrapment defense.

If you find that the defendant was entrapped, you should find the defendant not guilty of (crime charged or any applicable lesser-included offense)**. If, however, you find that the defendant was not entrapped, you should find the defendant guilty if all of the elements of the charge have been proved.**

Comments

There may be instances where the defense of entrapment will apply to the crime charged but will not apply to a lesser-included offense. The trial judge should consult with the parties to determine whether the defense of entrapment applies to any lesser included offenses.

This instruction should be given only if there is some evidence of the defendant's lack of predisposition to commit the crime. *Munoz v. State*, 629 So. 2d 90 (Fla. 1993).

This instruction was adopted in 1981 and was amended in 1989 [543 So. 2d 1205], 1998 [723 So. 2d 123], and 2019.

3.6(k) DURESS OR NECESSITY

An issue in this case is whether (defendant) **acted out of [duress] [necessity] in committing the crime of** (crime charged) (lesser included offenses)**.**

It is a defense to the (crime charged) (lesser included offenses) **if the defendant acted out of [duress] [necessity]. To find the defendant committed the** (crime charged) (lesser included offense) **out of [duress] [necessity], you must find the following eight elements:**

1. **The defendant reasonably believed [a danger] [an emergency] existed.**

2. **The defendant reasonably believed the [danger] [emergency] would cause death or serious bodily harm to [himself] [herself] [another].**

3. **The perceived harm of death or serious bodily injury was imminent and impending.**

4. **The defendant did not intentionally or recklessly place himself in a situation in which it was probable that [he] [she] would be forced to choose the criminal conduct.**

5. **The defendant had no reasonable means to avoid the [danger] [emergency] except by committing the** (crime charged) (lesser included offenses)**.**

6. **The** (crime charged) (lesser included offenses) **was committed out of [duress] [necessity] to avoid the [danger] [emergency].**

7. **The perceived harm that the defendant avoided outweighed the harm caused by committing the** (crime charged) (lesser included offenses)**.**

8. **The defendant ceased [his] [her] criminal conduct as soon as the necessity or apparent necessity for the criminal conduct ended.**

"Imminent and impending" means the [danger] [emergency] is about to take place and cannot be avoided by using other means. A threat of future harm is not sufficient for this defense to apply.

The reasonableness of the defendant's belief that [a danger] [an emergency] existed should be examined in the light of all the evidence.

In deciding whether it was necessary for the defendant to commit the (crime charged) (lesser included offenses)**, you must judge the defendant by the circumstances by which [he] [she] was surrounded at the time the crime was committed.**

The [danger] [emergency] facing the defendant need not have been actual, however, to justify the commission of the (crime charged) (lesser included offenses)**, the appearance of the [danger] [emergency] must have been so real that a reasonably cautious and prudent person under the same circumstances would have believed that the [danger] [emergency] could be avoided only by committing the** (crime charged) (lesser included offenses)**. Furthermore, the defendant must have actually believed the [danger] [emergency] was real.**

There is a conflict in the appellate courts about which party has the burden of persuasion for this affirmative defense. According to Smith v. State, 826 So. 2d 1098 (Fla. 5th DCA 2002), once the defense satisfies its burden of production for all the elements of the defense, the burden is on the State to disprove the affirmative defense beyond a reasonable doubt. According to Tyler v. State, 131 So. 3d 811 (Fla. 1st DCA 2014), once the defense satisfies its burden of production for all the elements of the defense, the burden remains on the defendant to prove the affirmative defense. The First District's opinion suggests the common law applies, which means the defense must prove the affirmative defense by the preponderance of the evidence. Until the Florida Supreme Court resolves the issue, trial judges outside of the First and Fifth Districts must choose which district court of appeal to follow. All judges must instruct on the burden of persuasion.

Comments

Duress is not a defense to premeditated murder or attempted premeditated murder. *See Wright v. State*, 402 So. 2d 493 (Fla. 3d DCA 1981) and *Cawthon v. State*, 382 So. 2d 796 (Fla. 1st DCA 1980). It is unclear whether duress is a defense to other forms of homicide. Review Judge Ervin's opinion in *Chestnut v. State*, 505 So. 2d 1352 (Fla. 1st DCA 1987), and the language in *Gahley v. State*, 567 So. 2d 456 (Fla. 1st DCA 1990), *Corujo v. State*, 424 So. 2d 43 (Fla. 2d DCA 1982), and *Hunt v. State*, 753 So. 2d 609 (Fla. 5th DCA 2000).

For the defense of necessity for the charge of Felon in Possession of a Firearm, *see State v. Chambers*, 890 So. 2d 456 (Fla. 2d DCA 2004) and *Marrero v. State*, 516 So. 2d 1052 (Fla. 3d DCA 1987).

For the defense of necessity for a charge of (Attempted) Escape, *see Muro v. State*, 445 So. 2d 374 (Fla. 3d DCA 1984) and *State v. Alcantaro*, 407 So. 2d 922 (Fla. 1st DCA 1981).

This instruction was adopted in July 1998 and amended in 2012 [95 So. 3d 868], 2014 [143 So. 3d 893], and on December 15, 2023.

3.6(*l*) INDEPENDENT ACT

If you find that the crime alleged was committed, an issue in this case is whether the crime of (crime alleged) **was an independent act of a person other than the defendant. An independent act occurs when a person other than the defendant commits or attempts to commit a crime**

1. **which the defendant did not intend to occur, and**

2. **in which the defendant did not participate, and**

3. **which was outside of and not a reasonably foreseeable consequence of the common design or unlawful act contemplated by the defendant.**

If you find the defendant was not present when the crime of (crime alleged) **occurred, that, in and of itself, does not establish that the** (crime alleged) **was an independent act of another.**

If you find that the (crime alleged) **was an independent act of [another] [**(name of individual)**]**, **then you should find** (defendant) **not guilty of the crime of** (crime alleged)**.**

*If the name of the other person is known, it should be inserted here; otherwise, use the word "**another**."*

Comment

This instruction was adopted in July 1997.

3.6(m) AFFIRMATIVE DEFENSE: TEMPORARY POSSESSION OF A CONTROLLED SUBSTANCE FOR LEGAL DISPOSAL

It is a defense to the charge of [possession of a controlled substance] [trafficking via possession] for a person to briefly possess a controlled substance for the sole purpose of legal disposal. In order to find the defendant briefly possessed a controlled substance for the sole purpose of legal disposal, you must find all of the following:

1. (Defendant) **possessed the controlled substance.**

2. (Defendant) **acquired the controlled substance without unlawful intent.**

3. **The possession of the controlled substance was brief and** (defendant) **sought to dispose of the controlled substance without delay.**

4. **The temporary possession was solely for the purpose of legal disposal.**

Definitions.

"Legal disposal" means to destroy or throw away the controlled substance or to turn in the controlled substance to a law enforcement officer.

To "possess a substance" means the defendant a) knew of the existence of the substance and b) intentionally exercised control over that substance.

Give if applicable.

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

Joint possession. Give if applicable.

Possession of a substance may be sole or joint, that is, two or more persons may possess a substance.

This defense does not apply if (defendant) **disposed of or surrendered a controlled substance because [he] [she] believed a law enforcement officer had discovered, or would have imminently discovered that [he] [she] was in possession of a controlled substance.**

There is no statute for the defense of "legal disposal" and, as of October 2018, the case law is silent as to (1) which party bears the burden of persuasion of the affirmative defense and (2) the standard for the burden of persuasion. Under the common law, defendants had both the burden of production and the burden of persuasion on an affirmative defense by a preponderance of the evidence.

The Florida Supreme Court has often decided, however, that once a defendant meets the burden of production on an affirmative defense, the burden of persuasion is on the State to disprove the affirmative defense beyond a reasonable doubt (e.g., self-defense and consent to enter in a burglary prosecution). In the absence of case law, trial judges must resolve the issue via a special instruction. See the opinion in Dixon v. United States, 548 U.S. 1 (2006), for further guidance.

If burden of persuasion is on the defendant:

If you find that defendant proved *(insert appropriate burden of persuasion)* **that [he] [she] temporarily possessed the controlled substance solely for legal disposal, you should find [him] [her] not guilty. If the defendant did not prove** *(insert appropriate burden of persuasion)* **that [he] [she] temporarily possessed the controlled substance solely for legal disposal, you should find [him] [her] guilty if all the elements of the charge have been proven beyond a reasonable doubt.**

If burden of persuasion is on the State:

If you find that the State proved *(insert appropriate burden of persuasion)* **that the defendant did not temporarily possess the controlled substance solely for legal disposal, you should find [him] [her] guilty, if all of the elements of the charge have been proven beyond a reasonable doubt. However, if you are not convinced** *(insert appropriate burden of persuasion)* **that the defendant did not temporarily possess the controlled substance solely for legal disposal, you should find [him] [her] not guilty.**

Comments

See *Ramsubhag v. State*, 937 So. 2d 1192 (Fla. 4th DCA 2006) and *Stanton v. State*, 746 So. 2d 1229 (Fla. 3d DCA 1999) for discussion on this topic.

This instruction was adopted in 2013 [141 So. 3d 132] and amended in 2019.

3.6(n) AFFIRMATIVE DEFENSE: CONTROLLED SUBSTANCE WAS LAWFULLY OBTAINED FROM A PRACTITIONER OR PURSUANT TO A VALID PRESCRIPTION

§§ 499.03(1), 893.13(6)(a) Fla. Stats.

It is a defense to the charge of [possession] [trafficking via possession] for a person to possess a controlled substance which [he] [she] lawfully obtained from a practitioner or pursuant to a valid prescription or order of a practitioner while acting in the course of his or her professional practice.

Like all affirmative defenses and pursuant to § 893.10(1), Fla. Stat., the burden of going forward with evidence of the "controlled substance was lawfully obtained" defense is upon the defendant. Fla. Stats. 893.10(1), 893.13(6)(a), and 499.03(1) are silent, however, as to the burden of persuasion for the affirmative defense. There is no case law, as of October 2018, as to (1) which party bears the burden of persuasion of the affirmative defense and (2) the standard for the burden of persuasion. Under the common law, defendants had both the burden of production and the burden of persuasion on an affirmative defense by a preponderance of the evidence.

The Florida Supreme Court has often decided, however, that once a defendant meets the burden of production on an affirmative defense, the burden of persuasion is on the State to disprove the affirmative defense beyond a reasonable doubt (e.g., self-defense and consent to enter in a burglary prosecution). In the absence of case law, trial judges must resolve the issue via a special instruction. See the opinion in Dixon v. United States, 548 U.S. 1 (2006), for further guidance.

For example, if the burden to prove the affirmative defense is on the defendant under the preponderance of the evidence standard.

If you find the defendant proved by a preponderance of the evidence that [he] [she] lawfully obtained the controlled substance from a practitioner or pursuant to a valid prescription or order of a practitioner while acting in the course of his or her professional practice, you should find [him] [her] not guilty of [possession of a controlled substance] [trafficking via possession]. If the defendant did not prove by a preponderance of the evidence that [he] [she] lawfully obtained the controlled substance from a practitioner or pursuant to a valid prescription or order of a practitioner while acting in the course of his or her professional practice, you should find [him] [her] guilty, if all the elements of the charge have been proven beyond a reasonable doubt.

Or, if the burden of disproving the affirmative defense is on the State under the beyond a reasonable doubt standard.

If you find that the State proved beyond a reasonable doubt that the defendant did not lawfully obtain the controlled substance from a practitioner or pursuant to a valid prescription or order of a practitioner while acting in the course of his or her professional practice, you should find [him] [her] guilty, if all of the elements of the charge have also been proven beyond a reasonable doubt. However, if you have a reasonable doubt as to whether the defendant lawfully obtained the controlled substance from a practitioner or pursuant to a valid prescription or order of a practitioner while acting in the course of his or her professional practice, you should find [him] [her] not guilty of [possession of a controlled substance] [trafficking via possession].

Definitions.

To "possess a substance" means the defendant a) knew of the existence of the substance and b) intentionally exercised control over that substance.

Give if applicable.

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

Joint possession. Give if applicable.

Possession of a substance may be sole or joint, that is, two or more persons may possess a substance.

§ 893.02(23), Fla. Stat.

"Practitioner" means a physician licensed pursuant to chapter 458, a dentist licensed pursuant to chapter 466, a veterinarian licensed pursuant to chapter 474, an osteopathic physician licensed pursuant to chapter 459, an advanced registered nurse practitioner certified under chapter 464, a naturopath licensed pursuant to chapter 462, a certified optometrist licensed under chapter 463, a psychiatric nurse who has an advanced registered nurse practitioner certified under § 464.012, Fla. Stat., and who has a master's or doctoral degree in psychiatric nursing,

holds a national advanced practice certification as a psychiatric mental health advanced practice nurse, and has 2 years of post-master's clinical experience under the supervision of a physician, a podiatric physician licensed pursuant to chapter 461, or a physician assistant licensed under chapter 458 or chapter 459, provided such practitioner holds a valid federal controlled substance registry number.

§ 893.02(24), Fla. Stat.

"Prescription" includes any order for drugs or medicinal supplies which is written or transmitted by any means of communication by a licensed practitioner authorized by the laws of this state to prescribe such drugs or medicinal supplies, is issued in good faith and in the course of professional practice, is intended to be dispensed by a person authorized by the laws of this state to do so, and meets the requirements of § 893.04, Fla. Stat. (*If there is a dispute about whether the requirements were met, the judge should insert those requirements or the requirement(s) in dispute.)*

[The term also includes an order for drugs or medicinal supplies transmitted or written by a physician, dentist, veterinarian, or other practitioner licensed to practice in a state other than Florida, but only if the pharmacist called upon to fill such an order determines, in the exercise of his or her professional judgment, that the order was issued pursuant to a valid patient-physician relationship, that it is authentic, and that the drugs or medicinal supplies ordered are considered necessary for the continuation of treatment of a chronic or recurrent illness.]

Comments

A special instruction is necessary where there is evidence that the defendant acted as an agent for the person who had a prescription. *See McCoy v. State*, 56 So. 3d 37 (Fla. 1st DCA 2010).

It is undecided whether a defendant may rely on the prescription defense when he or she is charged with Possession With Intent. *See Celeste v. State*, 79 So. 3d 898 (Fla. 5th DCA 2012); *Ayotte v. State*, 67 So. 3d 330 (Fla. 1st DCA 2011); and *Wagner v. State*, 88 So. 3d 250 (Fla. 4th DCA 2012).

See Knipp v. State, 67 So. 3d 376 (Fla. 4th DCA 2011) regarding the availability of the prescription defense for a person who obtained the prescription in violation of the doctor shopping statute.

This instruction was adopted in 2013 [141 So. 3d 132] and amended in 2019.

3.6(o) TRANSFERRED INTENT

If the defendant [or [his] [her] principal] intends to [hit] [strike] [shoot] a person, and in the process [hits] [strikes] [shoots] a different or unintended person, the law transfers the intent to [hit] [strike] [shoot] the intended person to any person who was actually [hit] [struck] [shot].

Give if applicable.

Under Florida law, mistaken identity of a person does not negate the doctrine of transferred intent.

Comments

If the State is proceeding on a principals theory, the court should give instruction 3.5(a).

The doctrine of transferred intent usually occurs when a defendant aims and shoots at X intending to kill him but instead misses and kills Y. However, the doctrine is not limited to that scenario. In *Mordica v. State*, 618 So. 2d 301 (Fla. 1st DCA 1993), the First District rejected the contention that the doctrine of transferred intent is applicable only where the defendant entirely misses the intended victim and hits the unintended victim. Additionally, the doctrine of transferred intent applies when a person is killed through mistaken identity or accident and when an accomplice is the shooter. *See Hunt v. State, 428 So. 3d 43 (Fla. 2025).*

The doctrine of transferred intent may not apply to the crime of Attempted First-Degree Murder. *See Bell v. State*, 768 So. 2d 22 (Fla. 1st DCA 2000)(stating that if the issue is whether the defendant attempted to murder multiple victims, then such specific intent is not subject to transfer but rather such intent should be independently evaluated as to each victim); *but see Frederick v. State*, 93 So. 3d 445 (Fla. 4th DCA 2012)(holding that the giving of a transferred intent instruction was not fundamental error because defendant was not charged with attempting to murder multiple victims).

This instruction was adopted in 2013 [131 So. 3d 720] and amended in 2017 [228 So. 3d 87] 2018 [259 So. 3d 743], and on June 12, 2026.

3.6(p) ABNORMAL MENTAL CONDITION

**Give if applicable and if requested, and only if insanity is not an issue and if no notice of intent to rely on the defense of insanity has been filed. If insanity is an issue in the case, give instruction 3.6(a).*

Mental illness, an abnormal mental condition, or diminished mental capacity is not a defense to any crime in this case. Any such evidence may not be taken into consideration to show that the defendant lacked the specific intent or did not have the state of mind essential to proving that [he] [she] committed the crime[s] charged [or any lesser crime].

Comments

*This instruction should be given only where it is applicable and appropriate under the facts of the case. "[D]iminished capacity is not a viable defense in Florida." *Evans v. State*, 946 So. 2d 1, 11 (Fla. 2006); *Lukehart v. State*, 70 So. 3d 503, 515 (Fla. 2011). Evidence of an abnormal mental condition not constituting legal insanity is inadmissible "for the purpose of proving either that the accused could not or did not entertain the specific intent or state of mind essential to proof of the offense, in order to determine whether the crime charged, or a lesser degree thereof, was in fact committed." *Chestnut v. State*, 538 So. 2d 820 (Fla. 1989). In some cases, however, such evidence, or something that jurors might interpret as such evidence, might be admitted presumably for another purpose or might simply be obvious or apparent from the facts of the case. In such cases, it could be appropriate in the court's discretion to give this instruction to avoid the possibility of juror confusion.

This instruction was adopted in 2017.

3.7 PLEA OF NOT GUILTY; REASONABLE DOUBT; AND BURDEN OF PROOF

The defendant has entered a plea of not guilty. This means you must presume or believe the defendant is innocent. The presumption stays with the defendant as to each material allegation in the [information] [indictment] through each stage of the trial unless it has been overcome by the evidence to the exclusion of and beyond a reasonable doubt.

To overcome the defendant's presumption of innocence, the State has the burden of proving the crime with which the defendant is charged was committed and the defendant is the person who committed the crime.

The bracketed part of the paragraph below should be given only when the defendant is relying on an affirmative defense for which he or she has the burden of persuasion (e.g., insanity, renunciation of an attempt).

The defendant is not required to present evidence or prove anything [except for the defense of (*insert relevant affirmative defense*) **to the crime[s] of** (*insert relevant crime[s]*) **as I previously explained to you].**

Whenever the words "reasonable doubt" are used, you must consider the following:

Reasonable doubt is not proof beyond all doubt. A mere possible, speculative, imaginary, or forced doubt is not a reasonable doubt. Such a doubt is not a guess or mere conjecture.

Rather, it is a doubt based upon reasoning and common sense after careful and impartial consideration of all the evidence in the case.

A reasonable doubt as to the guilt of the defendant may arise from the evidence, conflict in the evidence, or the lack of evidence. If after a careful and impartial consideration of all the evidence, you have a reasonable doubt as to the guilt of the accused, it is your duty to find the defendant not guilty. On the other hand, if after a careful and impartial consideration of all the evidence, you are convinced beyond a reasonable doubt that the defendant is guilty, it is your duty to find the defendant guilty.

It is to the evidence introduced in this trial, and to it alone, that you are to look for that proof.

Comments

In addition to giving this instruction as part of the final instructions, the judge may also want to provide it to the jury during *voir dire. State v. Wilson*, 686 So.2d 569 (Fla. 1996).

This instruction was adopted in 1981 and was amended in 1997, on May 21, 2024, on June 12, 2026, and on October 9, 2026.

3.8(a) EVIDENCE OF OTHER CRIMES, WRONGS, OR ACTS

§ 90.404(2)(a), Fla. Stat.

To be given at the close of evidence, if applicable.

The evidence that has been admitted to show other crimes, wrongs, or acts allegedly committed by the defendant may be considered by you, but only as that evidence relates to proof of [motive] [opportunity] [intent] [preparation] [plan] [knowledge] [identity] [the absence of mistake or accident] [(other relevant fact)**]. However, the defendant cannot be convicted for a crime, wrong, or act that is not included in the [information] [indictment].**

Comments

This instruction should be given in cases involving "Williams Rule" evidence admissible under § 90.404(2)(a), Fla. Stat.

Instruction 3.8(b) should be given for cases involving evidence of other acts of child molestation or a sexual offense admissible under § 90.404(2)(b) or (2)(c), Fla. Stat.

This instruction was adopted in 1981 and was amended in 2000 [765 So. 2d 692], 2007 [965 So. 2d 811], 2012 [87 So. 3d 679], 2013 [131 So. 3d 755], and on September 20, 2024.

3.8(b) EVIDENCE OF OTHER CRIMES, WRONGS, OR ACTS [OF CHILD MOLESTATION] [INVOLVING A SEXUAL OFFENSE]

§ 90.404(2)(b) and (2)(c), Fla. Stat.

To be given at the close of evidence, if applicable.

The evidence that has been admitted regarding other crimes, wrongs, or acts [of child molestation] [involving [a] sexual offense[s]] allegedly committed by the defendant may be considered by you for its bearing on any matter to which it is relevant. However, the defendant cannot be convicted for a crime, wrong, or act that is not included in the [information] [indictment].

Comments

§ 90.404(2)(b)2., Fla. Stat, explains the term "child molestation" and § 90.404(2)(c)2., Fla. Stat. explains the term "sexual offense" for purposes of the statute. Collateral crime evidence qualifying under § 90.404(2)(b) or (2)(c), Fla. Stat., may be admissible to show propensity. *Whisby v. State,* 262 So. 3d 228 (Fla. 1st DCA 2018).

This instruction was adopted on September 20, 2024.

3.8(c) DISREGARDING EVIDENCE [RESERVED]

3.8(d) DATE OF CRIME

Give if statement of particulars filed.

The State must prove that the crime was committed [(date)**] [**(time)**] [**(place)**].**

When applicable, instruct on statute of limitations or on fact that crime need not be committed on date stated in charge.

Comment

This instruction was adopted in 1981.

3.8(e) VENUE

The State must prove by a preponderance of the evidence that the alleged crime[s] [was] [were] committed [in this county] [within the areas of the counties named in the charge[s]].

Comments

Statutes within Chapter 910 cover circumstances where not all elements of the crime were committed in one county or where the State may prove venue even though the elements of the crime were not committed in one county or where it is not known in which county the crime occurred. In those circumstances, trial judges will need to draft a special instruction.

This instruction should be given only when the defendant requests it and there is an issue of fact for the jury to resolve.

This instruction was adopted in 1981 and was amended on August 2, 2024.

3.9 WEIGHING THE EVIDENCE

It is up to you to decide what evidence is reliable. You should use your common sense in deciding which is the best evidence and which evidence should not be relied upon in considering your verdict. You may find some of the evidence not reliable, or less reliable than other evidence.

You should consider how the witnesses acted, as well as what they said. Some things you should consider are:

1. **Did the witness seem to have an opportunity to see and know the things about which the witness testified?**

2. **Did the witness seem to have an accurate memory?**

3. **Was the witness honest and straightforward in answering the attorneys' questions?**

4. **Did the witness have some interest in how the case should be decided?**

5. **Does the witness's testimony agree with the other testimony and other evidence in the case?**

Give as applicable.

6. **Has the witness been offered or received any money, preferred treatment, or other benefit in order to get the witness to testify?**

7. **Had any pressure or threat been used against the witness that affected the truth of the witness's testimony?**

8. **Did the witness at some other time make a statement that is inconsistent with the testimony [he] [she] gave in court?**

9. **Has the witness been convicted of a [felony] [misdemeanor involving [dishonesty] [false statement]]?**

10. **Does the witness have a general reputation for [dishonesty] [truthfulness]?**

Whether the State has met its burden of proof does not depend upon the number of witnesses it has called or upon the number of exhibits it

has offered, but instead upon the nature and quality of the evidence presented.

Give as applicable and if requested.

Law enforcement witness.

The fact that a witness is employed in law enforcement does not mean that [his] [her] testimony deserves more or less consideration than that of any other witness.

Expert witness.

Expert witnesses are like other witnesses, with one exception—the law permits an expert witness to give [his] [her] opinion. However, an expert's opinion is reliable only when given on a subject about which you believe [him] [her] to be an expert. Like other witnesses, you may believe or disbelieve all or any part of an expert's testimony.

Accomplices and Informants.

You must consider the testimony of some witnesses with more caution than others. For example, a witness who [claims to have helped the defendant commit a crime] [has been promised immunity from prosecution] [hopes to gain more favorable treatment in his or her own case] may have a reason to make a false statement in order to strike a good bargain with the State. This is particularly true when there is no other evidence tending to agree with what the witness says about the defendant. So, while a witness of that kind may be entirely truthful when testifying, you should consider [his] [her] testimony with more caution than the testimony of other witnesses. However, if the testimony of such a witness convinces you beyond a reasonable doubt of the defendant's guilt, or the other evidence in the case does so, then you should find the defendant guilty.

Child witness.

You have heard the testimony of a child. No witness is disqualified just because of age. There is no precise age that determines whether a witness may testify. The critical consideration is not the witness's age, but whether the witness understands the difference between what is true and what is not true, and understands the duty to tell the truth.

Give only if defendant testified.

The defendant in this case has become a witness. You should apply the same rules to consideration of [his] [her] testimony that you apply to the testimony of the other witnesses.

Witness talked to lawyer.

It is entirely proper for a lawyer to talk to a witness about what testimony the witness would give if called to the courtroom. The witness should not be discredited by talking to a lawyer about [his] [her] testimony.

Give in all cases.

You may rely upon your own conclusion about the credibility of any witness. A juror may believe or disbelieve all or any part of the evidence or the testimony of any witness.

Comment

This instruction was adopted in 1981 and amended in 2012 [95 So. 3d 868] and 2013.

3.9(a) DEFENDANT NOT TESTIFYING

Give either paragraph, or both, if defendant requests.

The constitution requires the State to prove its accusations against the defendant. It is not necessary for the defendant to disprove anything. Nor is the defendant required to prove [his] [her] innocence. It is up to the State to prove the defendant's guilt by evidence.

The defendant exercised a fundamental right by choosing not to be a witness in this case. You must not view this as an admission of guilt or be influenced in any way by [his] [her] decision. No juror should ever be concerned that the defendant did or did not take the witness stand to give testimony in the case.

Comment

This instruction was adopted in 1981 and amended in 2013.

3.9(b) DEFENDANT'S STATEMENTS

A statement claimed to have been made by the defendant outside of court has been introduced into evidence. Such a statement should be considered with caution and be weighed with great care to make certain it was freely and voluntarily made.

If you conclude the defendant made the statement, you must also determine from the evidence whether the defendant's statement was freely and voluntarily made.

In making this determination, you should consider the circumstances, including but not limited to

1. **whether, when the defendant made the statement, [he] [she] had been threatened to get [him] [her] to make the statement,**

   and

2. **whether anyone had promised [him] [her] anything to get [him] [her] to make the statement.**

If you conclude the defendant made the out of court statement, but it was not freely and voluntarily made, you should disregard it.

Comment

This instruction was adopted in 1981 and amended in 2013 [122 So. 3d 302] and on December 6, 2024.

3.9(c) EYEWITNESS IDENTIFICATION

Give if eyewitness identification is a disputed issue and if requested.

You have heard testimony of eyewitness identification. In deciding how much weight to give to this testimony, you may consider the various factors mentioned in these instructions concerning credibility of witnesses.

In addition to those factors, in evaluating eyewitness identification testimony, you may also consider:

1. **The capacity and opportunity of the eyewitness to observe the offender based upon the length of time for observation and the conditions at the time of observation, including lighting and distance.**

2. **Whether the identification was the product of the eyewitness's own recollection or was the result of influence or suggestiveness.**

3. **The circumstances under which the defendant was presented to the eyewitness for identification.**

4. **Any inconsistent identifications made by the eyewitness.**

5. **Any instance in which the eyewitness did not make an identification when given the opportunity to do so.**

6. **The witness's familiarity with the subject identified.**

7. **Lapses of time between the event and the identification[s].**

8. **Whether the eyewitness and the offender are of different races or ethnic groups, and whether this may have affected the accuracy of the identification.**

9. **The totality of circumstances surrounding the eyewitness's identification.**

Lineup Requirements. Give if applicable. § 92.70, Fla. Stat.

You have heard testimony concerning a [live] [photo] lineup conducted by a law enforcement agency. Florida law requires that the person conducting the [live] [photo] lineup must not have participated in

the investigation of the crime alleged and must not have been aware of which person in the [live] [photo] lineup was the suspect.

When an independent administrator was not used. Give as applicable.

As an alternative, it is permissible under Florida law if

[an automated computer program automatically administered the photo lineup directly to an eyewitness and prevented the person conducting the photo lineup from seeing which photograph the eyewitness viewed until after the procedure was completed.]

[photographs were placed in folders, randomly numbered, and shuffled and then presented to an eyewitness such that the person conducting the photo lineup did not see or did not track which photograph was presented to the eyewitness until after the procedure was completed.]

[the photo lineup procedure achieved neutral administration and prevented the person conducting the photo lineup from knowing which photograph was presented to the eyewitness during the identification procedure.]

Give in all cases involving a lineup.

Also, before conducting a [live] [photo] lineup, the eyewitness must be instructed that:

1. **The perpetrator might or might not be in the [live] [photo] lineup;**

Give #2 only when an independent administrator was used.

2. **The person conducting the [live] [photo] lineup does not know the suspect's identity;**

3. **The eyewitness should not feel compelled to make an identification;**

4. **It is as important to exclude innocent persons as it is to identify the perpetrator; and**

5. **The investigation will continue with or without an identification.**

The eyewitness must acknowledge, in writing, that he or she received a copy of the [live] [photo] lineup instructions. If the eyewitness refused to sign a document acknowledging receipt of the

instructions, the person conducting the [live] [photo] lineup must document the refusal of the eyewitness to sign a document acknowledging receipt of the instructions, and the person conducting the [live] [photo] lineup must sign the acknowledgment document himself or herself.

You may consider compliance or noncompliance with these requirements to determine the reliability of an eyewitness identification made during a [live] [photo] lineup procedure.

Comment

This instruction was adopted in 2013 [141 So. 3d 132] and amended in 2013 [122 So. 3d 302], 2018 [238 So. 3d 192], and 2018.

3.10 RULES FOR DELIBERATION

These are some general rules that apply to your discussion. You must follow these rules in order to return a lawful verdict:

1. **You must follow the law as it is set out in these instructions. If you fail to follow the law, your verdict will be a miscarriage of justice. There is no reason for failing to follow the law in this case. All of us are depending upon you to make a wise and legal decision in this matter.**

2. **This case must be decided only upon the evidence that you have heard from the testimony of the witnesses [and have seen in the form of the exhibits in evidence] and these instructions.**

3. **This case must not be decided for or against anyone because you feel sorry for anyone, or are angry at anyone.**

4. **Remember, the lawyers are not on trial. Your feelings about them should not influence your decision in this case.**

When the jury is to be involved in a penalty phase, omit the second sentence of paragraph 5.

5. **Your duty is to determine if the defendant has been proven guilty or not, in accord with the law. It is the judge's job to determine a proper sentence if the defendant is found guilty.**

6. **Whatever verdict you render must be unanimous, that is, each juror must agree to the same verdict.**

Give 7 if applicable.

7. **The jury is not to discuss any question[s] that [a juror] [jurors] wrote that was [were] not asked by the court, and must not hold that against either party.**

8. **Your verdict should not be influenced by feelings of prejudice, bias, or sympathy. Your verdict must be based on the evidence, and on the law contained in these instructions.**

Comment

This instruction was adopted in 1981 and was amended in 1995 and September 2005 and 2012.

3.11 CAUTIONARY INSTRUCTION

Deciding a verdict is exclusively your job. I cannot participate in that decision in any way. Please disregard anything I may have said or done that made you think I preferred one verdict over another.

Comment

This instruction was adopted in 1981.

3.12 VERDICT

You may find the defendant guilty as charged [or guilty of such lesser included crime[s] as the evidence may justify] or not guilty.

***If you return a verdict of guilty, it should be for the highest offense on the verdict form [for each count] that has been proven beyond a reasonable doubt. If you find that no offense has been proven beyond a reasonable doubt, then, of course, your verdict must be not guilty.**

The verdict must be unanimous, that is, all of you must agree to the same verdict. Only one verdict may be returned as to [the crime] [each crime] charged [, except as to Count (insert number**), where the defendant can be found guilty of more than one lesser included crime]. The verdict must be in writing and for your convenience, the necessary verdict form[s] [has] [have] been prepared for you. [It is] [They are] as follows (read verdict form(s)):**

Give if State is proceeding on both theories of First Degree Murder (premeditated and felony murder). Mansfield v. State, 911 So. 2d 1160 (Fla. 2005).

If you return a verdict of guilty to the charge of First Degree Murder, it is not necessary that all of you agree the State proved First Degree Premeditated Murder and it is not necessary that all of you agree the State proved First Degree Felony Murder. Instead, what is required is that all of you agree the State proved either First Degree Premeditated Murder or First Degree Felony Murder.

In cases of multiple defendants or multiple charges, give 3.12(a), (b), or (c) as applicable.

A sample of possible verdict forms for typical variables in combinations of defendants and charges follows:

1. Verdict form for single count, single defendant.

   We, the jury, find as follows, as to the defendant in this case: (check only one)

   ___a. The defendant is guilty of (crime charged).

   ___b. The defendant is guilty of (a lesser included offense).

   ___c. The defendant is not guilty.

2. Verdict form for multiple counts, single defendant.

We, the jury, find as follows, as to Count I of the charge: (check only one as to this count)

___a. The defendant is guilty of (crime charged).

___b. The defendant is guilty of (a lesser included offense).

___c. The defendant is not guilty.

We, the jury, find as follows, as to Count II of the charge: (check only one as to this count)

___a. The defendant is guilty of (crime charged).

___b. The defendant is guilty of (a lesser included offense).

___c. The defendant is not guilty.

3. Verdict form if a count is a crime where the defendant can be guilty of more than one lesser included offense.

We, the jury, find as follows, as to Count (insert number) of the charge:

___a. The defendant is guilty of (crime charged).

(If the defendant is not guilty of the main charge, then proceed to the lesser included offenses):

___b. The defendant is guilty of lesser included offense(s). (check as many lesser included offenses as apply)

___ The defendant is guilty of (lesser included offense).

___ The defendant is guilty of (lesser included offense).

___ The defendant is guilty of (lesser included offense).

___ The defendant is guilty of (lesser included offense).

(If the defendant is not guilty of the main charge or any lesser included offenses, then proceed to not guilty):

___c. The defendant is not guilty.

Use separate verdict for each defendant.

4. Verdict form for multiple counts, multiple defendants.

We, the jury, find as to the defendant, (name of defendant), as follows:

As to Count I: (check only one as to this count)

___a. The defendant is guilty of (crime charged).

___b. The defendant is guilty of (a lesser included offense).

___c. The defendant is not guilty.

As to Count II: (check only one as to this count)

___a. The defendant is guilty of (crime charged).

___b. The defendant is guilty of (a lesser included offense).

___c. The defendant is not guilty.

5. Verdict form when insanity is a defense.

___a. The defendant is guilty of (crime charged).

___b. The defendant is guilty of (a lesser included offense).

___c. The defendant is not guilty.

___d. The defendant is not guilty because legally insane.

Read if applicable. Special finding forms #6 and #7 below refer to § 775.087, Fla. Stat. There are other statutes requiring special findings.

In addition to the verdict form[s], there [is] [are] [a] Special Finding form[s] for Count[s] (insert number(s))**.**

6. Special finding form regarding § 775.087(1), Fla. Stat.

If you found the defendant guilty of (name of crime), you must then answer the following question:

During the commission of the offense, did the defendant personally [carry] [display] [use] [threaten to use] [attempt to use] a [weapon] [firearm]?

_____ Yes

_____ No

7. Special finding form regarding § 775.087(2), Fla. Stat.

If you found the defendant guilty of (name of crime), you must then answer the following question[s]:

1. During the commission of the offense, did the defendant actually possess a [firearm] [destructive device]?

   _____ Yes

   _____ No

2. During the commission of the offense, did the defendant personally discharge a [firearm] [destructive device]?

   _____ Yes

   _____ No

3. During the commission of the offense and as a result of the discharge of the [firearm] [destructive device], was death caused to (victim)?

   _____ Yes

   _____ No

8. Special finding form regarding § 741.281, Fla. Stat.

   If you found the defendant guilty of (name of crime), you must then answer the following question:

   Was the defendant a family or household member of (victim)?

   _____ Yes

   _____ No

9. Special finding form regarding § 741.283(1)(a), Fla. Stat.

   If you found the defendant guilty of (name of crime), you must then answer the following questions:

1. Was the defendant a family or household member of (victim)?

_____ Yes

_____ No

2. Did the defendant intentionally cause bodily harm to (victim)?

_____ Yes

_____ No

10. Special finding form regarding § 741.283(1)(b), Fla. Stat.

If you found the defendant guilty of (name of crime), you must then answer the following five questions:

1. Was the defendant a family or household member of (victim)?

_____ Yes

_____ No

2. Did the defendant intentionally cause bodily harm to (victim)?

_____ Yes

_____ No

3. Did (name of crime) take place in the presence of (name of child)?

_____ Yes

_____ No

4. At the time, was (name of child) under 16 years of age?

_____ Yes

_____ No

5. Was (name of child) a family or household member of

[(defendant)] [or] [(name of victim)]?

_____ Yes

_____ No

11. Special finding form regarding § 775.0848, Fla. Stat.

If you found the defendant guilty of (name of crime), you must then answer the following question:

At the time the crime was committed, was the defendant an unauthorized alien?

_____ Yes

_____ No

Comments

*This paragraph should be read if the case involves one or more lesser-included offenses.

This instruction must be amended if the defendant is relying on an insanity defense.

It is recommended that trial courts rely solely on the core offense in determining the order of lesser included offenses on a verdict form. Trial courts can then provide an interrogatory, separate from the verdict form for the core offense, for the jury to determine the existence of circumstances that can result in mandatory minimum sentences, sentence enhancements, or offense reclassifications. In addition, interrogatories may be used for crimes such as burglary and robbery, in which the aggravating factor is part of the statute governing the substantive crime. *Sanders v. State*, 944 So. 2d 203 (Fla. 2006).

For compounded offenses, such as Burglary with an Assault, the jury can convict on two lesser-included offenses. *See Gian-Grasso v. State*, 899 So. 2d 392 (Fla. 4th DCA 2005).

This verdict form was adopted in 1981 and was amended in October 1981, December 1995, 2016 [199 So. 3d 234], 2018 [244 So. 3d 157], 2020 [290 So. 3d 864], on October 7, 2022, and on September 12, 2025.

3.12(a) SINGLE DEFENDANT, MULTIPLE COUNTS OR INFORMATIONS

A separate crime is charged in each [count of the information] [indictment] [information] and, although they have been tried together, each crime and the evidence applicable to it must be considered separately and a separate verdict returned as to each. A finding of guilty or not guilty as to one crime must not affect your verdict as to the other crime(s) charged [, except as explained in the instruction for legally interlocking counts].

Comments

See instruction 3.12(d) if legally interlocking crimes are charged.

This instruction was adopted in 1981 and was amended in 2008 [996 So. 3d 854] and 2018.

3.12(b) SINGLE COUNT, MULTIPLE DEFENDANTS

The defendants have been tried together; however, you must consider each defendant and the evidence applicable to [him] [her] separately. You may find [one] [any] [or] [both] guilty or not guilty. However, your verdict as to one defendant must not affect your verdict as to the other(s).

Comment

This instruction was adopted in 1981.

3.12(c) MULTIPLE COUNTS OR INFORMATIONS, MULTIPLE DEFENDANTS

A separate crime is charged against each defendant in each [count of the information] [information] [indictment]. The defendants have been tried together; however, the charges against each defendant and the evidence applicable to [him] [her] must be considered separately. A finding of guilty or not guilty as to [one] [both] [or] [some] of the defendants must not affect your verdict as to any other defendant(s) or other crimes charged [, except as explained in the instruction for legally interlocking counts].

Comments

See instruction 3.12(d) if legally interlocking crimes are charged.

This instruction was adopted in 1981 and was amended in 2008 [996 So. 2d 854] and 2018.

3.12(d) LEGALLY INTERLOCKING COUNTS

Counts [A and B] (substitute appropriate count numbers) **are linked in that the crime charged in count [A]** (identify predicate charged crime) **is an essential element of the crime charged in count [B]** (identify compound charged crime)**. You should first consider the evidence applicable to count [A]. If you find the crime in count [A] has not been proven beyond a reasonable doubt, you must find the defendant not guilty on both counts [A] and [B].**

If, on the other hand, you find that the crime charged in count [A] has been proven beyond a reasonable doubt, you must then consider the evidence applicable to count [B]. A guilty verdict on count [A] does not require a guilty verdict on count [B]. You should find the Defendant guilty on count [B] only if you find all the elements of that crime, including the essential elements contained in count [A], were proven beyond a reasonable doubt.

Comments

Legally interlocking crimes are charged when the crime charged in one count of the information or indictment is an essential element of the crime charged in another count. As a general rule, inconsistent verdicts are permitted because they may be the result of jury lenity. There is only one recognized exception to this general rule, namely, the "true inconsistent verdict" exception. True inconsistent verdicts are "those in which an acquittal on one count negates a necessary element for conviction on another count." Read cases such as *Brown v. State*, 959 So. 2d 218 (Fla. 2007) and *Gonzalez v. State*, 440 So. 2d 514 (Fla. 4th DCA 1983).

This instruction was adopted in 2008 [996 So. 2d 854] and amended in 2018.

3.12(e) JURY VERDICT FORM—PENALTY PHASE

If the defendant has been convicted of more than one count of First Degree Murder, use the following heading for each count and repeat the content of this form for each count.

We the jury find as follows as to (Defendant) in this case:

As to Count _____:

A. Aggravating Factor[s]

We the jury unanimously find the State proved beyond a reasonable doubt that (insert aggravating factor using language from instruction 7.11).

YES _____

NO _____

Repeat this step for each aggravating factor submitted to the jury for each count.

If you, the jury, answered NO [to every aggravating factor listed], you have completed your deliberations. The foreperson should date and sign at the end of this form.

If you, the jury, answered YES [to any aggravating factor listed], proceed to Section B.

B. Jury Recommendation

If fewer than 8 jurors vote for the death penalty, your recommendation must be for a penalty of life in prison without the possibility of parole.

If 8 or more jurors vote for the death penalty, your recommendation must be for the death penalty.

CHECK ONLY ONE:

We the jury have unanimously found the State proved one or more aggravating factors. Each of us has considered whether one or more mitigating circumstances exist. Each of us has weighed whether the proven aggravating factor(s) is/are sufficient and whether the proven aggravating factor(s) outweigh any proven mitigating circumstances.

We have further considered whether (Defendant) should be sentenced to life in prison without the possibility of parole or death.

_____ We the jury find (Defendant) should be sentenced to LIFE IN PRISON WITHOUT THE POSSIBILITY OF PAROLE.

_____ We the jury find by a vote of _____ to _____ that (Defendant) should be sentenced to DEATH.

Dated this _____ day of _____, 20___, in _____ County, Florida.

_____

(Signature of foreperson) / Juror identification number

Comment

This instruction was adopted in 2017 [214 So. 3d 1236] and amended in 2017 [214 So. 3d 1236], 2018 [244 So. 3d 172], and on June 23, 2023.

3.12(f) CRIME LEGALLY INTERLOCKING WITH A SPECIAL FINDING WITHIN THAT SAME COUNT

The charge of (insert appropriate charge) **and the special finding associated with that charge are interrelated because a special finding that the defendant** (insert the element of the special finding) **is an essential element of** (insert appropriate charge)**.**

Accordingly, you should not return a verdict finding the defendant guilty of (insert appropriate charge) **unless you also find, in the special finding, that the State proved the allegation that the defendant** (insert the element of the special finding)**.**

On the other hand, if you decide that the allegation that the defendant (insert the element of the special finding**) in the special finding [for Count** (insert the appropriate number of the relevant count**)] has not been proven beyond a reasonable doubt, then you should not return a verdict finding the defendant guilty of** (insert appropriate charge)**.**

Comments

In appropriate cases, this instruction may be used in order to avoid a true inconsistent verdict. As a general rule, inconsistent verdicts are permitted because they may be the result of jury lenity. Florida case law recognizes an exception to the general rule in cases of a "true inconsistent verdict." True inconsistent verdicts are those in which an acquittal on one count negates a necessary element for conviction on another count. *See Brown v. State*, 959 So. 2d 218 (Fla. 2007).

A true inconsistent verdict may occur because a) a crime and b) the special finding associated with that same crime, are legally interlocking. For example, if a defendant was charged with Aggravated Battery (Deadly Weapon) along with the 10-year minimum mandatory for actual possession of a firearm; if there was no evidence that the defendant was acting as an aider or abettor; and if the only weapon the defendant is alleged to have used was undisputedly a firearm, it would be inconsistent for the jury to find the defendant guilty of Aggravated Battery (Deadly Weapon) but not guilty of the special finding that the defendant actually possessed a firearm. *See*, for example, *Proctor v. State*, 205 So. 3d 784 (Fla. 2d DCA 2016) and *Gerald v. State*, 132 So. 3d 891, 893-94 (Fla. 1st DCA 2014). On the other hand, if there was a dispute about the nature of the deadly weapon used or if there was a dispute about whether the defendant was acting as an aider or abettor, then a guilty verdict on an Aggravated Battery (Deadly Weapon) charge along with a not guilty verdict pertaining to actual possession of a firearm, may not be "truly inconsistent." *See State v. McGhee*, 174 So. 3d 470 (Fla. 1st DCA 2015).

This instruction was adopted in 2018.

3.13 SUBMITTING CASE TO JURY

In just a few moments, you will be taken to the jury room by the [court deputy] [bailiff]. The first thing you should do is choose a foreperson who will preside over your deliberations. The foreperson should see to it that your discussions are carried on in an organized way and that everyone has a fair chance to be heard. It is also the foreperson's job to sign and date the verdict form[s] when all of you have agreed on a verdict and to bring the verdict form[s] back to the courtroom when you return.

During deliberations, jurors must communicate about the case only with one another and only when all jurors are present in the jury room. If a juror goes to the restroom, the deliberations should stop until the juror returns. You are not to communicate with any person outside the jury about this case. Until you have reached a verdict, you must not talk about this case in person or through the telephone, writing, or electronic communication, such as e-mail or any other means. Do not contact anyone to assist you during deliberations. These communications rules apply until I discharge you at the end of the case. If you become aware of any violation of these instructions or any other instruction I have given in this case, you must tell me by giving a note to the [court deputy] [bailiff].

Give if judge has allowed jurors to keep their electronic devices during the trial.

Many of you may have cell phones, tablets, laptops, or other electronic devices here in the courtroom. The rules do not allow you to bring your phones or any of those types of electronic devices into the jury room. Kindly leave those devices on your seats where they will be guarded by the [court deputy] [bailiff] while you deliberate.

If you need to communicate with me, send a note through the [court deputy] [bailiff]. If you have voted, do not disclose the actual vote in the note.

If you have a question, I will talk with the attorneys before I answer, so it may take some time. You may continue your deliberations while you wait for my answer. I will answer any questions, if I can, in writing or orally here in open court.

Give if applicable.

During the trial, [an item] [items] [was] [were] received into evidence as [an] exhibit[s]. You may examine whatever exhibit[s] you think will help you in your deliberations.

Give a or b as appropriate.

a. The[se] exhibit[s] will be sent into the jury room with you when you begin to deliberate.

b. If you wish to see an[y] exhibit[s], please request that in writing.

In closing, let me remind you that it is important that you follow the law spelled out in these instructions in deciding your verdict. There are no other laws that apply to this case. Even if you do not like the laws that must be applied, you must use them. For more than two centuries, we have lived by the Constitution and the law. No juror has the right to violate rules we all share.

Comment

This instruction was adopted in 1981 and was amended in 2000 [777 So. 2d 366], 2003 [850 So. 2d 1272], 2010 [52 So. 3d 595], 2012 [141 So. 3d 132], 2014 [152 So. 3d 529], 2016 [202 So. 3d 830], 2018 [260 So. 2d 1024], and on March 8, 2024.

3.14 SCORESHEET FINDINGS

Give any of the following where necessary but only if alleged in the State's charging document. See Comment.

Victim Injury Points
(Section III on the Criminal Punishment Code scoresheet)

If you find (defendant) **guilty of** (name of crime [or relevant lesser-included offenses])**, you must then answer the following question[s]:**

Did the State prove beyond a reasonable doubt that (victim) **died as a direct result of the** (name of crime [or relevant lesser-included offenses])**?**

_____**Yes**

_____**No**

Did the State prove beyond a reasonable doubt that (victim) **suffered severe physical injury as a direct result of the** (name of crime [or relevant lesser-included offenses])**?**

_____**Yes**

_____**No**

Did the State prove beyond a reasonable doubt that (victim) **suffered moderate physical injury as a direct result of the** (name of crime [or relevant lesser-included offenses])**?**

_____**Yes**

_____**No**

Did the State prove beyond a reasonable doubt that (victim) **suffered slight physical injury as a direct result of the** (name of crime [or relevant lesser- included offenses])**?**

_____**Yes**

_____**No**

For sex crimes, physical injury points (if physical injury occurred) must be scored in addition to points scored for either sexual contact or sexual penetration. § 921.0022(7), Fla. Stat.

Pursuant to § 921.0022(7), Fla. Stat., sexual contact or sexual penetration points cannot be scored for violations of § 944.35(3)(b)2., Fla. Stat., or § 872.06, Fla. Stat.

Did the State prove beyond a reasonable doubt there was sexual penetration between (victim) **and** (defendant) **during the commission of the** (name of crime [or relevant lesser-included offenses])**?**

_____**Yes**

_____**No**

Did the State prove beyond a reasonable doubt there was sexual contact between (victim) **and** (defendant) **during the commission of the** (name of crime [or relevant lesser-included offenses])**?**

_____**Yes**

_____**No**

Firearm/Semi-Automatic or Machine Gun Points
(Section VII on the Criminal Punishment Code scoresheet)

Firearm points may only be scored if the defendant is found guilty of committing or attempting to commit a felony other than those enumerated in § 775.087(2), Fla. Stat.

Semi-automatic or machine gun points may be scored only if the defendant is found guilty of committing or attempting to commit a felony other than those enumerated in § 775.087(3), Fla. Stat.

If you find (defendant) **guilty of** (name of crime [or relevant lesser-included offenses])**, you must then answer the following question:**

Did the State prove beyond a reasonable doubt that while [attempting to commit] [committing] (name of crime [or relevant lesser-included offenses])**, the defendant possessed a [firearm] [semi-automatic firearm] [machine gun]?**

_____**Yes**

_____**No**

Use for firearm points. § 790.001, Fla. Stat.

A "firearm" means any weapon [including a starter gun] which will, is designed to, or may readily be converted to expel a projectile by the

action of an explosive; [the frame or receiver of any such weapon;] [any firearm muffler or firearm silencer;] [any destructive device;]. [The term "firearm" does not include an antique firearm unless the antique firearm is used in the commission of a crime. An antique firearm is *(insert definition in § 790.001, Fla. Stat.*] **[A destructive device is** *(insert definition in § 790.001, Fla. Stat.*]**.**

Use a shortened definition of firearm for semi-automatic or machine gun points.

§ 790.001, Fla. Stat.

A "firearm" means any weapon which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; [the frame or receiver of any such weapon;] [any firearm muffler or firearm silencer].

§ 775.087(3), Fla. Stat.

"Semiautomatic firearm" means a firearm which is capable of firing a series of rounds by separate successive depressions of the trigger and which uses the energy of discharge to perform a portion of the operating cycle.

§ 790.001, Fla. Stat.

"Machine gun" means any firearm which shoots, or is designed to shoot, automatically more than one shot, without manually reloading, by a single function of the trigger.

Possession.

To prove (defendant) **"possessed" a [firearm] [semi-automatic firearm] [machine gun], the State must prove beyond a reasonable doubt that [he] [she] a) knew of the existence of the [firearm] [semi-automatic firearm] [machine gun] and b) intentionally exercised control over it.**

Give if applicable.

Control can be exercised over a [firearm] [semi-automatic firearm] [machine gun] whether it is carried on a person, near a person, or in a completely separate location. Mere proximity to a [firearm] [semi-automatic firearm] [machine gun] 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 the [firearm] [semi-automatic firearm] [machine gun] or the present ability to direct its control by another.

Joint possession.

Possession of a [firearm] [semi-automatic firearm] [machine gun] may be sole or joint, that is, two or more persons may possess it.

Criminal Gang Offense
(Section IX on the Criminal Punishment Code scoresheet)

If you find (defendant) **guilty of** (name of primary offense [or relevant lesser-included offenses that would still be the primary offense])**, you must then answer the following question:**

Did the State prove beyond a reasonable doubt the defendant committed the crime for the purpose of benefiting, promoting, or furthering the interests of a criminal gang?

_____**Yes**

_____**No**

§ 874.03, Fla. Stat.

"Criminal gang" means a formal or informal ongoing organization, association, or group that has as one of its primary activities the commission of criminal or delinquent acts, and that consists of three or more persons who have a common name or common identifying signs, colors, or symbols, including, but not limited to, terrorist organizations and hate groups.

Domestic Violence in Presence of a Child Under 16
(Section IX on the Criminal Punishment Code scoresheet)

If you find (defendant) **guilty of** (name of primary offense [or relevant lesser-included offenses that would still be the primary offense])**, you must then answer the following questions:**

Did the State prove beyond a reasonable doubt the (name of primary offense [or relevant lesser-included offenses that would still be the primary offense]) **was a crime of domestic violence?**

_____**Yes**

_____**No**

Did the State prove beyond a reasonable doubt the (name of primary offense [or relevant lesser included offenses that would still be the primary offense]) **was committed in the presence of a child under 16 years of age who was a family or household member of either the defendant or the victim?**

_____Yes

_____No

§ 741.28, Fla. Stat.

"Domestic violence" means any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member.

"Family or household member" means spouses, former spouses, persons related by blood or marriage, persons who are presently residing together as if a family or who have resided together in the past as if a family, and persons who are parents of a child in common regardless of whether they have been married. With the exception of persons who have a child in common, the family or household members must be currently residing or have in the past resided together in the same single dwelling unit.

Comments

Alleyne v. United States, 570 U.S. 99 (2013), requires that any fact that increases the required minimum sentence must be found by the jury. Accordingly, it is probably necessary to have a jury finding to add scoresheet points for facts that do not inhere in the verdict where that would change the minimum or maximum allowable or mandatory sentence. However, because *Apprendi v. New Jersey*, 530 U.S. 466 (2000), exempts recidivism from jury fact-finding, it is unlikely that scoresheet points related to recidivism factors require a jury finding.

This instruction need not be given in cases where the verdict regarding the crime itself makes clear that particular injury points should be applied. For example, if a defendant is found guilty of a homicide, scoresheet points for death can be added based solely on the verdict. Similarly, a conviction for crimes such as aggravated battery causing great bodily harm or DUI causing serious bodily injury would probably allow for the addition of scoresheet points for severe physical injury.

In addition, unless these scoresheet findings could result in increasing the minimum or maximum allowable or mandatory sentence beyond what could otherwise be imposed, submission of these matters to the jury may be unnecessary.

But a guilty verdict for sexual battery may not allow for sexual penetration points in the absence of a jury finding that penetration occurred, since sexual battery may be committed by sexual contact. *Blair v. State*, 201 So. 3d 800 (Fla. 4th DCA 2016). Also, the scoresheet multiplier for a crime of domestic violence committed in the presence of a child requires a jury finding if it would result in increasing the minimum allowable sentence. *Cartagena v. State*, 237 So. 3d 417 (Fla. 4th DCA 2018). Similarly, designating someone as a dangerous sexual felony offender and imposing a mandatory minimum sentence requires a jury finding. *Britten v. State*, 181 So. 3d 1215 (Fla. 1st DCA 2015).

This verdict form was adopted in 2019.

3.15 VIOLENT OFFENSES COMMITTED AGAINST SPECIFIED JUSTICE SYSTEM PERSONNEL

§ 775.0823, Fla. Stat.

If you find (defendant) **guilty of** (crime listed in § 775.0823, Fla. Stat. [or the lesser-included crime of (insert name of crime)] **and that** (victim) **was the victim of that crime, you must then answer the following two questions:**

1. **Did the State prove beyond a reasonable doubt that at the time of the crime,** (victim of crime) **was a[n] [law enforcement officer] [correctional officer] [correctional probation officer] [part-time law enforcement officer] [part-time correctional officer] [auxiliary law enforcement officer] [auxiliary correctional officer] [state attorney] [assistant state attorney] [public defender] [regional counsel] [court-appointed counsel] [defense attorney in a criminal proceeding] [justice] [judge]?**

   _____Yes _____No

2. **Did the State prove beyond a reasonable doubt:**

   [the crime arose out of or in the scope of the officer's duty as a [law enforcement officer] [correctional officer] [correctional probation officer] [part-time law enforcement officer] [part-time correctional officer] [auxiliary law enforcement officer] [auxiliary correctional officer]]?

   [the crime arose out of or in the scope of the [state attorney's] [assistant state attorney's] duty as a prosecutor or investigator]?

   [the crime arose out of or in the scope of the [justice's] [judge's] duty as a judicial officer]?

   [the [public defender] [regional counsel] [court-appointed counsel] [defense attorney] was acting in [his] [her] capacity as defense counsel?

   _____Yes _____No

Give definitions as applicable.

§ 943.10, Fla. Stat.

"Law enforcement officer" means any person who is elected, appointed, or employed full time by any municipality or the state or any

political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.

"Correctional officer" means any person who is appointed or employed full time by the state or any political subdivision thereof, or by any private entity which has contracted with the state or county, and whose primary responsibility is the supervision, protection, care, custody, and control, or investigation, of inmates within a correctional institution; however, the term "correctional officer" does not include any secretarial, clerical, or professionally trained personnel.

"Correctional probation officer" means a person who is employed full time by the state whose primary responsibility is the supervised custody, surveillance, and control of assigned inmates, probationers, parolees, or community controllees within institutions of the Department of Corrections or within the community. The term includes supervisory personnel whose duties include, in whole or in part, the supervision, training, and guidance of correctional probation officers, but excludes management and administrative personnel above but not including the probation and parole regional administrator level.

"Part-time law enforcement officer" means any person employed or appointed less than full time, as defined by an employing agency, with or without compensation, who is vested with authority to bear arms and make arrests and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state.

"Part-time correctional officer" means any person who is employed or appointed less than full time, as defined by the employing or appointing agency, with or without compensation, whose responsibilities include the supervision, protection, care, custody, and control of inmates within a correctional institution.

"Auxiliary law enforcement officer" means any person employed or appointed, with or without compensation, who aids or assists a full-time

or part-time law enforcement officer and who, while under the direct supervision of a full-time or part-time law enforcement officer, has the authority to arrest and perform law enforcement functions.

"Auxiliary correctional officer" means any person employed or appointed, with or without compensation, who aids or assists a full-time or part-time correctional officer and who, while under the supervision of a full-time or part-time correctional officer, has the same authority as a full-time or part-time correctional officer for the purpose of providing supervision, protection, care, custody, and control of inmates within a correctional institution or a county or municipal detention facility.

"State Attorney" means the person who was elected as the judicial circuit's state attorney pursuant to s. 27.01, Florida Statute.

"Assistant State Attorney" means a person who was appointed by a state attorney pursuant to s. 27.181, Florida Statute.

"Public defender" means the person who was elected as the judicial circuit's public defender pursuant to s. 27.50, Florida Statutes.

"Regional counsel" means the person who was appointed to act as the regional counsel pursuant to s. 27.511(3), Florida Statutes.

Court-appointed counsel means the person who was appointed to represent a client pursuant to s. 27.40, Florida Statutes.

[Justice] [Judge] means a judicial officer of [the Florida Supreme Court] [a district court of appeal] [a circuit court] [a county court].

Comments

There would be no effect for a § 775.0823, Fla. Stat. jury finding for first degree murder because that crime carries a mandatory life sentence and because life means life. But for second degree murder, third degree murder, attempted murders, kidnapping, aggravated battery, and aggravated assault, the scoresheet multipliers in § 921.0024, Fla. Stat. can be scored only if there were a jury finding of facts that did not inhere in the verdict. *See Alleyne v. United States,* 570 U.S. 99 (2013).

This instruction was adopted on December 15, 2023.

3.16 PRISON RELEASEE REOFFENDER FINDINGS

§ 775.082(9), Fla. Stat.

You have found (defendant) **guilty of** (crime listed in § 775.082(9), Fla. Stat.)**. You must now determine whether the State proved beyond a reasonable doubt whether:**

Give at least one of the following as applicable.

The (crime listed in § 775.082(9), Fla. Stat.) **was committed:**

a. within 3 years after being released from a state correctional facility operated by the Florida Department of Corrections.

b. while the defendant was serving a prison sentence.

c. within 3 years after being released from a county detention facility following incarceration for a crime for which the sentence pronounced was a prison sentence.

d. within 3 years after being released from a correctional institution of [another state] [the District of Columbia] [the United States] [any possession or territory of the United States] [any foreign jurisdiction] following incarceration for a crime for which the sentence is punishable by more than 1 year in Florida.

e. while the defendant was on escape status from a state correctional facility operated by the Florida Department of Corrections

f. within 3 years after being released from a private vendor.

g. while the defendant was on escape status from a private vendor.

h. while the defendant was on escape status from a correctional institution of [another state] [the District of Columbia] [the United States] [any possession or territory of the United States] [any foreign jurisdiction] following incarceration for an offense for which the sentence is punishable by more than 1 year in Florida.

Give if applicable.

The Court instructs you that the sentence for (name of crime) **is punishable by more than 1 year in Florida.**

Give as applicable.

"State correctional facility" means any prison.*

§951.23, Fla. Stat.

"County detention facility" means a [county jail] [county stockade] [county work camp] [county residential probation center] [and any other place except a municipal detention facility] used by a county or county officer for the detention of persons charged with or convicted of a felony or a misdemeanor, regardless of whether such facility is operated by a board of county commissioners, a sheriff, or any other entity.

Comments

As of January 2025, the effect of *Erlinger v. United States,* 602 U.S. 821 (2024) on Florida' s enhanced sentencing schemes was not fully developed. In an abundance of caution, the Committee on Standard Jury Instructions in Criminal Cases assumed the State must prove all the relevant criteria in § 775.082, Fla. Stat. to the jury.

*The PRR statute refers to a "state correctional facility." The term "state correctional institution" is defined in § 944.02, Fla. Stat., and includes a road camp, prison industry, prison forestry camp, or any prison camp or prison farm or other correctional facility, temporary or permanent, in which prisoners are housed, worked, or maintained, under the custody and jurisdiction of the Department of Corrections. It is likely that "state correctional facility" is synonymous with "state correctional institution" for purposes of § 775.082(9), Fla. Stat., since the terms are made synonymous in § 944.115, Fla. Stat. However, as of January 2025, in the absence of case law, the Committee on Standard Jury Instructions in Criminal Cases defined "state correctional facility" as meaning "prison."

This instruction was adopted on February 21, 2025.

3.17 HABITUAL FELONY OFFENDER* FINDINGS

§ 775.084, Fla. Stat.

You have found (defendant) **guilty of** (name(s) of crime(s)). **You must now determine whether the State proved the following four elements beyond a reasonable doubt.**

1. **The defendant was previously convicted of [any combination of] [at least two felonies in Florida] [or other] [qualified offenses].**

Give at least one of the following as applicable.

2. **The** (name(s) of crime(s)) **for which you just rendered a verdict of guilty was committed**

    a. **while the defendant was serving a prison sentence [or other sentence] that was imposed as a result of a prior felony conviction [or other qualified offense].**

    b. **while the defendant was serving a [court-ordered] [or lawfully imposed supervision] that was imposed as a result of a prior felony conviction [or other qualified offense].**

    c. **within 5 years of the date of the conviction of the defendant's last prior felony [or other qualified offense].**

    d. **within 5 years of the defendant's release from [a prison sentence] [probation] [community control] [control release] [conditional release] [parole] [court-ordered or lawfully imposed supervision or other sentence] that was imposed as a result of a prior felony conviction [or other qualified offense].**

3. **The** (name(s) of crime(s)) **for which you rendered a verdict of guilty and at least one of the two prior felony convictions in element #1 are not for Purchase of a Controlled Substance or Possession of a Controlled Substance, in violation of § 893.13, Florida Statutes.**

4. **The convictions in element #1 were sentenced separately from each other and separately from the** (name(s) of crime(s)) **for which you just found the defendant guilty.**

Give if applicable.

The Court instructs you that (names of felonies) **are felonies.**

"Qualified offense" means any crime, substantially similar in elements and penalties to a crime in Florida, which is in violation of a law of any other jurisdiction, whether that of another state, the District of Columbia, the United States or any possession or territory thereof, or any foreign jurisdiction, that was punishable under the law of such jurisdiction at the time of its commission by the defendant by death or imprisonment exceeding 1 year.

Give if applicable.

The placing of a person on probation or community control without an adjudication of guilt qualifies as a prior conviction.

Comments

As of January 2025, the effect of *Erlinger v. United States,* 602 U.S. 821 (2024) on Florida' s enhanced sentencing schemes was not fully developed. In an abundance of caution, the Committee on Standard Jury Instructions in Criminal Cases assumed the State must prove all the relevant criteria in § 775.084, Fla. Stat. to the jury, except for pardons and postconviction set asides which are discussed below.

*If the phrase "Habitual Felony Offender" is deemed too prejudicial, the court could use another title such as "Further Findings."

It is an affirmative defense that the defendant was pardoned for a prior felony or other qualified offense or that a prior conviction had been set aside in a postconviction proceeding. *See State v. Rucker*, 613 So. 2d 460 (Fla. 1993). A special instruction will be required if the defendant satisfies his or her burden of production on an affirmative defense. As of January 2025, the courts had not determined which party had the burden of persuasion of proving or disproving the affirmative defense or what that burden of persuasion is (preponderance of the evidence, clear and convincing evidence, or beyond a reasonable doubt).

If the State proves to the jury that a defendant qualifies as a HFO, the judge can still find that sentencing under the habitual felony offender statute is not necessary for the protection of the public. *See* § 775.084, Fla. Stat.

This instruction was adopted on February 21, 2025.

3.18 HABITUAL VIOLENT FELONY OFFENDER* FINDINGS

§ 775.084, Fla. Stat.

You have found (defendant) **guilty of** (name(s) of crime(s))**. You must now determine whether the State proved the following three elements beyond a reasonable doubt.**

1. **The defendant was previously convicted of [an attempt to commit] [a conspiracy to commit]** *(insert the appropriate felony listed in § 775.084(1)(b)1., Fla. Stat.)***.**

Give at least one of the following as applicable.

2. **The** (name(s) of crime(s)) **for which you just rendered a verdict of guilty was committed**

    a. **while the defendant was serving a prison sentence [or other sentence] that was imposed as a result of the conviction for the crime in element #1.**

    b. **while the defendant was serving a [court-ordered] [or lawfully imposed supervision] that was imposed as a result of the conviction for the crime in element #1.**

    c. **within 5 years of the date of the conviction for the crime in element #1.**

    d. **within 5 years of the defendant's release from [a prison sentence] [probation] [community control] [control release] [conditional release] [parole] [court-ordered or lawfully imposed supervision or other sentence] that was imposed as a result of the conviction for the crime in element #1.**

3. **The conviction for the crime in element #1 was sentenced separately from the** (name(s) of crime(s)) **for which you just found the defendant guilty.**

Give if applicable.

The placing of a person on probation or community control without an adjudication of guilt qualifies as a prior conviction.

Comments

As of January 2025, the effect of *Erlinger v. United States,* 602 U.S. 821 (2024) on Florida' s enhanced sentencing schemes was not fully developed. In

an abundance of caution, the Committee on Standard Jury Instructions in Criminal Cases assumed the State must prove all the relevant criteria in § 775.084, Fla. Stat. to the jury, except for pardons and postconviction set asides which are discussed below.

It is an affirmative defense that the defendant was pardoned for a prior felony or other qualified offense or that a prior conviction had been set aside in a postconviction proceeding. *See State v. Rucker*, 613 So. 2d 460 (Fla. 1993). A special instruction will be required if the defendant satisfies his or her burden of production on an affirmative defense. As of January 2025, the courts had not determined which party had the burden of persuasion of proving or disproving the affirmative defense or what that burden of persuasion is (preponderance of the evidence, clear and convincing evidence, or beyond a reasonable doubt).

*If the phrase "Habitual Violent Felony Offender" is deemed too prejudicial, the court could use another title.

If the State proves to the jury that a defendant qualifies as a HVFO, the judge can still find that sentencing under the HVFO statute is not necessary for the protection of the public. *See* § 775.084, Fla. Stat.

This instruction was adopted on February 21, 2025.

3.19 VIOLENT CAREER CRIMINAL* FINDINGS

§ 775.084, Fla. Stat.

You have found (defendant) **guilty of** (name(s) of crime(s))**. You must now determine whether the State proved the following six elements beyond a reasonable doubt.**

1. **The defendant was previously convicted as an adult three or more times for [**(insert appropriate crimes listed in § 775.084(1)(d)1., Fla. Stat.)**] [or] [a forcible felony] [or] [a felony violation of Chapter 790, Florida Statutes, involving the use or possession of a firearm] [or] [other qualified offense].**

2. **The defendant had been [or was] incarcerated in a [state] [or federal] prison.**

3. **The crime [in Count x] for which you just rendered a verdict of guilty was committed on or after October 1, 1995.**

4. **The crime [in Count x] for which you just rendered a verdict of guilty is [a** (insert appropriate crime listed in § 775.084(1)(d)1., Fla. Stat.)**] [or] [a forcible felony] [or] [a felony violation of Chapter 790, Florida Statutes, involving the use or possession of a firearm] [or] [an other qualified offense].**

Give at least one of the following as applicable.

5. **The** (name(s) of crime(s)) **for which you just rendered a verdict of guilty was committed**

    a. **while the defendant was serving a prison sentence [or other sentence] that was imposed as a result of the conviction for one of the crimes in element #1.**

    b. **while the defendant was serving a [court-ordered] [or lawfully imposed supervision] that was imposed as a result of the conviction for one of the crimes in element #1.**

    c. **within 5 years of the date of the conviction for one of the crimes in element #1.**

    d. **within 5 years of the defendant's release from [a prison sentence] [probation] [community control] [control release] [conditional release] [parole] [court-ordered or lawfully imposed supervision or other sentence] that was imposed**

as a result of the conviction for one of the crimes in element #1.

6. **The convictions in element #1 were sentenced separately from each other and separately from the** (name(s) of crime(s)) **for which you just found the defendant guilty.**

Give as applicable.

The Court instructs you that (name of crime) **is a [forcible felony] [a felony violation of Chapter 790, Florida Statutes, involving the use or possession of a firearm].**

"Qualified offense" means any crime, substantially similar in elements and penalties to a crime in Florida, which is in violation of a law of any other jurisdiction, whether that of another state, the District of Columbia, the United States or any possession or territory thereof, or any foreign jurisdiction, that was punishable under the law of such jurisdiction at the time of its commission by the defendant by death or imprisonment exceeding 1 year.

The placing of a person on probation or community control without an adjudication of guilt qualifies as a prior conviction.

Comments

*The phrase "Violent Career Criminal" has been deemed too prejudicial. The parties and the Court should review *State v. Emmund,* 698 So. 2d 1318 (Fla. 3d DCA 1997) for guidance to determine an alternative title.

As of February 2026, the effect of *Erlinger v. United States,* 602 U.S. 821 (2024) on Florida's enhanced sentencing schemes was not fully developed. In an abundance of caution, the Committee on Standard Jury Instructions in Criminal Cases assumed the State must prove all the relevant criteria in § 775.084, Fla. Stat. to the jury, except for pardons and postconviction set asides which are discussed below.

It is an affirmative defense that the defendant was pardoned for a prior felony or other qualified offense or that a prior conviction had been set aside in a postconviction proceeding. *See State v. Rucker*, 613 So. 2d 460 (Fla. 1993). A special instruction will be required if the defendant satisfies his or her burden of production on an affirmative defense. As of February 2026, the courts had not determined which party had the burden of persuasion of proving or disproving the affirmative defense or what that burden of persuasion is (preponderance of the evidence, clear and convincing evidence, or beyond a reasonable doubt).

If the State proves to the jury that a defendant qualifies as a VCC, the judge can still find that sentencing under the VCC statute is not necessary for the protection of the public. *See* § 775.084, Fla. Stat.

This instruction was adopted on February 21, 2025, and amended on March 20, 2026.

3.20 NONSTATE PRISON SANCTION/DANGER TO PUBLIC

§ 775.082(10), Fla. Stat.

The instruction may need significant edits during the charge conference to comport with local sanctions or conditions that are available for the court to impose. This initial paragraph could also be used as a preliminary instruction for the sentencing phase of the trial.

You have found (defendant) **guilty of** (insert name(s) of crimes(s)). **You must now determine if the State proved beyond a reasonable doubt whether sentencing [him] [her] to a nonstate prison sanction could present a danger to the public.**

"A nonstate prison sanction" means probation for up to _____ years, house arrest for up to two years, county jail for up to _____ years, or some combination of these alternatives for up to _____ years.

"Probation" would require the defendant to report to a probation officer as directed. The probation officer could visit [him] [her] at [his] [her] home unannounced. The defendant would be required to work at suitable employment if possible. [He] [She] would be ordered to live without violating the law, to not associate with persons engaged in criminal activity, and [he] [she] would not be allowed to possess a firearm. [[He] [She] could be ordered [to pay restitution] [and] [to submit to random drug testing by a probation officer].] Additionally, I could order other conditions of probation that I find to be appropriate. *(Instruct on other relevant conditions of probation, including those in § 948.03 – § 948.039, Fla. Stats., as requested.)* **A violation of any condition of probation, if proven by the State to a judge could result in a resentencing for [this] [these] crime[s].**

House arrest requires that the defendant be confined to [his] [her] home except for approved travel such as travel to a job and to other approved activities such as food shopping and attending religious services. The conditions of probation that I previously mentioned would be applicable and I could order additional conditions of house arrest that I find to be appropriate. *(Instruct on other relevant conditions of community control, including those in § 948.101, Fla. Stat., as requested.)* **A violation of any condition of house arrest, if proven by the State to a judge, could result in a resentencing for [this] [these] crime[s].**

The instructions I previously gave you about your deliberations apply to this phase of the trial.

Give if requested and applicable.

The defendant has a constitutional right to remain silent during and after the trial. The defendant is not required to present evidence or prove anything, even after a guilty verdict. You must not consider the exercise of a constitutional right to remain silent as evidence of anything and the decision to remain silent must not affect your verdict.

Give in all cases.

The State has the burden to prove beyond a reasonable doubt that a nonstate prison sanction could present a danger to the public.

Proof beyond a reasonable doubt does not mean proof beyond all doubt. A reasonable doubt is not a mere possible doubt, a speculative, imaginary, or forced doubt. On the other hand, if, after carefully considering, comparing, and weighing all the evidence, you do not have an abiding conviction that a nonstate prison sanction could present a danger to the public, or, if, having a conviction, it is one which is not stable but one which wavers and vacillates, then the State's allegation is not proved beyond every reasonable doubt. It is to the evidence introduced in this phase of the trial, and to it alone, that you are to look for that proof.

The jury's verdict must be unanimous, that is, all of you must agree to the same answer to the following question: Did the State prove beyond a reasonable doubt that a nonstate prison sanction could present a danger to the public?

Comments

Absent a plea, a jury must make a dangerousness finding for a judge to impose any sentence above a nonstate prison sanction for an offense committed on or after July 1, 2009, which is a third degree felony, but not a forcible felony, and excluding any third degree felony violation related to burglary or trespass, and if total sentence points pursuant to the Criminal Punishment Code are 22 points or fewer. *Gaymon v. State*, 288 So. 3d 1087 (Fla. 2020).

§ 775.082(10), Fla. Stat., requires the court to make its own written dangerousness finding regardless of a jury finding.

This instruction was adopted on February 21, 2025.

3.21 THREE TIME VIOLENT FELONY OFFENDER FINDINGS*

§ 775.084(1)(c), Fla. Stat.

You have found (defendant) **guilty of** (name of crime)**. You must now determine whether the State proved the following four elements beyond a reasonable doubt.**

1. **The defendant has two or more prior convictions as an adult, at least two of which were for:** (insert crimes or attempted crimes; must be listed in § 775.084(1)(c)1., Fla. Stat.)**.**

2. **The crime for which you just rendered a verdict of guilty is for:** (insert crime or attempted crime; must be listed in § 775.084(1)(c)1., Fla. Stat.)**.**

Give as applicable.

3. **The** (name of crime) **for which you just rendered a verdict of guilty was committed**

   a. **while the defendant was serving a prison sentence [or other sentence] that was imposed as a result of the conviction for one of the crimes in element #1.**

   b. **within 5 years after the date of conviction of the last prior crime in element #1.**

   c. **within 5 years of the defendant's release from [a prison sentence] [probation] [community control] [or other sentence] that was imposed as a result of the conviction for one of the crimes in element #1, whichever is later.**

4. **The convictions in element #1 were sentenced separately from each other and separately from the** (name of crime) **for which you just found the defendant guilty.**

[The placing of a person on probation or community control without an adjudication of guilt qualifies as a prior conviction.]

Comments

*The phrase "Three Time Violent Felony Offender" may be too prejudicial. The parties and the Court may consider an alternative title such as "Further Findings."

As of September 2026, the effect of *Erlinger v. United States,* 602 U.S. 821 (2024) on Florida's enhanced sentencing schemes was not fully developed. In an abundance of caution, the Committee on Standard Jury Instructions in Criminal Cases assumed the State must prove all the relevant criteria in § 775.084, Fla. Stat. to the jury, except for pardons and postconviction set asides which are discussed below.

It is an affirmative defense that the defendant was pardoned for a prior felony or other qualified offense or that a prior conviction had been set aside in a postconviction proceeding. *See State v. Rucker*, 613 So. 2d 460 (Fla. 1993). A special instruction will be required if the defendant satisfies his or her burden of production on an affirmative defense. As of September 2026, the courts had not determined which party had the burden of persuasion of proving or disproving the affirmative defense or what that burden of persuasion is (preponderance of the evidence, clear and convincing evidence, or beyond a reasonable doubt).

For element #1, a conviction for a crime committed in another jurisdiction qualifies if the elements of that crime are substantially similar to the elements of the felonies listed in § 784,084(1)(c)1., Fla. Stat. As of September 2026, it was unclear whether the judge or the jury makes the substantially similar finding. A special instruction will be necessary if a jury finding is required on that issue.

For element #1, Aggravated Assault with a Deadly Weapon may be used as a qualifying conviction while Aggravated Assault (with the intent to commit a felony) may not. *McNair v. State*, 244 So. 3d 379 (Fla. 5th DCA 2018).

This instruction was adopted on October 9, 2026.

CHAPTER 4 - SUPPLEMENTAL INSTRUCTIONS

4.1 JURY DEADLOCK

I know that all of you have worked hard to try to find a verdict in this case. It apparently has been impossible for you so far. Sometimes an early vote before discussion can make it hard to reach an agreement about the case later. The vote, not the discussion, might make it hard to see all sides of the case.

We are all aware that it is legally permissible for a jury to disagree. There are two things a jury can lawfully do: agree on a verdict or disagree on what the facts of the case may truly be.

There is nothing to disagree about on the law. The law is as I told you. If you have any disagreements about the law, I should clear them up for you now. That should be my problem, not yours.

If you disagree over what you believe the evidence showed, then only you can resolve that conflict, if it is to be resolved.

I have only one request of you. By law, I cannot demand this of you, but I want you to go back into the jury room. Then, taking turns, tell each of the other jurors about any weakness of your own position. You should not interrupt each other or comment on each other's views until each of you has had a chance to talk. After you have done that, if you simply cannot reach a verdict, then return to the courtroom and I will declare this case mistried, and will discharge you with my sincere appreciation for your services.

You may now retire to continue with your deliberations.

Comment

This instruction was adopted in 1981.

4.2 INSTRUCTION UPON DISCHARGE OF JURY

Ladies and gentlemen, I wish to thank you for your time and consideration of this case.

I also wish to advise you of some very special privileges enjoyed by jurors.

No juror can ever be required to talk about the discussions that occurred in the jury room, except by court order. For many centuries, our society has relied upon juries for consideration of difficult cases. We have recognized for hundreds of years that a jury's deliberations, discussions, and votes should remain their private affair as long as they wish it. Therefore, the law gives you a unique privilege not to speak about the jury's work.

Although you are at liberty to speak with anyone about your deliberations, you are also at liberty to refuse to speak to anyone. A request to discuss either your verdict or your deliberations may come from those who are simply curious, from those who might seek to find fault with you, from the media, from the attorneys, or elsewhere. It will be up to you to decide whether to preserve your privacy as a juror.

Upon the completion of the reading of this instruction, the jury should be discharged and no further discussion should be had at that time between the judge and the jurors or between the attorneys and jurors unless some question of irregularity in the jury procedures arises at that point. Fla. R. Crim. P. 3.451.

Comment

This instruction was adopted in 1981 and amended in 2007 [967 So. 2d 178].

4.3 ANSWERS TO JUROR INQUIRIES DURING DELIBERATIONS

Members of the jury, I have discussed your [note][question] with the attorneys.

You have [asked the following question] [made the following request]: (read juror's note)

If I have not read your [note][question] correctly, please raise your hand.

(clarify question as needed)

1. **The answer is:** (respond to question)

   OR

2. **I am not able to [answer][respond to] this [question][request] because it [calls for information that is not in evidence][is not proper to be considered in this case]** (other reason why question or request is improper)**. Your decision must be based only on the evidence presented in the trial and the law that I have given you. [If you have any other specific questions, please send another note, and I will see if I can answer it.]** (other appropriate response)

Notes On Use Of 4.3

1. The procedure contained in 4.3 assumes that a juror question or request will be in writing. Oral questions from jurors are discouraged.

2. In responding to a juror's question or request, the court should answer as specifically as possible. To avoid inadvertent error, it is a good practice to prepare a written answer with the assistance of the attorneys and then read this answer to the jury.

3. All written questions and answers should be preserved and placed in the court file.

Comment

This instruction was adopted in 2007 [967 So. 2d 178].

4.4 REQUEST FOR [READ-BACK] [PLAY-BACK] OR TRANSCRIPT OF TESTIMONY

1. Read-Back/Play-Back granted as requested

Members of the jury, you have asked that the following testimony be [read] [played] back to you: (describe testimony)**. The court reporter will now [read] [play back] the testimony that you have requested.**

OR

2. Read-Back/Play-Back Deferred

Members of the jury, I have discussed with the attorneys your request to have certain testimony [read] [played] back to you. It will take approximately (amount of time) **to have the court reporter prepare and [read] [play] back the requested testimony.**

I now direct you to return to the jury room and discuss your request further. If you are not able to resolve your question about the requested testimony by relying on your collective memory, then you should write down as specific a description as possible of the part of the witness(es)' testimony that you want to hear again. Make your request for [reading] [playing] back testimony as specific as possible.

OR

3. Read-Back/Play Back Denied

Members of the jury, you have asked that the following testimony be [read] [played] back to you: (describe testimony)

I am not able to grant your request.

4. Request for transcripts

Members of the jury, you have asked that transcripts of testimony be provided for you. Transcripts are not available. However, you may request to have testimony [read] [played] back to you. This request may be granted at the court's discretion. I now direct you to return to the jury room and discuss your request further. If you are not able to resolve your question about the requested testimony by relying on your collective memory, then you may request to have testimony [read] [played] back to you. If you decide to make such a request, it should be as specific as possible.

Note on Use

Any read-back or play-back of testimony must take place in open court in the presence of all parties. Transcripts or tapes of testimony should not be sent back to the jury room.

Comments

See *Hazuri v. State*, 91 So. 3d 836 (Fla. 2012); *State v. Barrow*, 91 So. 3d 826 (Fla. 2012); Fla. R. Crim. P. 3.410.

This instruction was adopted in 2007 [967 So. 2d 178] and amended in 2013.

PART TWO: INSTRUCTIONS ON CRIMES

CHAPTER 5 —INCHOATE CRIMES

5.1 ATTEMPT TO COMMIT CRIME

§ 777.04(1), Fla. Stat.

To prove (defendant) **attempted to commit the crime of** (name of crime attempted)**, the State must prove the following three elements beyond a reasonable doubt:**

1. (Defendant) **intended to commit the crime of** (name of crime attempted)**.**

2. (Defendant) **committed an overt act toward the commission of** (name of crime attempted) **that went beyond mere preparation.**

3. (Defendant) **failed to complete the** (name of crime attempted)**.**

Berger v. State, 259 So. 3d 933 (Fla. 5th DCA 2018); State v. Coker, 452 So. 2d 1135 (Fla. 2d DCA 1984).

The line between mere preparation and an overt act is a question of fact for you to decide. Mere preparation consists of devising or arranging the means or measures necessary to commit the crime. An overt act consists of some movement toward committing the crime after mere preparation. An overt act need not be the last possible act toward completing the crime.

The crime of (crime attempted) **is defined as** (insert elements of crime attempted)**.**

Give if applicable. Affirmative Defense. § 777.04(5)(a), Fla. Stat. Carroll v. State, 680 So. 2d 1065 (Fla. 3d DCA 1996). Harriman v. State, 174 So. 3d 1044 (Fla. 1st DCA 2015).

It is a defense to the crime of Attempted (name of crime attempted) **if the defendant abandoned [his] [her] attempt to commit the offense or otherwise prevented its commission, under circumstances indicating a complete and voluntary renunciation of [his] [her] criminal purpose.**

Renunciation is not complete and voluntary where the defendant failed to complete the crime because of unanticipated difficulties, unexpected resistance, a decision to postpone the crime to another time, or circumstances known by the defendant that increased the probability of being apprehended.

If you find that the defendant proved by a preponderance of the evidence that [he] [she] abandoned [his] [her] attempt to commit the

offense or otherwise prevented its commission, under circumstances indicating a complete and voluntary renunciation of [his] [her] criminal purpose, you should find [him] [her] not guilty of Attempted (name of crime attempted)**.**

If the defendant failed to prove by a preponderance of the evidence that [he] [she] abandoned [his] [her] attempt to commit the offense or that [he] [she] otherwise prevented its commission, under circumstances indicating a complete and voluntary renunciation of [his] [her] criminal purpose, you should find [him] [her] guilty of Attempted (name of crime attempted) **if all the elements of the charge have been proven beyond a reasonable doubt.**

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comments

As of January 2025, no case law addressed the issue of whether renunciation remains a defense to an attempt to commit a crime where some harm was done.

§ 777.04(1), Fla. Stat., includes the phrase "…or is intercepted or prevented in the execution thereof…." If needed, element #3 should be altered to cover one or both of those concepts.

This instruction was adopted in 1981 and amended in 2017 [213 So. 3d 680], 2018 [238 So. 3d 192], on December 15, 2023, and on February 21, 2025.

5.2 CRIMINAL SOLICITATION

§ 777.04(2), Fla. Stat.

To prove the crime of Criminal Solicitation, the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) **solicited** (person alleged) **to commit** (offense solicited)**.**

2. **During the solicitation,** (defendant)

[commanded]

[encouraged]

[hired]

[requested]

(person alleged) **to engage in specific conduct, which would constitute the commission of** (offense solicited) **or an attempt to commit** (offense solicited)**.**

It is not necessary that the defendant do any act in furtherance of the offense solicited.

Define the crime solicited. If it is Burglary, also define crime that was object of the burglary. Also define "attempt" (see 5.1).

Definition

To "solicit" means to ask earnestly or to try to induce another person to engage in specific conduct.

Affirmative Defense. Give if applicable. § 777.04(5)(b), Fla. Stat. Carroll v. State, 680 So. 2d 1065 (Fla. 3d DCA 1996). Harriman v. State, 174 So. 3d 1044 (Fla. 1st DCA 2015).

It is a defense to the charge of Criminal Solicitation if the defendant, after soliciting (person solicited) to commit the (offense solicited)**, persuaded** (person solicited) **not to do so, or otherwise prevented commission of the offense, under circumstances indicating a complete and voluntary renunciation of [his] [her] criminal purpose.**

Renunciation is not complete and voluntary where the crime solicited was not completed because of unanticipated difficulties, unexpected resistance, a decision to postpone the crime to another time,

or circumstances known by the defendant that increased the probability of being apprehended.

If you find that the defendant proved by a preponderance of the evidence that [he] [she] persuaded (person solicited) **not to commit the** (offense solicited)**, or otherwise prevented commission of the** (offense solicited)**, under circumstances indicating a complete and voluntary renunciation of [his] [her] criminal purpose, you should find [him] [her] not guilty of** (crime solicited)**.**

If the defendant failed to prove by a preponderance of the evidence that [he] [she] persuaded (person solicited) **not to commit the** (offense solicited)**, or that [he] [she] did not otherwise prevent commission of the** (offense solicited)**, under circumstances indicating a complete and voluntary renunciation of [his] [her] criminal purpose, you should find [him] [her] guilty of** (crime solicited)**, if all the elements of the charge have been proven beyond a reasonable doubt.**

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comments

As of November 2015, no case law addressed the issue of whether renunciation remains a defense to a solicitation to commit a crime where some harm was done.

This instruction was adopted in 1981 and amended in 2017.

5.3 CRIMINAL CONSPIRACY

§ 777.04(3), Fla. Stat.

To prove the crime of Criminal Conspiracy, the State must prove the following two elements beyond a reasonable doubt:

1. **The intent of** (defendant) **was that the offense of** (object of conspiracy) **would be committed.**

If there is an issue as to whether the subject of the conspiracy was a crime, it may be necessary to define that crime.

2. **In order to carry out the intent** (defendant)

[agreed]
[conspired]
[combined]
[confederated]

with (person[s] alleged) **to cause** (object of conspiracy) **to be committed either by them, or one of them, or by some other person.**

It is not necessary that the

[agreement]
[conspiracy]
[combination]
[confederation]

to commit (object of conspiracy) **be expressed in any particular words or that words pass between the conspirators.**

It is not necessary that the defendant do any act in furtherance of the offense conspired.

Affirmative Defense. Give if applicable. § 777.04(5)(c), Fla. Stat. Carroll v. State, 680 So. 2d 1065 (Fla. 3d DCA 1996). Harriman v. State, 174 So. 3d 1044 (Fla. 1st DCA 2015).

It is a defense to the charge of Criminal Conspiracy that (defendant)**, after conspiring with one or more persons to commit the** (object of conspiracy)**, persuaded** (person alleged) **not to do so, or otherwise prevented commission of the** (object of conspiracy)**, under circumstances indicating a complete and voluntary renunciation of [his] [her] criminal purpose.**

Renunciation is not complete and voluntary where the crime that was conspired to was not completed because of unanticipated difficulties, unexpected resistance, a decision to postpone the crime to another time, or circumstances known by the defendant that increased the probability of being apprehended.

If you find that the defendant proved by a preponderance of the evidence that [he] [she] persuaded (person alleged) **not to commit the** (object of conspiracy)**, or otherwise prevented commission of the** (object of conspiracy)**, under circumstances indicating a complete and voluntary renunciation of [his] [her] criminal purpose, you should find [him] [her] not guilty of Conspiracy to Commit** (name of crime)**.**

If the defendant failed to prove by a preponderance of the evidence that [he] [she] persuaded (person alleged) **not to commit the** (object of conspiracy)**, or that [he] [she] did not otherwise prevent commission of the** (object of conspiracy)**, under circumstances indicating a complete and voluntary renunciation of [his] [her] criminal purpose, you should find [him] [her] guilty of Conspiracy to Commit** (name of crime)**, if all the elements of the charge have been proven beyond a reasonable doubt.**

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comments

As of November 2015, no case law addressed the issue of whether renunciation remains a defense to conspiracy to commit a crime where some harm was done.

This instruction was adopted in 1981 and amended in 2017.

CHAPTER 6 — ATTEMPTED HOMICIDE

6.1 INTRODUCTION TO ATTEMPTED HOMICIDE

Read in all attempted murder and attempted manslaughter cases.

Chapter 776, Fla. Stat., and § 782.02, Fla. Stat., when considered together, cover the lawful use of deadly force. If the defendant is relying on a claim that his or her use of deadly force was lawful, appropriate parts of instruction 3.6(f) should be given in addition to this instruction. Hamilton v. State, 387 So. 3d 305 (Fla. 4th DCA 2024).

(Defendant) **is accused of** (crime(s) charged) **in Count[s]** (insert the number of the relevant count(s))**.**

Give degrees of attempted homicides as applicable.

Attempted First Degree Murder includes the lesser crimes of Attempted Second Degree and Attempted Manslaughter, all of which are forms of attempted homicide and all of which are unlawful. However, an attempted homicide that was excusable or that was committed by the justifiable use of deadly force is lawful.

If you find that there was an attempted homicide of (victim) **by** (defendant)**, you will then consider the circumstances surrounding the attempted homicide in deciding whether it was Attempted First Degree Murder, or Attempted Second Degree Murder, or Attempted Manslaughter, or whether the attempted homicide was excusable or resulted from the justifiable use of deadly force.**

JUSTIFIABLE ATTEMPTED HOMICIDE
§ 782.02, Fla. Stat.

The use of deadly force to attempt to kill a human being is justifiable, and therefore lawful, if necessarily done while resisting an attempt to murder or commit a felony upon the defendant, or to commit a felony in or upon any dwelling house in which the defendant was at the time of the attempted killing. "Deadly force" means force likely to cause death or great bodily harm. "Great bodily harm" means harm that is more than slight, trivial, minor, or moderate.

EXCUSABLE ATTEMPTED HOMICIDE
§ 782.03, Fla. Stat.

An attempted homicide is excusable and therefore lawful under any one of the three following circumstances:

1. **When the attempted homicide is committed by accident and misfortune in doing any lawful act by lawful means with usual ordinary caution and without any unlawful intent, or**

2. **When the attempted homicide occurs by accident and misfortune in the heat of passion, upon any sudden and sufficient provocation, or**

3. **When the attempted homicide is committed by accident and misfortune resulting from a sudden combat, if a dangerous weapon is not used and the attempted killing is not done in a cruel and unusual manner.**

A "dangerous weapon" is any object that will likely cause death or great bodily harm if used in the ordinary and usual manner contemplated by its design and construction.

Give only if applicable.

An object not designed to inflict bodily harm may nonetheless be a "dangerous weapon" if it was used in a manner likely to cause death or great bodily harm.

Comments

Num-chucks, which were originally designed as a farm tool, can be a deadly weapon. *R.V. v. State,* 497 So. 2d 912 (Fla. 5th DCA 1986). Jurors could find that a 7-inch straight-edged razor might be a dangerous weapon. *R.R. v. State,* 826 So. 2d 465 (Fla. 5th DCA 2002). In trials involving these types of objects, the judge should consider a special instruction informing jurors that an object can be a dangerous weapon if its sole modern use is to cause great bodily harm or death. A special instruction may also be necessary in cases where the dangerous weapon was an animal or a substance or something that is not commonly referred to as an "object."

This instruction was adopted in 1994 and amended in 2014 [148 So. 3d 1204], on April 3, 2020, on July 29, 2022, and on September 12, 2025.

6.2 ATTEMPTED FIRST DEGREE PREMEDITATED MURDER

§§ 782.04(1)(a) and 777.04, Fla. Stat.

In the absence of an express concession that the attempted homicide was not excusable or justified, the trial judge must also read Instruction 6.1, Introduction to Attempted Homicide.

To prove the crime of Attempted First Degree Premeditated Murder, the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **intended to commit the crime of First Degree Premeditated Murder.**

2. (Defendant) **committed an overt act toward the commission of First Degree Premeditated Murder that went beyond mere preparation.**

3. (Defendant) **failed to complete the First Degree Premeditated Murder.**

Berger v. State, 259 So. 3d 933 (Fla. 5th DCA 2018); State v. Coker, 452 So. 2d 1135 (Fla. 2d DCA 1984).

The line between mere preparation and an overt act is a question of fact for you to decide. Mere preparation consists of devising or arranging the means or measures necessary to commit the crime. An overt act consists of some movement toward committing the crime after mere preparation. An overt act need not be the last possible act toward completing the crime.

To prove that a First Degree Premeditated Murder had taken place, the State would have to prove the following three elements beyond a reasonable doubt:

1. (Victim) **is dead.**

2. The death was caused by the criminal act of (defendant)**.**

3. There was a premeditated killing of (victim)**.**

"A premeditated killing" is killing after consciously deciding to do so. The decision must be present in the mind at the time of the killing. The law does not fix the exact period of time that must pass between the formation of the premeditated intent to kill and the killing. The period of

time must be long enough to allow reflection by the defendant. The premeditated intent to kill must be formed before the killing.

The question of premeditation is a question of fact to be determined by you from the evidence. It will be sufficient proof of premeditation if the circumstances of the killing and the conduct of the accused convince you beyond a reasonable doubt of the existence of premeditation at the time of the killing.

Lesser Included Offenses

ATTEMPTED FIRST DEGREE PREMEDITATED MURDER — 782.04(1) AND 777.04

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Attempted second degree (depraved mind) murder		782.04(2) and 777.04	6.4
Attempted manslaughter by act		782.07 and 777.04	6.6
Attempted aggravated battery (intentionally cause great bodily harm)		784.045(1)(a)1 and 777.04	8.4 and 5.1
Attempted battery (intentionally cause bodily harm)		784.03(1)(a)2 and 777.04	8.3 and 5.1
	Attempted felony murder	782.051(2)	6.3
	Attempted felony murder	782.051(3)	6.3(a)
	Aggravated battery	784.045	8.4
	Felony battery	784.041(1)	8.5
	Aggravated assault	784.021	8.2
	Battery	784.03	8.3
	Assault	784.011	8.1

Comments

See Instruction 5.1 for the affirmative defense of renunciation.

See Instruction 6.7 for the § 782.065, Fla. Stat., reclassification when the victim is a law enforcement officer, correctional officer, etc. and instruction 3.15 for the scoresheet multiplier in § 775.0823, Fla. Stat.

If there is evidence the defendant acted in the heat of passion on legally adequate provocation, judges must explain the concept of heat of passion to the jury. See Instruction 7.2.

A charging document that tracks the language of the Attempted First-Degree Premeditated Murder statute does not charge Attempted Felony Murder. *See Weatherspoon v. State*, 214 So. 3d 578 (Fla. 2017).

This instruction was adopted in 1994 [636 So. 2d 502] and amended in 2014 [137 So. 3d 995], 2018 [236 So. 3d 282], on December 15, 2021, and on December 15, 2023.

6.3 ATTEMPTED FELONY MURDER [ENUMERATED FELONY] [NON-ENUMERATED FELONY]

§ 782.051(1) and (2), Fla. Stat.

In the absence of an express concession that the attempted homicide was not excusable or justified, the trial judge must also read Instruction 6.1, Introduction to Attempted Homicide.

To prove the crime of Attempted Felony Murder, the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **[committed] [attempted to commit] a** (crime alleged)**.**

2. **While engaged in the [commission] [attempted commission] [escape from the immediate scene] of** (crime alleged)**, the defendant [committed] [aided or abetted] an intentional act that is not an essential element of** (crime alleged)**.**

3. **This intentional act could have but did not cause the death of** (victim)**.**

(Crime alleged) **is defined by Florida law as** (define the crime)**.**

To convict the defendant of Attempted Felony Murder, it is not necessary for the State to prove that [he] [she] had a premeditated design or intent to kill.

Give only if applicable.

An attempt to commit a crime requires an intent to commit the crime and an overt act that goes beyond mere preparation.

Berger v. State, 259 So. 3d 933 (Fla. 5th DCA 2018); State v. Coker, 452 So. 2d 1135 (Fla. 2d DCA 1984).

The line between mere preparation and an overt act is a question of fact for you to decide. Mere preparation consists of devising or arranging the means or measures necessary to commit the crime. An overt act consists of some movement toward committing the crime after mere preparation. An overt act need not be the last possible act toward completing the crime.

If the underlying felony or attempted felony is charged as a separate count, read instruction 3.12(d) (Legally Interlocking Counts). Failure to do so may

result in an impermissible inconsistent verdict. See, e.g., Brown v. State, 959 So. 2d 218 (Fla. 2007).

Lesser Included Offenses

6.3 ATTEMPTED FELONY MURDER [ENUMERATED FELONY] [NON-ENUMERATED FELONY] — § 782.051(1) AND (2)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Attempted Manslaughter by Act		782.07 & 777.04	6.6
	Aggravated Battery	784.045	8.4
	Felony Battery	784.041(1)	8.5
	Aggravated Assault	784.021	8.2
	Battery	784.03	8.3
	Assault	784.011	8.1

Comments

§ 782.051(1), Fla. Stat., applies where the defendant is alleged to have committed or attempted to commit a felony enumerated in § 782.04(3), Fla. Stat.

§ 782.051(2), Fla. Stat., applies where the defendant is alleged to have committed or attempted to commit a felony not enumerated in § 782.04(3), Fla. Stat.

A charging document that tracks the language of the Attempted First-Degree Premeditated Murder statute does not charge Attempted Felony Murder. *See Weatherspoon v. State*, 214 So. 3d 578 (Fla. 2017).

See Instruction 5.1 for the affirmative defense of renunciation.

See Instruction 6.7 for the § 782.065, Fla. Stat., reclassification when the victim is a law enforcement officer, correctional officer, etc. and instruction 3.15 for the scoresheet multiplier in § 775.0823, Fla. Stat.

This instruction was adopted in 2007 [962 So. 2d 310] and amended in 2014 [137 So. 3d 995], 2018 [236 So. 3d 282], and on December 15, 2023.

6.3(a) ATTEMPTED FELONY MURDER — INJURY CAUSED BY ANOTHER

§ 782.051(3) Fla. Stat.

In the absence of an express concession that the attempted homicide was not excusable or justified, the trial judge must also read Instruction 6.1, Introduction to Attempted Homicide.

To prove the crime of Attempted Felony Murder, the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) **[committed] [attempted to commit] a** (crime alleged)**.**

2. (Victim) **was injured during the [commission] [attempted commission] of an escape from the immediate scene of the (crime alleged) by an individual other than the person(s) [committing] [attempting to commit] [escaping from the immediate scene of] the** (crime alleged)**.**

(Crime alleged) **is defined by Florida law as** (define the crime)**.**

To convict the defendant of Attempted Felony Murder, it is not necessary for the state to prove that the defendant had a premeditated design or intent to kill.

Give only if applicable.

An attempt to commit a crime requires an intent to commit the crime and an overt act that goes beyond mere preparation.

Berger v. State, 259 So. 3d 933 (Fla. 5th DCA 2018); State v. Coker, 452 So. 2d 1135 (Fla. 2d DCA 1984).

The line between mere preparation and an overt act is a question of fact for you to decide. Mere preparation consists of devising or arranging the means or measures necessary to commit the crime. An overt act consists of some movement toward committing the crime after mere preparation. An overt act need not be the last possible act toward completing the crime.

If the underlying felony or attempted felony is charged as a separate count, read instruction 3.12(d) (Legally Interlocking Counts). Failure to do so may result in an impermissible inconsistent verdict. See, e.g., Brown v. State, 959 So. 2d 218 (Fla. 2007).

Lesser Included Offense

6.3(a) ATTEMPTED FELONY MURDER – INJURY CAUSED BY ANOTHER — § 782.051(3)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempted Manslaughter by Act	782.07 & 777.04	6.6

Comments

§ 782.051(3), Fla. Stat., applies only where the defendant was committing or attempting to commit a felony enumerated in § 782.04(3), Fla. Stat.

A charging document that tracks the language of the Attempted First-Degree Premeditated Murder statute does not charge Attempted Felony Murder. *See Weatherspoon v. State*, 214 So. 3d 578 (Fla. 2017).

This instruction was adopted in 2007 [962 So. 2d 310] and amended in 2014 [137 So. 3d 995], 2018 [236 So. 3d 282], and on December 15, 2023.

6.4 ATTEMPTED SECOND DEGREE MURDER

§§ 782.04(2) and 777.04, Fla. Stat.

In the absence of an express concession that the attempted homicide was not excusable or justified, the trial judge must also read Instruction 6.1, Introduction to Attempted Homicide.

To prove the crime of Attempted Second Degree Murder, the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **intentionally committed an overt act that could have resulted in the death of** (victim) **but did not result in** (victim's) **death.**

2. **The act was imminently dangerous to another and demonstrated a depraved mind without regard for human life.**

3. **The overt act went beyond mere preparation.**

Porter v. State, 384 So. 3d 839 (Fla. 1d DCA 2024) and Kenyon v. State, 429 So. 3d 473 (Fla. 4th DCA 2025) support the bracketed language in #2 below in appropriate cases.

An "act" includes a series of related actions arising from and performed pursuant to a single design or purpose. An act is "imminently dangerous to another and demonstrating a depraved mind" if it is an act or series of acts that:

1. **a person of ordinary judgment would know is reasonably certain to kill or do serious bodily injury to another,**

   and

2. **is done from ill will, hatred, spite, or an evil intent, and indicates an indifference to human life**

   [or

   denotes a wicked and corrupt disregard of the lives and safety of others].

Berger v. State, 259 So. 3d 933 (Fla. 5th DCA 2018); State v. Coker, 452 So. 2d 1135 (Fla. 2d DCA 1984).

The line between mere preparation and an overt act is a question of fact for you to decide. Mere preparation consists of devising or arranging

the means or measures necessary to commit the crime. An overt act consists of some movement toward committing the crime after mere preparation. An overt act need not be the last possible act toward completing the crime.

To convict the defendant of Attempted Second Degree Murder, it is not necessary for the State to prove the defendant had an intent to cause death.

Give only if there is evidence that the defendant acted in the heat of passion on legally adequate provocation.

An issue in this case is whether (defendant) **did not have a depraved mind without regard for human life because [he] [she] acted in the heat of passion based on adequate provocation. In order to find that the defendant did not have a depraved mind without regard for human life because [he] [she] acted in the heat of passion based on adequate provocation:**

a. there must have been a sudden event that would have suspended the exercise of judgment in an ordinary reasonable person; and

b. a reasonable person would have lost normal self-control and would have been driven by a blind and unreasoning fury; and

c. there was not a reasonable amount of time for a reasonable person to cool off; and

d. a reasonable person would not have cooled off before committing the act that would have resulted in death; and

e. (defendant) **was, in fact, so provoked and did not cool off before [he] [she] committed the act that would have resulted in the death of** (victim)**.**

If you have a reasonable doubt about whether the defendant had a depraved mind without regard for human life because [he] [she] acted in the heat passion based on adequate provocation, you should not find [him] [her] guilty of Attempted Second Degree Murder.

Lesser Included Offenses

ATTEMPTED SECOND DEGREE MURDER — 782.04(2) AND 777.04			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
Attempted manslaughter by act		782.07 and 777.04	6.6
	Aggravated battery	784.045	8.4
	Felony battery	784.041(1)	8.5
	Aggravated Assault	784.021	8.2
	Battery	784.03	8.3
	Assault	784.011	8.1

Comments

See Instruction 5.1 for the affirmative defense of renunciation.

See Instruction 6.7 for the § 782.065, Fla. Stat., reclassification when the victim is a law enforcement officer, correctional officer, etc. and instruction 3.15 for the scoresheet multiplier in § 775.0823, Fla. Stat.

This instruction was adopted in 1994 and amended in 1997 [697 So. 2d 84], 2014 [137 So. 3d 995], 2018 [236 So. 3d 282], on December 15, 2023, and on June 12, 2026.

6.5 ATTEMPTED FELONY MURDER — THIRD DEGREE

§§ 782.04(4) and 777.04, Fla. Stat.

The instructions on attempted first and third-degree felony murder have been deleted. See State v. Gray, 654 So.2d 552 (Fla. 1995).

6.6 ATTEMPTED MANSLAUGHTER BY ACT

§§ 782.07 and 777.04, Fla. Stat.

To prove the crime of Attempted Manslaughter by Act, the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) **intentionally committed an overt act that could have resulted in the death of** (victim) **but did not result in** (victim's) **death.**

2. **The overt act went beyond mere preparation.**

Berger v. State, 259 So. 3d 933 (Fla. 5th DCA 2018); State v. Coker, 452 So. 2d 1135 (Fla. 2d DCA 1984).

The line between mere preparation and an overt act is a question of fact for you to decide. Mere preparation consists of devising or arranging the means or measures necessary to commit the crime. An overt act consists of some movement toward committing the crime after mere preparation. An overt act need not be the last possible act toward completing the crime.

However, the defendant cannot be guilty of Attempted Manslaughter by Act by committing a merely negligent act. Every person has a duty to act reasonably and use ordinary care toward others. If there is a violation of that duty, without any conscious intention to harm, that violation is negligence.

The explanations of justifiable attempted homicide and excusable attempted homicide are in Instruction 6.1, Introduction to Attempted Homicide.

To convict of Attempted Manslaughter by Act, it is not necessary for the State to prove the defendant had an intent to cause death, only an intent to commit an overt act that could have caused death and was not justifiable or excusable attempted homicide, as I have previously instructed you].

Lesser Included Offenses

ATTEMPTED MANSLAUGHTER BY ACT—782.07 AND 777.04			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
Attempted aggravated battery (intentionally cause great bodily harm)		784.045(1)(a)1 and 777.04	8.4 and 5.1
Attempted battery (intentionally cause bodily harm)		784.03(1)(a)2 and 777.04	8.3 and 5.1
	Felony battery	784.041	8.5
	Battery	784.03	8.3
	Assault	784.011	8.1

Comments

In the event of any reinstruction on Attempted Manslaughter by Act, the instructions on justifiable and excusable attempted homicide as previously given should be given at the same time. *Hedges v. State,* 172 So. 2d 824 (Fla. 1965).

There is no crime of Attempted Manslaughter by Culpable Negligence. *See Taylor v. State*, 444 So. 2d 931 (Fla. 1983).

See Instruction 5.1 for the affirmative defense of renunciation.

This instruction was adopted in 1994 [636 So. 2d 502] and amended in 2014 [132 So. 3d 1124], 2017 [213 So. 3d 680], 2018 [236 So. 3d 282], on December 15, 2023, and on June 12, 2026.

6.7 ATTEMPTED MURDER — RECLASSIFIED (BY VICTIM'S EMPLOYMENT AS LAW ENFORCEMENT OFFICER, CORRECTIONAL OFFICER, ETC.)

§ 782.065, Fla. Stat.

In Ramroop v. State, 214 So. 3d 657 (Fla. 2017), the Florida Supreme Court held that § 782.065(2), Fla. Stat. is a reclassification statute that creates a substantive offense. Accordingly, the trial judge should add the three elements below to the elements section of the appropriate Attempted Murder crime (See Instruction 6.2, 6.3, 6.3(a), or 6.4.)

(Victim) **was a [law enforcement officer] [part-time law enforcement officer] [auxiliary law enforcement officer] [correctional officer] [part-time correctional officer] [auxiliary correctional officer] [correctional probation officer] [part-time correctional probation officer] [auxiliary correctional probation officer].**

(Defendant) **knew that** (victim) **was a [law enforcement officer] [part-time law enforcement officer] [auxiliary law enforcement officer] [correctional officer] [part-time correctional officer] [auxiliary correctional officer] [correctional probation officer] [part-time correctional probation officer] [auxiliary correctional probation officer].**

(Victim) **was engaged in the lawful performance of a legal duty.**

Definitions. § 943.10, Fla. Stat. Give as applicable.

"Law enforcement officer" means any person who is elected, appointed, or employed full time by any municipality or the State or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the State. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.

"Employing agency" means any agency or unit of government or any municipality or the State or any political subdivision thereof, or any agent thereof, which has constitutional or statutory authority to employ or appoint persons as officers. The term also includes any private entity which has contracted with the State or county for the operation and maintenance of a nonjuvenile detention facility.

"Correctional officer" means any person who is appointed or employed full time by the State or any political subdivision thereof, or by any private entity which has contracted with the State or county, and whose primary responsibility is the supervision, protection, care, custody, and control, or investigation, of inmates within a correctional institution; however, the term "correctional officer" does not include any secretarial, clerical, or professionally trained personnel.

"Correctional probation officer" means a person who is employed full time by the State whose primary responsibility is the supervised custody, surveillance, and control of assigned inmates, probationers, parolees, or community controllees within institutions of the Department of Corrections or within the community. The term includes supervisory personnel whose duties include, in whole or in part, the supervision, training, and guidance of correctional probation officers, but excludes management and administrative personnel above, but not including, the probation and parole regional administrator level.

"Part-time law enforcement officer" means any person employed or appointed less than full time, as defined by an employing agency, with or without compensation, who is vested with authority to bear arms and make arrests and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the State.

"Part-time correctional officer" means any person who is employed or appointed less than full time, as defined by the employing or appointing agency, with or without compensation, whose responsibilities include the supervision, protection, care, custody, and control of inmates within a correctional institution.

"Auxiliary law enforcement officer" means any person employed or appointed, with or without compensation, who aids or assists a full-time or part-time law enforcement officer and who, while under the direct supervision of a full-time or part-time law enforcement officer, has the authority to arrest and perform law enforcement functions.

"Auxiliary correctional officer" means any person employed or appointed, with or without compensation, who aids or assists a full-time or part-time correctional officer and who, while under the supervision of a full-time or part-time correctional officer, has the same authority as a full-time or part-time correctional officer for the purpose of providing supervision, protection, care, custody, and control of inmates within a correctional institution or a county or municipal detention facility.

Lesser Included Offenses

ATTEMPTED FIRST DEGREE PREMEDITATED MURDER RECLASSIFIED — 782.04(1), 777.04, AND 782.065

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Attempted First Degree Premeditated Murder		782.04(1) and 777.04	6.2
Attempted Second Degree Murder – Reclassified		782.04, 777.04, and 782.065	6.4 and 6.7
Attempted Second Degree Murder		782.04(2) and 777.04	6.4
Attempted Manslaughter by Act		782.07 and 777.04	6.6
Attempted aggravated battery (intentionally cause great bodily harm)		784.045(1)(a)1 and 777.04	8.4 and 5.1
Attempted battery (intentionally cause bodily harm)		784.03(1)(a)2 and 777.04	8.3 and 5.1
	Attempted felony murder - reclassified	782.051(1) and 782.065	6.3 and 6.7
	Attempted felony murder	782.051(1)	6.3
	Attempted felony murder - reclassified	782.051(2) and 782.065	6.3 and 6.7
	Attempted felony murder	782.051(2)	6.3
	Attempted felony murder- reclassified	782.051(3) and 782.065	6.3(a) and 6.7
	Attempted felony murder	782.051(3)	6.3(a)
	Aggravated battery	784.045	8.4
	Felony battery	784.041(1)	8.5
	Aggravated Assault	784.021	8.2
	Battery	784.03	8.3
	Assault	784.011	8.1

Comments

The reclassification in § 782.065, Fla. Stat., does not apply to the lesser-included offense of Attempted Manslaughter by Act.

This instruction was adopted in 2018.

CHAPTER 7 – HOMICIDE

7.1 INTRODUCTION TO HOMICIDE

Read in all murder and manslaughter cases.

Chapter 776, Fla. Stat., and § 782.02., Fla. Stat, when considered together, cover the lawful use of deadly force. If the defendant is relying on a claim that his or her use of deadly force was lawful, appropriate parts of instruction 3.6(f) should be given in addition to this instruction. Hamilton v. State, 387 So. 3d 305 (Fla. 4th DCA 2024).

(Defendant) **is accused of** (crime(s) charged) **in Count[s]** (insert the number of the relevant count(s))**.**

Give degrees of homicide as applicable.

First Degree Murder includes the lesser crimes of Second Degree Murder, [Third Degree Murder,] and Manslaughter, all of which are unlawful. However, a killing that was excusable homicide or that was committed by the justifiable use of deadly force is lawful.

If you find (victim) **was killed by** (defendant)**, you will then consider the circumstances surrounding the killing in deciding if the killing was First Degree Murder, or Second Degree Murder, [or Third Degree Murder,] or Manslaughter, or whether the killing was excusable homicide or resulted from the justifiable use of deadly force.**

JUSTIFIABLE HOMICIDE
§ 782.02, Fla. Stat.

The use of deadly force to kill a human being is justifiable homicide, and therefore lawful, if necessarily done while resisting an attempt to murder or commit a felony upon the defendant, or to commit a felony in or upon any dwelling house in which the defendant was at the time of the killing. "Deadly force" means force likely to cause death or great bodily harm. "Great bodily harm" means harm that is more than slight, trivial, minor, or moderate.

EXCUSABLE HOMICIDE
§ 782.03, Fla. Stat.

The killing of a human being is excusable homicide, and therefore lawful, under any one of the following three circumstances:

1. **When the killing is committed by accident and misfortune in doing any lawful act by lawful means with usual ordinary caution and without any unlawful intent, or**

2. **When the killing occurs by accident and misfortune in the heat of passion, upon any sudden and sufficient provocation, or**

3. **When the killing is committed by accident and misfortune resulting from a sudden combat, if a dangerous weapon is not used and the killing is not done in a cruel or unusual manner.**

A "dangerous weapon" is any object that will likely cause death or great bodily harm if used in the ordinary and usual manner contemplated by its design and construction.

Give only if applicable.

An object not designed to inflict bodily harm may nonetheless be a "dangerous weapon" if it was used in a manner likely to cause death or great bodily harm.

Comments

Num-chucks, which were originally designed as a farm tool, can be a deadly weapon. *R.V. v. State,* 497 So. 2d 912 (Fla. 5th DCA 1986). Jurors could find that a 7-inch straight-edged razor might be a dangerous weapon. *R.R. v. State,* 826 So. 2d 465 (Fla. 5th DCA 2002). In trials involving these types of objects, the judge should consider a special instruction informing jurors that an object can be a dangerous weapon if its sole modern use is to cause great bodily harm or death. A special instruction may also be necessary in cases where the dangerous weapon was an animal or a substance or something that is not commonly referred to as an "object."

This instruction was amended in 1990 [573 So. 2d 306], 1992 [603 So. 2d 1175], 1994 [639 So. 2d 602], on April 3, 2020, on July 29, 2022, and on September 12, 2025.

7.2 MURDER — FIRST DEGREE

§ 782.04(1)(a), Fla. Stat.

In the absence of an express concession that the homicide was not excusable or justified, the trial judge must also read Instruction 7.1, Introduction to Homicide.

When there will be instructions on both premeditated and first-degree felony murder, the following explanatory paragraph should be read to the jury.

There are two ways a person may commit First Degree Murder. One is known as First Degree Premeditated Murder and the other is known as First Degree Felony Murder.

If jury is to be instructed only on premeditated murder:

To prove the crime of First Degree Premeditated Murder, the State must prove the following three elements beyond a reasonable doubt:

1. (Victim) **is dead.**

2. The death was caused by the criminal act of (defendant)**.**

3. There was a premeditated killing of (victim)**.**

Definitions.

An "act" includes a series of related actions arising from and performed pursuant to a single design or purpose.

"Killing with premeditation" is killing after consciously deciding to do so. The decision must be present in the mind at the time of the killing. The law does not fix the exact period of time that must pass between the formation of the premeditated intent to kill and the killing. The period of time must be long enough to allow reflection by the defendant. The premeditated intent to kill must be formed before the killing.

The question of premeditation is a question of fact to be determined by you from the evidence. It will be sufficient proof of premeditation if the circumstances of the killing and the conduct of the accused convince you beyond a reasonable doubt of the existence of premeditation at the time of the killing.

Give only if there is evidence that the defendant acted in the heat of passion on legally adequate provocation.

An issue in this case is whether (defendant) **did not act with a premeditated design to kill because [he] [she] acted in the heat of passion based on adequate provocation. In order to find that the defendant did not act with a premeditated design to kill because [he] [she] acted in the heat of passion based on adequate provocation:**

a. there must have been a sudden event that would have suspended the exercise of judgment in an ordinary reasonable person; and

b. a reasonable person would have lost normal self-control and would have been driven by a blind and unreasoning fury; and

c. there was not a reasonable amount of time for a reasonable person to cool off; and

d. a reasonable person would not have cooled off before committing the act that caused death; and

e. (defendant) **was, in fact, so provoked and did not cool off before [he] [she] committed the act that caused the death of** (victim)**.**

If you have a reasonable doubt about whether the defendant acted with a premeditated design to kill because [he] [she] acted in the heat of passion based on adequate provocation, you should not find [him] [her] guilty of First Degree Premeditated Murder.

Lesser Included Offenses

FIRST DEGREE (PREMEDITATED) MURDER — 782.04(1)(a)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Second degree (depraved mind) murder		782.04(2)	7.4
Manslaughter		782.07	7.7
	Aggravated Manslaughter (Child)	782.07(3)	7.7(a)
	Second degree (felony) murder	782.04(3)	7.5
	Attempted felony murder	782.051(1)	6.3

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
	Attempted premeditated murder	782.04(1)	6.2
	Aggravated Manslaughter (Elderly Person/Disabled Adult)	782.07(2)	7.7(a)
	Aggravated Manslaughter (Officer/Firefighter/ EMT/Paramedic)	782.07(4)	7.7(a)
	Attempted second degree murder	782.04(2) & 777.04	6.4
	Attempted felony murder	782.051(2)	6.3
	Third degree (felony) murder	782.04(4)	7.6
	Vehicular homicide	782.071	7.9
	Attempted felony murder	782.051(3)	6.3(a)
	Aggravated battery	784.045	8.4
	Attempted Manslaughter by Act	782.07 & 777.04	6.6
	Felony Battery	784.041(1)	8.5
	Aggravated Assault	784.021	8.2
	Battery	784.03	8.3
	Culpable negligence	784.05(2)	8.9
	Culpable negligence	784.05(1)	8.9
	Assault	784.011	8.1

Comments

If the case involves transferred intent, insert Instruction 3.6(o).

See Instruction 7.13 for the § 782.065, Fla. Stat., reclassification when the victim is a law enforcement officer, correctional officer, etc.

This instruction was adopted in 1981 and was amended in October 1981, 2008 [994 So. 2d 1038], 2014 [137 So. 3d 995], and 2018.

7.3 FELONY MURDER — FIRST DEGREE

§ 782.04(1)(a), Fla. Stat.

In the absence of an express concession that the homicide was not excusable or justified, the trial judge must also read Instruction 7.1, Introduction to Homicide.

To prove the crime of First Degree Felony Murder, the State must prove the following three elements beyond a reasonable doubt:

1. (Victim) **is dead.**

Give as applicable.

2. **a. While engaged in the commission of a[n]** (felony alleged), **[**(defendant)**] [**(defendant's) accomplice**] caused the death of** (victim)**.**

b. While engaged in the attempt to commit a[n] (felony alleged), **[**(defendant)**] [**(defendant's) **accomplice] caused the death of** (victim)**.**

c. While escaping from the immediate scene after [committing] [attempting to commit] a[n] (felony alleged)**, [**(defendant)**] [**(defendant's) **accomplice] caused the death of** (victim)**.**

Give as applicable.

3. **a.** (Defendant) **was the person who actually killed** (victim)**.**

b. (Victim) **was killed by a person other than** (defendant) **but both** (defendant) **and the person who killed** (victim) **were principals in the commission of** (crime alleged)**.**

To convict the defendant of First Degree Felony Murder, it is not necessary for the State to prove the defendant had a premeditated design or an intent to kill.

1. Define the felony alleged.

2. If applicable, immediately give the attempt instruction (5.1).

3. If applicable, immediately give the principal instruction (3.5(a)).

4. If the underlying felony is charged as a separate count, read,

at an appropriate time, instruction 3.12(d)(Legally Interlocking Counts). Failure to do so may result in an impermissible inconsistent verdict. See, e.g., Brown v. State, 959 So. 2d 218 (Fla. 2007).

Give if the defendant was a juvenile at the time of the crime alleged.

§ 775.082(1)(b), Fla. Stat. Williams v. State, 242 So. 3d 280 (Fla. 2018). If the jury were to find the defendant guilty of First Degree Premeditated Murder, the question of whether the defendant intended to kill or attempted to kill would inhere in that verdict. Therefore, the finding below should be made only for cases involving First Degree Felony Murder where it is alleged in the charging document that the defendant actually killed, intended to kill, or attempted to kill the victim. A general verdict for First Degree Murder without a specific finding of premeditation would require the paragraph below to be given.

If you find (defendant) **guilty of First Degree Felony Murder, you must also determine whether the State proved beyond a reasonable doubt, that [he] [she] [actually killed] [intended to kill] [or] [attempted to kill]** (victim)**.**

Lesser Included Offenses

FIRST DEGREE FELONY MURDER — 782.04(1)(a)			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
	Death Caused by the Unlawful Distribution of [Name of Enumerated Controlled Substance(s))	782.04(1)(a)3	7.3(a)
	Second degree (depraved mind) murder	782.04(2)	7.4
Manslaughter		782.07	7.7
	Aggravated Manslaughter (Child)	782.07(3)	7.7(a)
	Second degree felony murder	782.04(3)	7.5
	Aggravated Manslaughter (Elderly Person/Disabled Adult)	782.07(2)	7.7(a)
	Aggravated Manslaughter (Officer/Firefighter/EMT/Paramedic)	782.07(4)	7.7(a)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
	Death Caused by the Unlawful Distribution by a Person Less than 18 Years of Age of [Name of Enumerated Controlled Substance(s))	782.04(5)(b)	7.3(b)
	Third degree felony murder*	782.04(4)	7.6
	Non-homicide lessers**		
	Aggravated battery	784.045	8.4
	Felony battery	784.041(1)	8.5
	Aggravated assault	784.021	8.2
	Battery	784.03	8.3
	Assault	784.011	8.1

Comments

See Instruction 7.13 for the § 782.065, Fla. Stat., reclassification when the victim is a law enforcement officer, correctional officer, etc.

*In some cases, Third Degree Felony Murder may be a necessary lesser-included offense of First Degree Felony Murder. For example, Third Degree Felony Murder with Child Abuse as the underlying felony may be a necessarily lesser-included offense of First Degree Felony Murder if Aggravated Child Abuse is the underlying felony.

**Non-homicide lesser-included offenses do not have to be given if the parties agree causation is not in dispute and that the victim is dead. *Carver v. State*, 348 So. 3d 1214 (Fla. 5th DCA 2022).

This instruction was adopted in 1981 and was amended in 1985, 1992 [603 So. 2d 1175], 2011 [53 So. 3d 1017], 2014 [146 So. 3d 1110], 2018 [236 So. 3d 282], 2018 [259 So. 3d 754], 2019 [285 So. 3d 1265], and on September 12, 2025.

7.3(a) UNLAWFUL DISTRIBUTION OF (NAME(S) OF ENUMERATED CONTROLLED SUBSTANCE(S)) **BY A PERSON 18 YEARS OF AGE OR OLDER CAUSING DEATH**

§ 782.04(1)(a)3., Fla. Stat.

In the absence of an express concession that the homicide was not excusable or justified, the trial judge must also read Instruction 7.1, Introduction to Homicide.

To prove the crime of Unlawful Distribution of (name(s) of enumerated controlled substance(s)) **by a Person 18 Years of Age or Older Causing Death, the State must prove the following six elements beyond a reasonable doubt:**

1. (Defendant) **knowingly distributed a substance.**

2. **The substance was [**(name of enumerated controlled substance(s))**] [or] [a mixture containing** (name(s) of enumerated controlled substance(s))**].**

3. **The distribution was unlawful.**

4. **At the time of the distribution,** (defendant) **was 18 years of age or older.**

5. (Victim) **is dead.**

6. **The [**(name(s) of enumerated controlled substance(s))**] [or] [mixture containing** (name(s) of enumerated controlled substance(s))**] that** (defendant) **distributed caused or was a substantial factor in producing the death of** (victim)**.**

***The Court instructs you that it is unlawful to distribute [**(name(s) of enumerated controlled substance(s))**] [a mixture containing** (name(s) of enumerated controlled substance(s))**].**

§ 782.04, Fla. Stat.

"Substantial factor" means that the use of the substance [or mixture] alone was sufficient to cause death, regardless of whether any other substance or mixture used was also sufficient to cause death.

Give if applicable. Aumuller v. State, 944 So. 2d 1137 (Fla. 2d DCA 2006) (citing Martin v. State, 377 So. 2d 706 (Fla. 1979)).

If the State proves all the elements, a person commits this crime by acting as a distributor in the drug distribution chain, and it is irrelevant that other persons are also involved in the chain.

It is not necessary for the State to prove that (defendant) **intended that** (victim) **die.**

Lesser Included Offenses

UNLAWFUL DISTRIBUTION OF (NAME(S) OF ENUMERATED CONTROLLED SUBSTANCE(S)) BY A PERSON 18 YEARS OF AGE OR OLDER CAUSING DEATH— 782.04(1)(a)3.

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS.NO.
Manslaughter		782.07	7.7
	Second degree (depraved mind) murder	782.04(2)	7.4
Non-homicide lesser**			
Delivery of a Controlled Substance**		893.13(1)	25.2

Comments

As of August 2025, there are many unresolved issues regarding the correct interpretation of s. 782.04(1)(a)3., Fla. Stat. For example, it is unclear whether an element of the crime is that 1) the defendant knew or reasonably should have known the specific nature of the substance that he or she distributed; or, 2) the defendant knew or reasonably should have known the substance distributed was a controlled substance. If that *mens rea* is not required, it is unclear whether either 1) lack of knowledge that the substance was a controlled substance; or, 2) lack of knowledge of the specific nature of the substance, is an affirmative defense. Moreover, if lack of knowledge of either the illicit nature or the specific nature of the substance is an affirmative defense, it is unclear which party has the burden of persuasion for the affirmative defense and what that burden of persuasion is.

*Also, it is unclear whether the § 893.02, Fla. Stat. definitions of "distribute," "deliver," "administer," "dispense," and "mixture" apply to this crime. If those definitions apply, "distribute" means to deliver a controlled substance other than by administering or dispensing.

*A special instruction will be necessary if there is evidence the distribution was allowed by Florida law. For example, a person who delivers a medicinal drug from a wholesaler to a pharmacy or hospital in the normal course of business might be lawfully distributing the controlled substance.

Furthermore, the instruction indicates the state must prove the defendant unlawfully distributed the controlled substance. However, there was no case law that determined whether the state must prove the distribution was unlawful, or whether the defendant must provide evidence, as an affirmative defense, that the distribution was lawful. If lawfulness of the distribution is an affirmative defense, the trial judge must determine which party has the burden of persuasion and what that burden is (preponderance of the evidence, clear and convincing, or beyond a reasonable doubt).

**It is also unclear whether delivery of a controlled substance is a lesser included crime. A defendant can be convicted of and sentenced for both a felony murder and the underlying felony. Therefore, an underlying felony is not a necessarily lesser included offense of felony murder. *State v. Enmund*, 476 So. 2d 165 (Fla. 1985). However, § 782.04(1)(a)3., Fla. Stat., is listed separately from the first degree felony murders in § 782.04(1)(a)2., Fla. Stat. Also, non-homicide lesser included crimes should not be given in a homicide case if causation is not an issue and there is no dispute that the victim is dead. *Carver v. State*, 348 So. 3d 1214 (Fla. 5th DCA 2022).

In sum, this standard instruction can be used as a beginning template, but trial judges will likely have to litigate all these issues before the jury is sworn.

This instruction was adopted on August 4, 2020, and amended on October 7, 2022, on May 21, 2024, on February 21, 2025, and on September 12, 2025.

7.3(b) UNLAWFUL DISTRIBUTION OF (NAME(S) OF ENUMERATED CONTROLLED SUBSTANCE(S)) **BY A PERSON LESS THAN 18 YEARS OF AGE CAUSING DEATH**

§ 782.04(5)(b), Fla. Stat.

In the absence of an express concession that the homicide was not excusable or justified, the trial judge must also read Instruction 7.1, Introduction to Homicide.

To prove the crime of Unlawful Distribution of (name(s) of enumerated controlled substance(s)) **by a Person Less Than 18 Years of Age Causing Death, the State must prove the following seven elements beyond a reasonable doubt:**

1. (Defendant) **distributed a substance.**

2. **The substance was [**(name of enumerated controlled substance(s))**] [or] [a mixture containing** ((name of enumerated controlled substance(s))**].**

3. (Defendant) **knew or reasonably should have known that the substance that [he] [she] distributed contained [**(name of enumerated controlled substance(s))**] [or] [a mixture containing** (name of enumerated controlled substance(s))**].**

4. **The distribution was unlawful.**

5. **At the time of the distribution,** (defendant) **was less than 18 years of age.**

6. (Victim) **is dead.**

7. **The [**(name(s) of enumerated controlled substance(s))**] [or] [mixture containing** (name(s) of enumerated controlled substance(s))**] that** (defendant) **distributed caused or was a substantial factor in producing the death of** (victim)**.**

***The Court instructs you that it is unlawful to distribute [**(name(s) of enumerated controlled substance(s))**] [a mixture containing** (name(s) of enumerated controlled substance(s)**].**

"Distribute" means to deliver, other than by administering or dispensing.

"Deliver" means the actual, constructive, or attempted transfer from one person to another of a substance, regardless of whether there is an agency relationship.

"Administer" means the direct application of a substance, whether by injection, inhalation, ingestion, or any other means, to the body of a person.

"Dispense" means the transfer of possession of one or more doses of a medicinal drug by a pharmacist or other licensed practitioner to the ultimate consumer thereof or to one who represents that it is his or her intention not to consume or use the same but to transfer the same to the ultimate consumer or user for consumption by the ultimate consumer or user.

"Substantial factor" means that the use of the substance [or mixture] alone was sufficient to cause death, regardless of whether any other substance or mixture used was also sufficient to cause death.

Give if applicable. Aumuller v. State, 944 So. 2d 1137 (Fla. 2d DCA 2006) (citing Martin v. State, 377 So. 2d 706 (Fla. 1979)).

If the State proves all the elements, a person commits this crime by acting as a distributor in the drug distribution chain, and it is irrelevant that other persons are also involved in the chain.

It is not necessary for the State to prove that (defendant) **intended that** (victim) **die.**

Lesser Included Offenses

UNLAWFUL DISTRIBUTION OF (NAME(S) OF ENUMERATED CONTROLLED SUBSTANCE(S)) BY A PERSON LESS THAN 18 YEARS OF AGE CAUSING DEATH— 782.04(5)(b)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS.NO.
Manslaughter		782.07	7.7
	Second degree (depraved mind) murder	782.04(2)	7.4
Non-homicide lesser**			
Delivery of a Controlled Substance**		893.13(1)	25.2

Comments

This crime can be committed only if the controlled substance is listed in § 893.135(1)(c)4.a.(I)-(VII), Fla. Stat.

*A special instruction will be necessary if there is evidence the distribution was allowed by Florida law. For example, a person who delivers a medicinal drug from a wholesaler to a pharmacy or hospital in the normal course of business might be lawfully distributing the controlled substance. Furthermore, the instruction indicates the state must prove the defendant unlawfully distributed the controlled substance. However, there was no case law that determined whether the state must prove the distribution was unlawful, or whether the defendant must provide evidence, as an affirmative defense, that the distribution was lawful. If lawfulness of the distribution is an affirmative defense, the trial judge must determine which party has the burden of persuasion and what that burden is (preponderance of the evidence, clear and convincing, or beyond a reasonable doubt).

**It is also unclear whether delivery of a controlled substance is a lesser included crime. A defendant can be convicted of and sentenced for both a felony murder and the underlying felony. Therefore, an underlying felony is not a necessarily lesser included offense of felony murder. *State v. Enmund*, 476 So. 2d 165 (Fla. 1985). However, § 782.04(5)(b), Fla. Stat., is listed separately from the third degree felony murders in § 782.04(4), Fla. Stat. Also, non-homicide lesser included crimes should not be given in a homicide case if causation is not an issue and there is no dispute that the victim is dead. *Carver v. State*, 348 So. 3d 1214 (Fla. 5th DCA 2022).

This instruction was adopted on September 12, 2025.

7.4 MURDER — SECOND DEGREE

§ 782.04(2), Fla. Stat.

In the absence of an express concession that the homicide was not excusable or justified, the trial judge must also read Instruction 7.1, Introduction to Homicide.

To prove the crime of Second Degree Murder, the State must prove the following three elements beyond a reasonable doubt:

1. (Victim) **is dead.**

2. **The death was caused by the act of** (defendant)**.**

3. **There was an unlawful killing of** (victim) **by an act imminently dangerous to another and demonstrating a depraved mind**

Porter v. State, 384 So. 3d 839 (Fla. 1d DCA 2024) and Kenyon v. State, 429 So. 3d 473 (Fla. 4th DCA 2025) support the bracketed language in #2 below in appropriate cases.

An "act" includes a series of related actions arising from and performed pursuant to a single design or purpose. An act is "imminently dangerous to another and demonstrating a depraved mind" if it is an act or series of acts that:

1. **a person of ordinary judgment would know is reasonably certain to kill or do serious bodily injury to another,**

   and

2. **is done from ill will, hatred, spite, or an evil intent, and indicates an indifference to human life;**

   [or

   denotes a wicked and corrupt disregard of the lives and safety of others].

To convict of Second Degree Murder, it is not necessary for the State to prove the defendant had an intent to cause death.

Give only if there is evidence that the defendant acted in the heat of passion on legally adequate provocation.

An issue in this case is whether (defendant) **did not have a depraved mind without regard for human life because [he] [she] acted in the heat of passion based on adequate provocation. To find that the defendant did not have a depraved mind without regard for human life because [he] [she] acted in the heat of passion based on adequate provocation:**

a. there must have been a sudden event that would have suspended the exercise of judgment in an ordinary reasonable person; and

b. a reasonable person would have lost normal self-control and would have been driven by a blind and unreasoning fury; and

c. there was not a reasonable amount of time for a reasonable person to cool off; and

d. a reasonable person would not have cooled off before committing the act that caused death; and

e. (defendant) **was, in fact, so provoked and did not cool off before [he] [she] committed the act that caused the death of** (victim)**.**

If you have a reasonable doubt about whether the defendant had a depraved mind without regard for human life because [he] [she] acted in the heat of passion based on adequate provocation, you should not find [him] [her] guilty of Second Degree Murder.

Give if the defendant was a juvenile at the time of the crime alleged. § 775.082(3), Fla. Stat. Williams v. State, 242 So. 3d 280 (Fla. 2018). The finding below should be made only for cases involving Second Degree Murder where it is alleged in the charging document that the defendant actually killed, intended to kill, or attempted to kill the victim.

If you find (defendant) **guilty of Second Degree Murder, you must also determine whether the State proved beyond a reasonable doubt, that [he] [she] [actually killed] [intended to kill] [or] [attempted to kill]** (victim)**.**

Lesser Included Offenses

SECOND DEGREE MURDER — 782.04(2)			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
Manslaughter		782.07	7.7
	Aggravated Manslaughter (Child)	782.07(3)	7.7(a)
	Aggravated Manslaughter (Elderly Person/Disabled Adult)	782.07(2)	7.7(a)
	Aggravated Manslaughter (Officer/Firefighter/EMT/Paramedic)	782.07(4)	7.7(a)
	Third degree (felony) murder	782.04(4)	7.6
	Death Caused by the Unlawful Distribution by a Person Less than 18 Years of Age of [Name of Enumerated Controlled Substance(s))	782.04(5)(b)	7.3(b)
	Vehicular homicide	782.071	7.9
	Non-homicide lessers*		
	Attempted Second Degree Murder	777.04(1)	6.4
	Aggravated Battery	784.045	8.4
	Attempted Manslaughter	782.07 and 777.04	6.6
	Felony battery	784.041(1)	8.5
	Aggravated Assault	784.021	8.2
	Battery	784.03	8.3
	Culpable negligence	784.05(2)	8.9
	Culpable negligence	784.05(1)	8.9
	Assault	784.011	8.1

Comments

See Instruction 7.13 for the § 782.065, Fla. Stat., reclassification when the victim is a law enforcement officer, correctional officer, etc.

*Non-homicide lesser-included offenses do not have to be given if the parties agree causation is not in dispute and that the victim is dead. *Carver v. State*, 348 So. 3d 1214 (Fla. 5th DCA 2022).

This instruction was adopted in 1981 and amended in 1997 [697 So. 2d 84], 2008 [994 So. 2d 1038], 2014 [137 So. 3d 995], 2018 [236 So. 3d 282], 2018 [259 So. 3d 754], on September 12, 2025, and on June 12, 2026.

7.5 FELONY MURDER — SECOND DEGREE

§ 782.04(3), Fla. Stat.

In the absence of an express concession that the homicide was not excusable or justified, the trial judge must also read Instruction 7.1, Introduction to Homicide.

To prove the crime of Second Degree Felony Murder, the State must prove the following four elements beyond a reasonable doubt:

1. (Victim) **is dead.**

2. (Defendant) **was not the person who actually killed** (victim)**, but** (defendant) **did commit or did knowingly aid, abet, counsel, hire, or otherwise procure the commission of a[n]** (felony alleged)**.**

Give 3a, 3b, and/or 3c as applicable.

3. **a.** (Victim's) **death was caused during and was a consequence of the commission of the** (felony alleged)**.**

b. (Victim's) **death was caused during and was a consequence of the attempted commission of the** (felony alleged)**.**

c. (Victim's) **death was caused during and was a consequence of the escape from the immediate scene of the [**(felony alleged)**] [attempt to commit the** (felony alleged)**].**

4. **The person who actually killed** (victim) **was not involved in the commission or the attempt to commit the** (crime alleged)**.**

1. Define the felony alleged..

2. If applicable, immediately give the attempt instruction (5.1).

3. If the underlying felony is charged as a separate count, read instruction 3.12(d)(Legally Interlocking Counts). Failure to do so may result in an impermissible inconsistent verdict. See, e.g., Brown v. State, 959 So. 2d 218 (Fla. 2007).

Lesser Included Offenses

SECOND DEGREE FELONY MURDER — 782.04(3)			
CATEGORY ONE	**CATEGORY TWO**	**FLA.STAT.**	**INS. NO.**
Manslaughter		782.07	7.7
	Aggravated Manslaughter (Child)	782.07(3)	7.7(a)
		782.07(2)	7.7(a)
	Aggravated Manslaughter (Elderly Person/Disabled Adult)		
	Aggravated Manslaughter (Officer/Firefighter/EMT/Paramedic)	782.07(4)	7.7(a)
	Third degree felony murder	782.04(4)	7.6

Comments

See Instruction 7.13 for the § 782.065, Fla. Stat., reclassification when the victim is a law enforcement officer, correctional officer, etc.

This instruction was adopted in 1981 and amended in 1985 [477 So. 2d 985], 2014 [146 So. 3d 1110], 2018 [236 So. 3d 282], and 2019.

7.6 FELONY MURDER — THIRD DEGREE

§ 782.04(4), Fla. Stat.

In the absence of an express concession that the homicide was not excusable or justified, the trial judge must also read Instruction 7.1, Introduction to Homicide.

To prove the crime of Third Degree Felony Murder, the State must prove the following three elements beyond a reasonable doubt:

1. (Victim) **is dead.**

Give as applicable.

2. **a.** **While engaged in the commission of a[n]** (felony alleged)**, [**(defendant)**] [**(defendant's) **accomplice] caused the death of** (victim)**.**

b. **While engaged in the attempt to commit a[n]** (felony alleged)**, [**(defendant)**] [**(defendant's) **accomplice] caused the death of** (victim)**.**

c. **While escaping from the immediate scene after [committing] [attempting to commit] a[n]** (felony alleged)**, [**(defendant)**] [**(defendant's) **accomplice] caused the death of** (victim)**.**

Give as applicable.

3. **a.** (Defendant) **was the person who actually killed** (victim)**.**

b. (Victim) **was killed by a person other than** (defendant) **but both** (defendant) **and the person who killed** (victim) **were principals in the commission of** (crime alleged)**.**

It is not necessary for the State to prove the killing was perpetrated with a design to effect death.

1. Define the felony alleged.

2. If applicable, immediately give the attempt instruction (5.1).

3. If applicable, immediately give principal instruction (3.5(a)).

4. If the underlying felony is charged as a separate count, read instruction 3.12(d)(Legally Interlocking Counts). Failure to do so may

result in an impermissible inconsistent verdict. See, e.g., Brown v. State, 959 So. 2d 218 (Fla. 2007).

Lesser Included Offenses

THIRD DEGREE FELONY MURDER — 782.04(4)			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
Manslaughter		782.07	7.7
	Death Caused by the Unlawful Distribution by a Person Less than 18 Years of Age of [Name of Enumerated Controlled Substance(s))	782.04(5)(b)	7.3(b)
	Non-homicide lessers*		
	Felony Battery	784.041(1)	8.5
	Aggravated assault	784.021	8.2
	Battery	784.03	8.3
	Assault	784.011	8.1

Comments

See Instruction 7.13 for the § 782.065, Fla. Stat., reclassification when the victim is a law enforcement officer, correctional officer, etc.

*Non-homicide lesser-included offenses do not have to be given if the parties agree causation is not in dispute and that the victim is dead. *Carver v. State*, 348 So. 3d 1214 (Fla. 5th DCA 2022).

This instruction was adopted in 1981 and amended in 1992 [603 So. 2d 1775], 1994 [639 So. 2d 602], 2014 [146 So. 3d 1110], 2018 [236 So. 3d 282], 2019 [285 So. 3d 1265], and on September 12, 2025.

7.7 MANSLAUGHTER

§ 782.07, Fla. Stat.

To prove the crime of Manslaughter, the State must prove the following two elements beyond a reasonable doubt:

1. (Victim) **is dead.**

Give as applicable.

2. **a.** (Defendant) **intentionally committed an act or acts that caused the death of** (victim)**.**

b. (Defendant) **intentionally procured an act that caused the death of** (victim)**.**

c. **The death of** (victim) **was caused by the culpable negligence of** (defendant)**.**

The explanations of justifiable homicide and excusable homicide are in instruction 7.1, Introduction to Homicide.

Every person has a duty to act reasonably toward others. If there is a violation of that duty, without any conscious intention to harm, that violation is negligence. The defendant cannot be guilty of Manslaughter by committing a merely negligent act or if the killing was justifiable or excusable homicide, as I have previously instructed you.

To convict of Manslaughter, it is not necessary for the State to prove that the defendant had an intent to cause death, only an intent to commit an act that was not merely negligent, justified, or excusable, and which caused death.

Give only if element 2b is applicable.

To "procure" means to persuade, induce, prevail upon or cause a person to do something.

Give only if element 2c is applicable.

I will now define "culpable negligence" for you. As I have said, every person has a duty to act reasonably toward others. If there is a violation of that duty, without any conscious intention to harm, that violation is negligence. But culpable negligence is more than a failure to use ordinary care toward others. For negligence to be culpable, it must be gross and flagrant. Culpable negligence is a course of conduct showing reckless

disregard of human life or a grossly careless disregard for the safety and welfare of the public.

The negligent act or omission must have been committed with an utter disregard for the safety of another. Culpable negligence is consciously doing an act or following a course of conduct that the defendant knew or reasonably should have known was likely to cause death or great bodily injury.

Lesser Included Offenses

MANSLAUGHTER - 782.07			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
None			
	Vehicular homicide	782.071	7.9
	Vessel homicide	782.072	7.9
	Third Degree Felony Murder	782.04(4)	7.6
	Death Caused by the Unlawful Distribution by a Person Less than 18 Years of Age of [Name of Enumerated Controlled Substance(s))	782.04(5)(b)	7.3(b)
	Non-homicide lessers*		
	Attempt**	777.04(1)	5.1
	Aggravated assault	784.021	8.2
	Battery	784.03	8.3
	Assault	784.011	8.1
	Culpable negligence	784.05	8.9

Comments

*Non-homicide lesser-included offenses do not have to be given if the parties agree that causation is not in dispute and that the victim is dead. *Carver v. State*, 348 So. 3d 1214 (Fla. 5th DCA 2022). *See Eversley v. State*, 748 So. 2d 963 (Fla. 1999), in any case in which causation is an issue to determine if a special jury instruction on causation is needed.

**Attempted Manslaughter by Culpable Negligence does not exist. *See Taylor v. State,* 444 So. 2d 931 (Fla. 1983).

In the event of any reinstruction on Manslaughter, the instructions on justifiable and excusable homicide (instruction #7.1) as previously given should be given at the same time. *Hedges v. State*, 172 So. 2d 824 (Fla. 1965).

This instruction was adopted in 1981 and amended in 1985 [477 So. 2d 985], 1992 [603 So. 2d 1175], 1994 [636 So. 2d 502], 2005 [911 So. 2d 1220], 2006 [946 So. 2d 1061], 2008 [997 So. 2d 403], 2010 [41 So. 3d 853], 2011 [75 So. 3d 210], 2017 [213 So. 3d 680], 2018 [236 So. 3d 282], on September 12, 2025, and on June 12, 2026.

7.7(a) AGGRAVATED MANSLAUGHTER

§ 782.07(2), § 782.07(3), and § 782.07(4), Fla. Stat.

Use for cases where the alleged victim was an elderly person, a disabled adult, or a child. § 782.07(2) or § 782.07(3), Fla. Stat.

To prove the crime of Aggravated Manslaughter, the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant)**, by culpable negligence, neglected** (victim)**.**

2. As a result, (defendant) **caused the death of** (victim)**.**

3. At the time, (defendant) **was a caregiver for** (victim) **and** (victim) **was [an elderly person] [a disabled adult] [a child].**

Use for cases where the alleged victim was an officer, firefighter, an EMT, or a paramedic. § 782.07(4), Fla. Stat.

To prove the crime of Aggravated Manslaughter, the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant)**, by culpable negligence, caused the death of** (victim)**.**

2. At the time, (victim) **was a[n] [officer] [firefighter] [emergency medical technician] [paramedic] who was performing duties that were within the course of [his] [her] employment.**

Every person has a duty to act reasonably toward others. If there is a violation of that duty, without any conscious intention to harm, that violation is negligence. The defendant cannot be guilty of Aggravated Manslaughter by causing a death because of a merely negligent act.

But culpable negligence is more than a failure to use ordinary care toward others. For negligence to be culpable, it must be gross and flagrant. Culpable negligence is a course of conduct showing reckless disregard of human life or a grossly careless disregard for the safety and welfare of the public. The negligent act or omission must have been committed with an utter disregard for the safety of another. Culpable negligence is consciously doing an act or following a course of conduct that the defendant knew or reasonably should have known was likely to cause death or great bodily injury.

The trial judge must read Instruction 7.1 (Introduction to Homicide) and the paragraph below unless there is an express concession that the homicide was not excusable or justified.

The defendant cannot be guilty of Aggravated Manslaughter if the killing was either justifiable or excusable homicide, as I have previously instructed you.

Give as applicable only if alleged victim was an elderly person or disabled adult.

§ 825.101, Fla. Stat.

"Caregiver" means a person who has been entrusted with or has assumed responsibility for the care or the property of [an elderly person] [or] [a disabled adult]. "Caregiver" includes, but is not limited to, relatives, court-appointed or voluntary guardians, adult household members, neighbors, health care providers, and employees and volunteers of facilities.

"Elderly person" means a person 60 years of age or older who is suffering from the infirmities of aging as manifested by advanced age, organic brain damage, or physical, mental, or emotional dysfunctioning, to the extent that the ability of the person to provide adequately for the person's own care or protection is impaired.

"Disabled adult" means a person 18 years of age or older who suffers from a condition of physical or mental incapacitation due to developmental disability, organic brain damage, or mental illness, or who has one or more physical or mental limitations that restrict the person's ability to perform the normal activities of daily living.

"Facility" means any location providing day or residential care or treatment for elderly persons or disabled adults. The term "facility" may include, but is not limited to, any hospital, training center, state institution, nursing home, assisted living facility, adult family-care home, adult day care center, group home, mental health treatment center, or continuing care community.

§ 825.102, Fla. Stat.

Neglect of a[n] [elderly person] [disabled adult] means:

1. A caregiver's failure or omission to provide [an elderly person] [a disabled adult] with the care, supervision, and services necessary to maintain [an elderly person's] [a

disabled adult's] physical and mental health, including, but not limited to, food, nutrition, clothing, shelter, supervision, medicine, and medical services that a prudent person would consider essential for the well-being of the [elderly person] [disabled adult];

or

2. A caregiver's failure to make reasonable effort to protect [an elderly person] [a disabled adult] from abuse, neglect, or exploitation by another person.

Neglect of a[n] [elderly person] [disabled adult] may be based on repeated conduct or on a single incident or omission by a caregiver that results in, or could reasonably be expected to result in, serious physical or psychological injury, or a substantial risk of death to [an elderly person] [a disabled adult].

Give only if alleged victim was a child.

§ 827.01, Fla. Stat.

"Caregiver" means a parent, adult household member, or other person responsible for a child's welfare.

"Child" means a person under the age of 18 years.

Neglect of a child means that a caregiver willfully failed or omitted to provide a child with the care, supervision, and services necessary to maintain the child's physical and mental health, including, but not limited to, food, nutrition, clothing, shelter, supervision, medicine, and medical services that a prudent person would consider essential for the well-being of the child. The term includes a caregiver's failure to make a reasonable effort to protect a child from abuse, neglect, or exploitation by another person.

Neglect of child may be based on repeated conduct or on a single incident or omission that resulted in, or reasonably could have been expected to result in, serious physical or mental injury, or a substantial risk of death, to a child.

Neglect of a child does not include a caregiver allowing a child to engage in independent and unsupervised activities unless allowing such activities constitutes willful and wanton conduct that endangers the health and safety of the child. Such independent and unsupervised activities include, but are not limited to, traveling to and from school or

nearby locations by bicycle or on foot, playing outdoors, or remaining at home or any other locations for a reasonable period of time.

"Willfully" means intentionally, knowingly, and purposely.

Definitions for designated personnel.

§ 943.10(14), Fla. Stat. See § 943.10, Fla. Stat., for further definitions.

"Officer" means any person employed or appointed as a full-time, part-time or auxiliary law enforcement officer, correctional officer, or correctional probation officer, juvenile detention officer, or juvenile probation officer.

§ 112.191 and § 633.35, Fla. Stat.

"Firefighter" means any full-time duly employed uniformed firefighter employed by an employer, whose primary duty is the prevention and extinguishing of fires, the protection of life and property therefrom, the enforcement of municipal, county, and state fire prevention codes, as well as the enforcement of any law pertaining to the prevention and control of fires, who is certified by the Division of State Fire Marshal of the Department of Financial Services, who is a member of a duly constituted fire department of such employer or who is a volunteer firefighter.

§ 401.23, Fla. Stat.

"Emergency Medical Technician" means a person who is certified by the Department of Health to perform basic life support.

§ 401.23, Fla. Stat.

"Paramedic" means a person who is certified by the Department of Health to perform basic and advanced life support.

Lesser Included Offenses

AGGRAVATED MANSLAUGHTER — 782.07(2), 782.07(3), AND 782.07(4)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Manslaughter		782.07	7.7
	Death Caused by the Unlawful Distribution by a Person Less than 18 Years of Age of [Name of Enumerated Controlled Substance(s))	782.04(5)(b)	7.3(b)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Non-homicide lessers*			
Neglect of a[n] [Elderly Person] [Disabled Adult] [Child] Causing Great Bodily Harm, Permanent Disability, or Permanent Disfigurement		825.102(3)(b) or 827.03(2)(b)	29.22 or 16.5
Neglect of a[n] [Elderly Person] [Disabled Adult] [Child] Without Causing Great Bodily Harm, Permanent Disability, or Permanent Disfigurement		827.03(2)(d)	Or 16.6
Culpable Negligence Inflicting Injury		784.05(2)	8.9
Culpable Negligence Exposing Another to Injury		784.05(1)	8.9

Comments

*Non-homicide lesser-included offenses do not have to be given if the parties agree causation is not in dispute and that the victim is dead. *Carver v. State*, 348 So. 3d 1214 (Fla. 5th DCA 2022).

There is no statutory requirement that the defendant have knowledge of victim's status and as of September 2026, there was no case law addressing that issue.

This instruction was adopted in 2017 [213 So. 3d 680] and amended in 2018 [236 So. 3d 282], on September 12, 2025, and on October 9, 2026.

7.7(b) UNNECESSARY KILLING TO PREVENT AN UNLAWFUL ACT

§ 782.11, Fla. Stat.

In the absence of an express concession that the homicide was not excusable or justified, the trial judge must also read Instruction 7.1, Introduction to Homicide.

To prove the crime of Unnecessary Killing to Prevent an Unlawful Act, the State must prove the following four elements beyond a reasonable doubt:

1. (Victim) **attempted to commit [a felony] [an unlawful act].**

2. (Victim's) **attempt to commit [a felony] [an unlawful act] was independent of a[n] [[threatened] unlawful act] directed solely toward** (defendant)**.**

3. (Defendant) **resisted** (victim's) **[failed] attempt to commit [a felony] [an unlawful act] by intentionally committing an act or acts that caused the death of** (victim)**.**

4. (Defendant's) **killing of** (victim) **was unnecessary.**

A[n] (name of felony or unlawful act attempted to be committed by victim) **is defined as** (give elements of felony or unlawful act)**. The Court instructs you that** (name of felony or unlawful act) **is [a felony] [an unlawful act].**

In order for (victim) **to have attempted to commit** (name of felony or unlawful act)**, the following would have had to have occurred:**

1. (Victim) **did some act toward committing the** (name of felony or unlawful act) **that went beyond just thinking or talking about it.**

2. (Victim) **would have committed the** (name of felony or unlawful act) **except that someone prevented [him] [her] from committing it or [he] [she] failed.**

The defendant cannot be guilty of Unnecessary Killing to Prevent an Unlawful Act if the killing was either justifiable or excusable homicide, as I have previously instructed you. *(The explanations of justifiable homicide and excusable homicide are in Instruction 7.1, Introduction to Homicide.)*

Give if requested.

In order to convict of Unnecessary Killing to Prevent Unlawful Act, the State does not need to prove the defendant intended to cause (victim's**) death.**

Lesser Included Offenses

UNNECESSARY KILLING TO PREVENT AN UNLAWFUL ACT — 782.11			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
None		782.07	7.7
	(Nonhomicide lessers*) Aggravated battery	784.045	8.4
	Attempt	777.04(1)	5.1
	Felony battery	784.041	8.5
	Aggravated assault	784.021	8.2
	Battery	784.03	8.3
	Assault	784.011	8.1
	Culpable negligence	784.05	8.9

Comments

This instruction should not be given as a substitute for self-defense, defense of others, or defense of property with non-deadly force. It is applicable only where a victim was attempting to commit a felony or other unlawful act independent of an act directed solely at the defendant. *Mattier v. State*, 711 So. 2d 256 (Fla. 4th DCA 1998); *State v. Kadet*, 455 So. 2d 389 (Fla. 5th DCA 1984).

*Non-homicide lesser-included offenses do not have to be given if the parties agree that causation is not in dispute and that the victim is dead. *See Eversley v. State*, 748 So. 2d 963 (Fla. 1999). In cases in which causation is an issue, it will be necessary to determine if a special jury instruction on causation is needed.

This instruction was adopted on April 1, 2020.

7.7(c) ASSISTED SELF-MURDER

§ 782.08, Fla. Stat.

To prove the crime of Assisted Self-Murder, the State must prove the following three elements beyond a reasonable doubt:

1. (Victim) **is dead.**

2. (Victim) **committed self-murder.**

3. (Defendant) **deliberately assisted in the self-murder of** (victim)**.**

Definitions.

§ 782.081(1)(b), Fla. Stat.

"Self-murder" means the voluntary and intentional taking of one's own life.

Lesser Included Offenses

No lesser-included offenses have been identified for this offense.

Comment

This instruction was adopted in 2019.

7.8 DRIVING UNDER THE INFLUENCE MANSLAUGHTER

§ 316.193(3)(c)3., Fla. Stat.

To prove the crime of Driving Under the Influence Manslaughter, the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **drove [or was in actual physical control of] a vehicle.**

2. While driving [or in actual physical control of] the vehicle, (defendant)

Give 2a or 2b or both as applicable.

a. was under the influence of [alcoholic beverages] [a chemical substance] [a controlled substance] to the extent that [his] [her] normal faculties were impaired.

b. had a [blood] [breath]-alcohol level of .08 or more grams of alcohol per [100 milliliters of blood] [210 liters of breath].

3. As a result of operating the vehicle, (defendant) **caused or contributed to the cause of the death of [**(victim)**] [an unborn child].**

Give if applicable. Mizell v. State, 350 So. 3d 97 (Fla. 1st DCA 2022).

The conduct of [(victim)**] [another] [another person] is a defense to this crime only when that conduct was the sole cause of the crash that resulted in a death.**

Give if § 316.193(3)(c)3.b., Fla. Stat., is charged.

If you find the defendant guilty of Driving Under the Influence Manslaughter, you must further determine whether the State proved beyond a reasonable doubt that:

(Defendant)**, at the time of the crash,**

a. knew or should have known that the crash occurred

and

b. failed to either give information or render aid as required by law.

Florida law requires that the driver of any vehicle involved in a crash resulting in injury to or death of any person, or damage to any vehicle or other property which is driven or attended by any person, must supply [his] [her] name, address, and the registration number of the vehicle [he] [she] is driving to any person injured in the crash or to the driver or occupant of or person attending any vehicle or other property damaged in the crash. Upon request and if available, the driver shall also exhibit [his] [her] license or permit to drive.

The driver shall give the same information and, upon request, exhibit his or her license or permit, to any police officer who is at the scene of the crash or who is investigating the crash.

The driver shall also render reasonable assistance to any person injured in the crash, including carrying, or the making of arrangements for the carrying, of such person to a physician, surgeon, or hospital for medical or surgical treatment if it is apparent that treatment is necessary, or if such carrying is requested by the injured person.

In the event none of the persons specified above are in condition to receive the information to which they otherwise would be entitled, and no police officer is present, the driver of a vehicle involved in the crash, after trying to fulfill the requirements listed above as much as possible, shall immediately report the crash to the nearest office of a duly authorized police authority and supply the information specified above.

Give if applicable. § 316.193(4), Fla. Stat.

If you find the defendant guilty of Driving Under the Influence Manslaughter, you must also determine whether the State has proven beyond a reasonable doubt whether:

a. the defendant had a [blood] [breath]-alcohol level of .15 or higher while driving [or in actual physical control of] the vehicle.

b. the defendant was accompanied in the vehicle by a person under the age of 18 years at the time of the Driving Under the Influence.

§ 316.003, Fla. Stat. Some of these terms have their own statutory definitions, which should be given if necessary.

"Vehicle" is every device in, upon, or by which any person or property is or may be transported or drawn upon a highway[, except

personal delivery devices, mobile carriers, and devices used exclusively upon stationary rails or tracks].

§ 316.1934, Fla. Stat.

"Normal faculties" include but are not limited to the ability to see, hear, walk, talk, judge distances, drive an automobile, make judgments, act in emergencies and, in general, to normally perform the many mental and physical acts of our daily lives.

Shaw v. State, 783 So. 2d 1097 (Fla. 5th DCA 2001).

"Impaired" means diminished in some material respect.

Give if applicable. The option of "on a vehicle" pertains to vehicles such as motorcycles and bicycles.

"Actual physical control of a vehicle" means the defendant must be physically in [or on] the vehicle and have the capability to operate the vehicle, regardless of whether [he] [she] is actually operating the vehicle at the time.

§ 322.01(2), Fla. Stat.

"Alcoholic beverages" are considered to be substances of any kind and description which contain alcohol.

§ 877.111(1), Fla. Stat.

(_____) **is a chemical substance under Florida law.**

Chapter 893, Fla. Stat.

(_____) **is a controlled substance under Florida law.**

§ 775.021, Fla. Stat.

An "unborn child" means a member of the species *Homo sapiens***, at any stage of development, and who is carried in the womb.**

Give if applicable. § 775.021(5)(b), Fla. Stat.

Driving Under the Influence Manslaughter does not require the State to prove that the defendant knew or should have known that (victim) **was pregnant or that the defendant intended to cause the death of the unborn child.**

Give if appropriate. § 316.1934(2)(a) and (2)(b), Fla. Stat.

If you find from the evidence that while driving [or in actual physical control of] a vehicle, the defendant had a blood or breath-alcohol level of .05 or less, you shall presume that the defendant was not under the influence of alcoholic beverages to the extent that [his] [her] normal faculties were impaired; but this presumption may be overcome by other evidence demonstrating that the defendant was under the influence of alcoholic beverages to the extent that [his] [her] normal faculties were impaired.

If you find from the evidence that while driving [or in actual physical control of] a vehicle, the defendant had a blood or breath-alcohol level in excess of .05 but less than .08, that fact does not give rise to any presumption that the defendant was or was not under the influence of alcoholic beverages to the extent that [his] [her] normal faculties were impaired. In such cases, you may consider that evidence along with other evidence in determining whether the defendant was under the influence of alcoholic beverages to the extent that [his] [her] normal faculties were impaired.

It is not necessary to instruct on the "prima facie evidence of impairment" in §316.1934(2)(c), Fla. Stat., if the State charged the defendant with driving with a blood or breath-alcohol level of .08 or over. In those cases, if the jury finds that the defendant drove with an unlawful blood or breath-alcohol level, impairment becomes moot. Tyner v. State, 805 So. 2d 862 (Fla. 2d DCA 2001).

Give only if appropriate. State v. Burns, 661 So.2d 842 (Fla. 5th DCA 1995); Kurecka v. State, 67 So.3d 1052 (Fla. 4th DCA 2010).

A person [arrested] [being investigated] for Driving Under the Influence does not have the right to consult with an attorney before deciding whether to submit to a [breath] [urine] [blood] test.

Give only if appropriate

A person [arrested] [being investigated] for Driving Under the Influence does not have the right to consult with an attorney before deciding whether to submit to a [breath] [urine] [blood] test. However, if the defense maintains that the defendant mistakenly believed that [he] [she] did have such a right and refused to provide a [breath] [blood] [urine] sample because of that mistaken belief, you may consider that claim, as well as the state's competing claim that the defendant's refusal shows that [he] [she] did not want the police to obtain evidence regarding [his] [her] [[breath] [blood] alcohol level] [or] [drug consumption].

Defense of inoperability; give if applicable.

It is a defense to the charge of Driving Under the Influence Manslaughter if at the time of the alleged offense, the vehicle was inoperable. However, it is not a defense if the defendant was driving under the influence before the vehicle became inoperable. Therefore, if you are not convinced beyond a reasonable doubt that the vehicle was operable at the time of the alleged offense, you should find the defendant not guilty. However, if you are convinced that the vehicle was operable at the time of the alleged offense, then you should find the defendant guilty, if all the other elements of the charge have been proved beyond a reasonable doubt.

Lesser Included Offenses

DRIVING UNDER THE INFLUENCE MANSLAUGHTER — 316.193(3)(c)3.

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Driving under the Influence		316.193(1)	28.1
	Driving under the influence causing serious bodily injury	316.193(3)(a), (3)(b), and (3)(c)2.	28.3
	Driving under the influence causing damage to person or property	316.193(3)(a), (3)(b), and (3)(c)1.	28.1(a)

Comments

DUI Manslaughter becomes a first degree felony if the defendant had a prior qualifying conviction. *See* § 316.193(3)(c), Fla. Stat. Because the fact of a prior qualifying conviction is purely a recidivist factor, the Committee on Standard Jury Instructions in Criminal Cases did not create an instruction for the jury to find the existence of the prior qualifying conviction. However, the courts may treat this enhancement as an element that must be proven to the jury under the beyond a reasonable doubt standard in a bifurcated proceeding. If so, a special instruction would be needed. The judge and the parties can look toward the end of standard instruction #28.2 for some language for a special instruction for the bifurcated proceeding.

This instruction was adopted in 1981 and amended in 1985 [477 So. 2d 985], 1987 [508 So. 2d 1221], 1992 [603 So. 2d 1175], 1995 [665 So. 2d 212], 1998 [723 So. 2d 123], 2006 [946 So. 2d 1061], 2009 [6 So. 3d 574], 2016 [190 So. 3d 1055], 2017 [211 So. 3d 995], 2019 [262 So. 3d 59], on October 2, 2020, on December 15, 2023, on June 12, 2026, and on October 9, 2026.

7.8(a) BOATING UNDER THE INFLUENCE MANSLAUGHTER

§ 327.35(3)(a)3.c., Fla. Stat.

To prove the crime of Boating under the Influence Manslaughter, the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **operated a vessel.**

2. While operating the vessel, (defendant)

Give 2a or 2b or both as applicable.

a. was under the influence of [alcoholic beverages] [a chemical substance] [a controlled substance] to the extent that [his] [her] normal faculties were impaired.

b. had a [blood] [breath]-alcohol level of .08 or more grams of alcohol per [100 milliliters of blood] [210 liters of breath].

3. As a result of operating the vessel, (defendant) **caused or contributed to the cause of the death of [**(victim)**] [an unborn child].**

Give if applicable. Mizell v. State, 350 So. 3d 97 (Fla. 1st DCA 2022).

The conduct of [(victim)**] [another] [another person] is a defense to this crime only when that conduct was the sole cause of the crash that resulted in a death.**

Give if § 327.35(3)(a)3.c.(II), Fla. Stat., is charged.

If you find the defendant guilty of Boating under the Influence Manslaughter, you must further determine whether the State proved beyond a reasonable doubt that:

(Defendant)**, at the time of the accident,**

a. knew or should have known that the accident occurred

and

b. failed to give information as required by law

and

c. failed to render aid as required by law.

Florida law requires that the operator of a vessel involved in a collision, accident, or other casualty, to render to other persons affected by the collision, accident, or other casualty such assistance as is practicable and necessary in order to save them from or minimize any danger caused by the collision, accident, or other casualty, so far as [he] [she] can do so without serious danger to the operators own vessel, crew, and passengers.

Florida law also requires the operator to give [his] [her] name, address, and identification of [his] [her] vessel in writing to any person injured and to the owner of any property damaged in the collision, accident, or other casualty.

In cases of collision, accident, or other casualty resulting in death or medical treatment beyond immediate first aid, Florida law requires that the operator, without delay and by the quickest means available, give notice of the accident to one of the following agencies: the Division of Law Enforcement of the Fish and Wildlife Conservation Commission; the sheriff of the county within which the accident occurred; or the police chief of the municipality within which the accident occurred.

Give if applicable. § 327.35(4), Fla. Stat.

If you find the defendant guilty of Boating under the Influence Manslaughter, you must also determine whether the State has proven beyond a reasonable doubt whether:

a. the defendant had a [blood] [breath]-alcohol level of . 15 or higher while operating the vessel.

b. the defendant was accompanied in the vessel by a person under the age of 18 years at the time of the Boating under the Influence.

State v. Davis, 110 So. 3d 27 (Fla. 2d DCA 2013).

"Vessel" means a boat and includes every description of watercraft, barge, and airboat, other than a seaplane, on the water used or capable of being used as a means of transportation on water.

§ 327.354, Fla. Stat.

"Normal faculties" include but are not limited to the ability to see, hear, walk, talk, judge distances, operate a vessel, make judgments, act in emergencies and, in general, to normally perform the many mental and physical acts of our daily lives.

§ 327.02, Fla. Stat.

"Operate" means to be in charge of or in command of or in actual physical control of a vessel upon the waters of this state, or to exercise control over or to have responsibility for a vessels navigation or safety while the vessel is underway upon the waters of this state, or to control or steer a vessel being towed by another vessel upon the waters of the state.

Shaw v. State, 783 So. 2d 1097 (Fla. 5th DCA 2001).

Impaired means diminished in some material respect.

§ 322.01, Fla. Stat.

"Alcoholic beverages" are considered to be substances of any kind and description which contain alcohol.

(_____) **is a controlled substance under Florida law.** *Ch. 893, Fla. Stat.*

(_____) **is a chemical substance under Florida law.** *§ 877.111, Fla. Stat.*

§ 775.021(5), Fla. Stat.

An "unborn child" means a member of the species *Homo sapiens*, at any stage of development, and who is carried in the womb.

Give if applicable. § 775.021(5)(b), Fla. Stat.

Boating Under the Influence Manslaughter does not require the State to prove that the defendant knew or should have known that (victim) **was pregnant or that the defendant intended to cause the death of the unborn child.**

Give if appropriate. § 327.354(2)(a) and (2)(b), Fla. Stat.

1. **If you find from the evidence that while operating or in actual physical control of the vessel, the defendant had a [blood] [breath]- alcohol level of .05 or less, you shall presume that the defendant was not under the influence of alcoholic beverages to the extent that [his] [her] normal faculties were impaired; but this presumption may be overcome by other evidence demonstrating that the defendant was under the influence of alcoholic beverages to the extent that [his] [her] normal faculties were impaired.**

2. If you find from the evidence that while operating or in actual physical control of the vessel, the defendant had a [blood] [breath]- alcohol level in excess of .05 but less than .08, that fact does not give rise to any presumption that the defendant was or was not under the influence of alcoholic beverages to the extent that [his] [her] normal faculties were impaired. In such cases, you may consider that evidence along with other evidence in determining whether the defendant was under the influence of alcoholic beverages to the extent that [his] [her] normal faculties were impaired.

It is not necessary to instruct on the "prima facie evidence of impairment" in § 327.354(2)(c), Fla. Stat., if the State charged the defendant with boating with a blood or breath-alcohol level of .08 or over. In those cases, if the jury finds that the defendant operated a vessel with an unlawful blood or breath-alcohol level, impairment becomes moot. Tyner v. State, 805 So. 2d 862 (Fla. 2d DCA 2001).

Give only if appropriate. State v. Burns, 661 So.2d 842 (Fla. 5th DCA 1995); Kurecka v. State, 67 So.3d 1052 (Fla. 4th DCA 2010).

A person [arrested] [being investigated] for Boating Under the Influence does not have the right to consult with an attorney before deciding whether to submit to a [breath] [urine] [blood] test.

Give only if appropriate

A person [arrested] [being investigated] for Boating Under the Influence does not have the right to consult with an attorney before deciding whether to submit to a [breath] [urine] [blood] test. However, if the defense maintains that the defendant mistakenly believed that [he] [she] did have such a right and refused to provide a [breath] [blood] [urine] sample because of that mistaken belief, you may consider that claim, as well as the state's competing claim that the defendant's refusal shows that [he] [she] did not want the police to obtain evidence regarding [his] [her] [[breath] [blood] alcohol level] [or] [drug consumption].

Defense of inoperability; give if applicable.

It is a defense to the charge of Boating under the Influence Manslaughter if the vessel was inoperable at the time of the alleged offense, unless the defendant was controlling or steering the vessel while it was being towed by another vessel upon the waters of the state. However, it is not a defense if the defendant was boating under the influence before the vessel became inoperable.

Lesser Included Offenses

BOATING UNDER THE INFLUENCE MANSLAUGHTER — 327.35(3)(a)3.c.

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Boating under the influence		327.35	28.14
	Boating under the influence causing serious bodily injury	327.35(3)(a), (3)(b), and (3)(c)2.	28.17
	Boating under the influence causing damage to person or property	327.35(3)(a), (3)(b), and (3)(c)1.	28.15

Comments

Effective October 1, 2025, § 327.35(3), Fla. Stat, makes BUI Manslaughter a first degree felony when the defendant had a prior qualifying conviction. Because the fact of the prior qualifying conviction is purely a recidivist factor, the Committee on Standard Jury Instructions in Criminal Cases did not create an instruction for the jury to find the existence of the prior qualifying conviction. However, the courts may treat this enhancement as an element that must be proven to the jury under the beyond a reasonable doubt standard in a bifurcated proceeding. If so, a special instruction would be needed. The judge and the parties can look toward the end of standard instruction #28.2 for some language for a special instruction for the bifurcated proceeding.

This instruction was adopted in 2009 [6 So. 3d 574] and amended in 2016 [190 So. 3d 1055], 2017 [211 So. 3d 995], on June 12, 2026, and on October 9, 2026.

7.9 [VEHICULAR] [VESSEL] HOMICIDE

§ 782.071 or § 782.072, Fla. Stat.

To prove the crime of [Vehicular] [Vessel] Homicide, the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) **operated a [motor vehicle] [vessel] in a reckless manner likely to cause the death of or great bodily harm to another person.**

2. **[His] [Her] reckless operation of a [motor vehicle] [vessel] caused the death of [**(victim)**] [an unborn child by injury to the mother].**

"Great bodily harm" means harm that is more than slight, trivial, minor, or moderate.

Luzardo v. State, 147 So. 3d 1083 (Fla. 3d DCA 2014).

The State does not have to prove the defendant intended to harm or injure anyone. However, the reckless operation of a [motor vehicle] [vessel] requires the State to prove more than a failure to use ordinary care. A "reckless manner" means in willful or wanton disregard for the safety of persons or property. "Willful" means intentional, knowing, and purposeful. "Wanton" means with a conscious and intentional indifference to consequences and with the knowledge that damage is likely to be done to persons or property.

Give if applicable. Reaves v. State, 979 So. 2d 1066 (Fla. 1st DCA 2008).

The conduct of [(victim)**] [another] [another person] is a defense to this crime only when that conduct was the sole cause of the accident that resulted in a death.**

Give if applicable.

If you find the defendant guilty of [Vehicular] [Vessel] Homicide, you must then determine whether the State has further proved beyond a reasonable doubt that:

1. **At the time of the accident,** (defendant) **knew, or should have known, that the accident occurred; and**

2. (Defendant) **failed to give information and render aid as required by law.** (Read applicable portion of § 316.062, Fla. Stat., or § 327.30, Fla. Stat.)

The State is not required to prove (defendant) **knew that the accident resulted in injury or death.**

Give only if applicable. § 782.071, Fla. Stat.

An "unborn child" means a member of the species *Homo sapiens*, at any stage of development, who is carried in the womb.

Applicable only to Vehicular Homicide. § 316.003, Fla. Stat. Some of these terms have their own statutory definitions which should be given if necessary.

A "motor vehicle" is a self-propelled vehicle not operated upon rails or guideway[, but not including any bicycle, electric bicycle, motorized scooter, electric personal assistive mobility device, mobile carrier, personal delivery device, swamp buggy, or moped].

Applicable only to Vessel Homicide. § 327.02, Fla. Stat.

"Vessel" is synonymous with boat and includes every description of watercraft, barge, and airboat, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

"Operate" means to be in charge of, in command of, or in actual physical control of a vessel upon the waters of this state, to exercise control over or to have responsibility for a vessel's navigation or safety while the vessel is underway upon the waters of this state, or to control or steer a vessel being towed by another vessel upon the waters of the state.

Lesser Included Offenses

[VEHICULAR] [VESSEL] HOMICIDE — 782.071 OR 782.072

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Reckless [driving] [operation of a vessel]*		316.192 or 327.33	28.5 or 28.19
	Culpable negligence *	784.05(2)	8.9
	Culpable negligence*	784.05(1)	8.9

Comments

It is unclear whether the language in *Union v. State*, 642 So. 2d 91, 94 (Fla. 1st DCA 1994) and *Michel v. State*, 752 So. 2d 6 Fla. 5th DCA 2000) about it being unfair or unjust to hold the defendant criminally responsible based on the decedent's conduct should be given as a special instruction. *Cf. Reaves v. State*, 979 So. 2d 1066, 1069 (Fla. 1st DCA 2008).

*Non-homicide lesser included crimes need not be given where it is undisputed that a death occurred as a result of the operation of the vehicle or vessel. *See Knowles v. State*, 29 So.3d 466 (Fla. 4th DCA 2010) and *Barritt v. State*, 531 So.2d 338 (Fla. 1988).

As of October 1, 2025, a conviction for Vehicular or Vessel Homicide becomes a first degree felony if the defendant has a prior conviction for DUI Manslaughter, BUI Manslaughter, Vehicular Homicide, or Vessel Homicide. As of October 2025, it was unclear whether the existence of such a prior conviction is an element of the crime that must be proven to a jury beyond a reasonable doubt or a recidivist factor that can be proven to the judge under a preponderance of the evidence standard at sentencing.

If the court treats the prior conviction as an element, it would generally be improper to allow the jury to hear about the conviction before the verdict on the underlying charge. Under that circumstance, do not read the allegation of a prior conviction to the jury and do not send the charging document into the jury room. If the defendant is found guilty, the historical fact of a prior conviction should then be determined by the jury in a bifurcated proceeding.

This instruction was adopted in 1981 and amended in 1989, 2006 [946 So. 2d 1061], 2008 [994 So. 2d 1038], 2015 [176 So. 3d 938], 2019 [262 So. 3d 59], on October 2, 2020, and on September 12, 2025.

7.10 PRELIMINARY INSTRUCTIONS IN PENALTY PROCEEDINGS — CAPITAL CASES

§ 921.141, Fla. Stat.

The instruction is designed for first degree murders committed after May 24, 1994, when the Legislature omitted the possibility of parole for anyone convicted of First Degree Murder. For first degree murders committed before May 25, 1994, this instruction must be modified.

This instruction is to be given immediately before the opening statements in the penalty phase of a death penalty case.

Give the paragraph below to a jury that did not participate in the guilt phase.

Members of the jury, the defendant has been found guilty of _____count[s] of First Degree Murder in a previous proceeding. The only issue before you is to determine the appropriate penalty. The penalty for [this] [each of these] crime[s] is either life in prison without the possibility of parole or the death penalty.

Give the paragraph below to the jury that found the defendant guilty.

Members of the jury, you have found the defendant guilty of _____count[s] of First Degree Murder. The only issue before you in this phase of the trial is to determine the appropriate penalty. The penalty for [this] [each of these] crime[s] is either life in prison without the possibility of parole or the death penalty.

Before proceeding further, it will be helpful if you understand how this proceeding will be conducted.

The attorneys will have an opportunity, if they wish, to make an opening statement. The opening statement gives the attorneys a chance to tell you what evidence they believe will be presented during the penalty phase of this trial. What the lawyers say during opening statements is not evidence and you are not to consider it as such. After the attorneys have had the opportunity to present their opening statements, the State and the defendant may present evidence. Witnesses may be called to testify under oath. If so, they will be examined and may be cross-examined by the attorneys. Documents and other exhibits also may be produced as evidence. This evidence [, along with the evidence that you heard during the guilt phase of this trial,] is presented for you to determine whether the State proved beyond a reasonable doubt the existence of the alleged aggravating factor[s]. If so, you must weigh whether the proven aggravating factor[s] [is] [are] sufficient and whether

the aggravating factors[s] outweigh[s] any mitigating circumstances the defendant proves by the greater weight of the evidence. Finally, you will decide whether the defendant should be sentenced to life in prison without the possibility of parole or to death. At the conclusion of the evidence and after argument of counsel, you will be instructed on the law that will guide your deliberations.

An aggravating factor is the only circumstance recognized by Florida law that could result in a defendant receiving the death penalty. An aggravating factor increases the gravity of a crime or the harm to a victim beyond the harm inherent in every First Degree Murder. You must unanimously agree that an aggravating factor was proven beyond a reasonable doubt before it may be considered by you in arriving at your sentencing decision. The aggravating factor[s] alleged by the State in this case [is] [are]:

Give only those aggravating factors noticed by the State.

1. (Defendant) **was previously convicted of a felony and was [under sentence of imprisonment] [on community control] [on felony probation] at the time [he] [she] committed the First Degree Murder in this case.**

2. (Defendant) **was previously [or contemporaneously] convicted of [another capital felony] [a felony involving the [use] [threat] of violence to another person].**

Give 2a or 2b as applicable.

a. The crime of (previous crime) **is a capital felony.**

b. The crime of (previous crime) **is a felony involving the [use] [threat] of violence to another person.**

3. (Defendant) **knowingly created a great risk of death to many persons.**

4. The First Degree Murder was committed while (defendant) was [engaged] [an accomplice] in [the commission of] [an attempt to commit] [flight after committing or attempting to commit]

any

Check § 921.141(6)(d), Fla. Stat., for any change in list of offenses.

[robbery].

[sexual battery].

[aggravated child abuse].

[abuse of an elderly person or disabled adult resulting in great bodily harm, permanent disability, or permanent disfigurement].

[arson].

[burglary].

[kidnapping].

[aircraft piracy].

[unlawful throwing, placing or discharging of a destructive device or bomb].

5. **The First Degree Murder was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody.**

6. **The First Degree Murder was committed for financial gain.**

7. **The First Degree Murder was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws.**

8. **The First Degree Murder was especially heinous, atrocious, or cruel.**

"Heinous" means extremely wicked or shockingly evil.

"Atrocious" means outrageously wicked and vile.

"Cruel" means designed to inflict a high degree of pain with utter indifference to, or even enjoyment of, the suffering of others.

The kind of crime intended to be included as especially heinous, atrocious, or cruel is one accompanied by additional acts that show that the crime was conscienceless or pitiless and was unnecessarily torturous to (decedent**).**

9. The First Degree Murder was committed in a cold, calculated, and premeditated manner, without any pretense of moral or legal justification.

"Cold" means the murder was the product of calm and cool reflection.

"Calculated" means having a careful plan or prearranged design to commit murder.

A killing is "premeditated" if it occurs after the defendant consciously decides to kill. The decision must be present in the mind at the time of the killing. The law does not fix the exact period of time that must pass between the formation of the premeditated intent to kill and the killing. The period of time must be long enough to allow reflection by the defendant. The premeditated intent to kill must be formed before the killing.

However, for this aggravating factor to apply, a heightened level of premeditation, demonstrated by a substantial period of reflection, is required.

A "pretense of moral or legal justification" is any claim of justification or excuse that, though insufficient to reduce the degree of murder, nevertheless rebuts the otherwise cold, calculated, or premeditated nature of the murder.

10. (Decedent) **was a law enforcement officer engaged in the performance of [his] [her] official duties.**

11. (Decedent) **was an elected or appointed public official engaged in the performance of [his] [her] official duties, if the motive for the First Degree Murder was related, in whole or in part, to** (decedent's) **official capacity.**

12. (Decedent) **was a person less than 12 years of age.**

13. (Decedent) **was particularly vulnerable due to advanced age or disability, or because** (defendant) **stood in a position of familial or custodial authority over** (decedent)**.**

With the following aggravating factor, definitions as appropriate from § 874.03, Fla. Stat., must be given.

14. The First Degree Murder was committed by a criminal gang member.

15. The First Degree Murder was committed by a person designated as a sexual predator or a person previously designated as a sexual predator who had the sexual predator designation removed.

16. The First Degree Murder was committed by a person subject to

[a domestic violence injunction issued by a Florida judge],

[a [repeat] [sexual] [dating] violence injunction issued by a Florida judge],

[a protection order issued from [another state] [the District of Columbia] [an Indian tribe] [a commonwealth, territory, or possession of the United States]],

and

The victim of the First Degree Murder was [the person] [a [spouse] [child] [sibling] [parent] of the person] who obtained the [injunction] [protective order].

Effective July 1, 2025.

17. The First Degree Murder was committed against the head of a state, including, but not limited to, the President or the Vice President of the United States or the Governor of Florida or another state, [or in an attempt to commit such crime, a First Degree Murder was committed against another individual].

Effective October 1, 2025.

18. (Decedent)**, the victim of the First Degree Murder, was gathered with one or more persons for a school activity, religious activity, or public government meeting.**

Give if requested.

Once the State has presented evidence of the existence of [an] aggravating factor[s], victim impact evidence may be presented. Such evidence is only presented to demonstrate the victim's uniqueness as an individual and the loss to the community by the victim's death. However, victim impact evidence must not be considered by you as an aggravating factor.

A mitigating circumstance can be anything that might indicate the death penalty is not appropriate for the defendant. It is not limited to the facts surrounding the crime. In other words, a mitigating circumstance may include any aspect of the defendant's character, background, or life, or any circumstance of the offense that may indicate the death penalty is not an appropriate sentence in this case.

Whether a mitigating circumstance has been proven is an individual judgment by each juror. A mitigating circumstance need not be proven beyond a reasonable doubt but must be proven by the greater weight of the evidence.

The trial judge should select one of the following two alternatives regarding how final instructions are presented pursuant to Fla. R. Crim. P. 3.390(a).

Alternative A: **After the evidence has been presented, the attorneys will have the opportunity to make their closing arguments. Following the closing arguments by the attorneys, the court will instruct you on the law.**

Alternative B: **After the evidence has been presented, the court will give you instructions on the law. The attorneys will then have the opportunity to make their closing arguments. Following the closing arguments by the attorneys, the court will conclude with final instructions.**

Resume with the paragraph below.

After the final instructions are given, [the alternate juror[s] will be released and] you will begin your deliberations. You should not form any definite or fixed opinion until you have heard all the evidence, the argument of the lawyers, and my instructions on the law. Until that time, you should not discuss the case among yourselves. Your decision must be based solely on the evidence, or lack of evidence, and the law.

During the penalty phase, the court may take recesses, and you will be permitted to separate and go about your personal affairs. During these recesses, you must not discuss the case with anyone nor permit anyone to say anything to you or in your presence about the case. If anyone attempts to say anything to you or in your presence about this case, tell him or her that you are on the jury and ask that person to stop. If he or she persists, leave that person at once and immediately report the matter to the [court deputy] [bailiff], who will advise me.

The trial judge should select one of the following two alternative instructions explaining the rules governing jurors' use of electronic devices.

Alternative A: **All cell phones, computers, tablets, or other types of electronic devices must be turned off while you are in the courtroom. Turned off means that the phone or other electronic device is actually off and not in a silent or vibrating mode. You may use these devices during recesses, but even then, you may not use your cell phone or electronic device to find out any information about the case or communicate with anyone about the case or the people involved in the case. Do not take photographs, video recordings, or audio recordings of the proceedings or of your fellow jurors. After each recess, please double check to make sure your cell phone or electronic device is turned off. At the end of the case, while you are deliberating, you must not communicate with anyone outside the jury room. You cannot have in the jury room any cell phones, computers, or other electronic devices. If someone needs to contact you in an emergency, the court can receive messages and deliver them to you without delay. A contact phone number will be provided to you.**

Alternative B: **You cannot have any cell phones, tablets, laptops, or other electronic devices in the courtroom. You may use these devices during recesses, but even then, you may not use your cell phone or electronic device to find out any information about the case or communicate with anyone about the case or the people involved in the case. Do not take photographs, video recordings, or audio recordings of the proceedings or your fellow jurors. At the end of the case, while you are deliberating, you must not communicate with anyone outside the jury room. If someone needs to contact you in an emergency, the court can receive messages and deliver them to you without delay. A contact phone number will be provided to you.**

Resume with the paragraph below.

The penalty phase must be tried by you only on the evidence presented in your presence and in the presence of the defendant, the attorneys, and the judge. Jurors must not conduct any investigation of their own. This includes reading newspapers, watching television, or using a computer, cellphone, the internet, any electronic device, or any other means at all, to get information related to this case or the people and places involved in this case. This applies whether you are in the courthouse, at home, or anywhere else. You must not visit places mentioned or use the Internet to look at maps or pictures to see any place discussed during the penalty phase.

Jurors must not have discussions of any sort with friends or family members about the case or the people and places involved. Do not let even the closest family members make comments to you or ask questions about the penalty phase. In this age of electronic communication. I want to stress again that just as you must not talk about this case face-to-face, you must not talk about this case by using an electronic device. You must not use phones. computers, or other electronic devices to communicate. Do not send or accept any messages related to this case or your jury service. Do not discuss this case or ask for advice by any means at all, including posting information on an internet website, chat room, or blog.

What are the reasons for these rules? These rules are imposed because jurors must decide the case without distraction and only on the evidence presented in the courtroom. If you investigate, research, or make inquiries on your own, I have no way to make sure that the information you obtain is proper for the case. The parties likewise have no opportunity to dispute or challenge the accuracy of what you find. That is contrary to our judicial system, which assures every party the right to ask questions about and challenge the evidence being considered against it and to present argument with respect to that evidence. Any independent investigation by a juror unfairly and improperly prevents the parties from having the opportunity that our judicial system promises.

Any juror who violates these restrictions jeopardizes the fairness of these proceedings and a mistrial could result that would require the entire process to start over. A mistrial is a tremendous expense and inconvenience to the parties, the court, and the taxpayers. If you violate these rules, you may be held in contempt of court, and face sanctions, such as serving time in jail, paying a fine, or both.

Give the following paragraph if the defense requests it.

In every criminal proceeding, a defendant has the absolute right to remain silent. From the exercise of a defendant's right to remain silent, a jury is not permitted to draw any inference regarding the existence of an aggravating factor or an appropriate sentence, and the fact that a defendant did not take the witness stand must not influence your sentencing decision in any manner whatsoever.

The attorneys are trained in the rules of evidence and trial procedure, and it is their duty to make all objections they feel are proper. When an objection is made you should not speculate on the reason why it is made; likewise, when an objection is sustained, or upheld, by me, you must not speculate on what might have occurred had the objection not

been sustained. nor what a witness might have said had the witness been permitted to answer.

It may be necessary to confer with the attorneys out of your hearing to discuss matters that require consideration by me alone. It is impossible to predict when such a conference may be required or how long it will last. When such conferences occur, they will be conducted to consume as little of your time as is necessary.

Comment

This instruction was adopted in 1981 and amended in 1985 [477 So. 2d 985], 1989 [543 So. 2d 1205], 1991 [579 So. 2d 75], 1992 [603 So. 2d 1175], 1994 [639 So. 2d 602], 1995 [665 So. 2d 212], 1996 [678 So. 2d 1224], 1997 [690 So. 2d 1263], 1998 [723 So. 2d 123], 2009 [22 So. 3d 17], 2014 [146 So. 3d 1110], 2017 [214 So. 3d 1236], 2018 [244 So.3d 172], on June 23, 2023, and on September 12, 2025.

7.11 FINAL INSTRUCTIONS IN PENALTY PROCEEDINGS — CAPITAL CASES

§ 921.141, Fla. Stat.

This instruction should be given after the closing arguments in the penalty phase of a death penalty trial. The instruction is designed for first degree murders committed after May 24, 1994, when the Legislature omitted the possibility of parole for anyone convicted of First Degree Murder. For first degree murders committed before May 25, 1994, this instruction must be modified.

Members of the jury, you have heard all the evidence and the argument of counsel. Now you must decide whether the defendant should be sentenced to life in prison without the possibility of parole or to death.

In making your decision, you must first unanimously determine whether the aggravating factor[s] alleged by the State [has] [have] been proven beyond a reasonable doubt. An aggravating factor is the only circumstance recognized by Florida law that could result in a defendant receiving the death penalty. An aggravating factor increases the gravity of a crime or the harm to a victim beyond the harm inherent in every First Degree Murder. You must not consider any other facts as an aggravating factor other than what has been alleged and proven by the State beyond a reasonable doubt.

Give only those aggravating factors noticed by the State and supported by the evidence.

The aggravating factor[s] alleged by the State [is] [are]:

1. (Defendant) **was previously convicted of a felony and was [under sentence of imprisonment] [on community control] [on felony probation] at the time [he] [she] committed the First Degree Murder in this case.**

2. (Defendant) **was previously [or contemporaneously] convicted of [another capital felony] [a felony involving the [use] [threat] of violence to another person].**

Give 2a or 2b as applicable.

a. The crime of (previous crime) **is a capital felony.**

b. The crime of (previous crime) **is a felony involving the [use] [threat] of violence to another person.**

3. (Defendant) **knowingly created a great risk of death to many persons.**

4. The First Degree Murder was committed while (defendant) **was [engaged] [an accomplice] in [the commission of] [an attempt to commit] [flight after committing or attempting to commit]**

any

Check § 921.141(6)(d), Fla. Stat., for any change in list of offenses.

[robbery].

[sexual battery].

[aggravated child abuse].

[abuse of an elderly person or disabled adult resulting in great bodily harm, permanent disability, or permanent disfigurement].

[arson].

[burglary].

[kidnapping].

[aircraft piracy].

[unlawful throwing, placing or discharging of a destructive device or bomb].

5. The First Degree Murder was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody.

6. The First Degree Murder was committed for financial gain.

7. The First Degree Murder was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws.

8. The First Degree Murder was especially heinous, atrocious or cruel.

"Heinous" means extremely wicked or shockingly evil.

"Atrocious" means outrageously wicked and vile.

"Cruel" means designed to inflict a high degree of pain with utter indifference to, or even enjoyment of, the suffering of others.

The kind of crime intended to be included as especially heinous, atrocious, or cruel is one accompanied by additional acts that show that the crime was conscienceless or pitiless and was unnecessarily torturous to (decedent).

9. The First Degree Murder was committed in a cold, calculated, and premeditated manner, without any pretense of moral or legal justification.

"Cold" means the murder was the product of calm and cool reflection.

"Calculated" means having a careful plan or prearranged design to commit murder.

A killing is "premeditated" if it occurs after the defendant consciously decides to kill. The decision must be present in the mind at the time of the killing. The law does not fix the exact period of time that must pass between the formation of the premeditated intent to kill and the killing. The period of time must be long enough to allow reflection by the defendant. The premeditated intent to kill must be formed before the killing.

However, for this aggravating factor to apply, a heightened level of premeditation, demonstrated by a substantial period of reflection, is required.

A "pretense of moral or legal justification" is any claim of justification or excuse that, though insufficient to reduce the degree of murder, nevertheless rebuts the otherwise cold, calculated, or premeditated nature of the murder.

10. (Decedent) **was a law enforcement officer engaged in the performance of [his] [her] official duties.**

11. (Decedent) **was an elected or appointed public official engaged in the performance of [his] [her] official duties, if the motive for the First Degree Murder was related, in whole or in part, to** (decedent's) **official capacity.**

12. (Decedent) **was a person less than 12 years of age.**

13. (Decedent) **was particularly vulnerable due to advanced age or disability, or because** (defendant) **stood in a position of familial or custodial authority over** (decedent).

With the following aggravating factor, definitions as appropriate from § 874.03, Fla. Stat., must be given.

14. The First Degree Murder was committed by a criminal gang member.

15. The First Degree Murder was committed by a person designated as a sexual predator or a person previously designated as a sexual predator who had the sexual predator designation removed.

16. The First Degree Murder was committed by a person subject to

[a domestic violence injunction issued by a Florida judge],

[a [repeat] [sexual] [dating] violence injunction issued by a Florida judge],

[a protection order issued from [another state] [the District of Columbia] [an Indian tribe] [a commonwealth, territory, or possession of the United States]],

and

the victim of the First Degree Murder was [the person] [a [spouse] [child] [sibling] [parent] of the person] who obtained the [injunction] [protective order].

Effective July 1, 2025.

17. The First Degree Murder was committed against the head of a state, including, but not limited to, the President or the Vice President of the United States or the Governor of Florida or another state, [or in an attempt to commit such crime, a First Degree Murder was committed against another individual.]

Effective October 1, 2025.

18. (Decedent)**, the victim of the First Degree Murder, was gathered with one or more persons for a school activity, religious activity, or public government meeting.**

Merging aggravating factors. Give the following paragraph if applicable. For example, the aggravating factors that 1) the murder was committed during the course of a robbery and 2) the murder was committed for financial gain, relate to the same aspect of the offense and may be considered as only a single aggravating factor. Castro v. State, 597 So. 2d 259 (Fla. 1992).

Under Florida law, the aggravating factors of *(insert aggravating factor)* **and** *(insert aggravating factor)* **are considered to merge because they are considered to be a single aspect of the offense. If you unanimously determine that the aggravating factors of** *(insert aggravating factor)* **and** *(insert aggravating factor)* **have both been proven beyond a reasonable doubt, your findings should indicate that both aggravating factors exist, but you must consider them as only one aggravating factor.**

Victim impact evidence. Give if applicable. Also, give at the time victim impact evidence is admitted, if requested.

You have heard evidence about the impact of this murder on the [family] [friends] [community] of (victim**). This evidence was presented to show the victim's uniqueness as an individual and the resultant loss by** (victim's) **death. However, you may not consider this evidence as an aggravating factor.**

Give in all cases.

The State has the burden to prove an aggravating factor beyond a reasonable doubt.

The law does not require proof beyond all doubt before a jury can find that an aggravating factor exists. A mere possible, speculative, imaginary, or forced doubt is not a reasonable doubt. A reasonable doubt is not a guess or mere conjecture. Rather, it is a doubt based upon reasoning and common sense after careful and impartial consideration of all the evidence in the case.

A reasonable doubt as to the existence of an aggravating factor may arise from the evidence, conflict in the evidence, or the lack of evidence. If after a careful and impartial consideration of all the evidence, you have a reasonable doubt about the existence of an aggravating factor, it is your duty to find that the State has not proven that aggravating factor. On the other hand, if after a careful and impartial consideration of all the

evidence, you are convinced beyond a reasonable doubt that the alleged aggravating factor exists, it is your duty to make that finding.

It is to the evidence introduced in this trial, and to it alone, that you are to look for that proof.

A finding that an aggravating factor exists must be unanimous, that is, all of you must agree that [the] [each] alleged aggravating factor exists. You will be provided a form to make this finding [as to each alleged aggravating factor] and you should indicate whether you find [the] [each] aggravating factor has been proven beyond a reasonable doubt.

If you do not unanimously find that at least one aggravating factor was proven by the State beyond a reasonable doubt, then the defendant is not eligible for the death penalty, and your deliberations are complete.

If, however, you unanimously find that at least one aggravating factor[s] [has] been proven beyond a reasonable doubt, then the defendant is eligible for the death penalty, and you must consider additional matters to determine whether the appropriate penalty should be life in prison without the possibility of parole or death.

Mitigating circumstances. § 921.141(7), Fla. Stat.

First, each of you must determine whether any mitigating circumstances exist. A mitigating circumstance is not limited to the facts surrounding the crime. A mitigating circumstance may include any aspect of the defendant's character, background, or life, or any circumstance of the offense that may indicate the death penalty is not appropriate in this case.

It is the defendant's burden to prove that one or more mitigating circumstances exist. Mitigating circumstances need not be proven beyond a reasonable doubt. Instead, the defendant need only prove a mitigating circumstance by the greater weight of the evidence, which means evidence that more likely than not tends to establish the existence of a mitigating circumstance. If you determine by the greater weight of the evidence that a mitigating circumstance exists, you must consider it proven and give that evidence such weight as you determine it should receive. You need not reach a unanimous decision about whether the defendant has proven the existence of a mitigating circumstance. Any juror persuaded as to the existence of a mitigating circumstance must consider it in this case.

Among the mitigating circumstances you may consider are:

Give only those mitigating circumstances for which evidence has been presented.

1. (Defendant) **has no significant history of prior criminal activity.**

If the defendant offers evidence on this circumstance and the State, in rebuttal, offers evidence of other crimes, also give the following:

Conviction of (previous crime) **is not an aggravating factor to be considered in determining the penalty to be imposed on the defendant, but a conviction of that crime may be considered by the jury in determining whether the defendant has a significant history of prior criminal activity.**

2. The First Degree Murder was committed while (defendant) **was under the influence of extreme mental or emotional disturbance.**

3. (Decedent) **was a participant in** (defendant's) **conduct or consented to the act.**

4. (Defendant) **was an accomplice in the First Degree Murder committed by another person and [his] [her] participation was relatively minor.**

5. (Defendant) **acted under extreme duress or under the substantial domination of another person.**

6. The capacity of (defendant) **to appreciate the criminality of [his] [her] conduct or to conform [his] [her] conduct to the requirements of law was substantially impaired.**

7. (Defendant's) **age at the time of the crime.**

The judge should also instruct on any additional mitigating circumstances as requested.

8. The existence of any other factors in (defendant's) **character, background, or life or the circumstances of the offense that would mitigate against the imposition of the death penalty.**

The final step in the process is for the jury to determine whether the defendant should be sentenced to life in prison without the possibility of parole or to death. In making your decision, you must weigh all of the following factors:

(1) whether sufficient aggravating factors exist;

and,

(2) whether the proven aggravating factor[s] outweigh the proven mitigating circumstances.

The process of weighing aggravating factors and mitigating circumstances is not a mechanical or mathematical process. In other words, you should not merely total the number of aggravating factors and compare that number to the total number of mitigating circumstances. The law contemplates that different factors or circumstances may be given different weight or values by different jurors. Therefore, in your decision-making process, each individual juror must decide what weight is to be given to a particular aggravating factor or mitigating circumstance. Regardless of the results of each juror's individual weighing process—even if you conclude that [a] [the] sufficient aggravator[s] outweigh[s] the mitigator[s]—the law neither compels nor requires you to recommend that the defendant should be sentenced to death.

If fewer than 8 jurors vote for the death penalty, the Court must sentence the defendant to life in prison without the possibility of parole.

If 8 or more jurors vote for the death penalty, your recommendation must be for the death penalty. This recommendation is not binding on the Court. However, I am required to assign and give great weight and deference to your recommendation.

You will be provided [a form] [forms] to reflect your decisions. The fact that the jury can make its decision on a single ballot should not influence you to act hastily or without due regard to the gravity of these proceedings. Before you vote, you should carefully consider and weigh the evidence, realizing that a human life is at stake, and bring your best judgment to bear in reaching your decisions.

The trial judge must also instruct on other pertinent standard instructions modified for a death penalty phase. These instructions could include weighing the evidence, defendant's statements, eyewitness identification, Williams Rule, rules for deliberation, cautionary instruction, verdict, and submitting case to jury.

Comments

An *Enmund-Tison* issue arises in multi-participant felony murder cases where there is a factual dispute about whether the defendant alone killed the victim. The *Enmund v. Florida,* 458 U.S. 782 (1982) and *Tison v. Arizona,* 481

U.S. 137 (1987) issue should be resolved by the jury. *See Perez v. State*, 919 So. 2d 347 (Fla. 2005), and instruction 7.14.

This instruction was adopted in 2017 [214 So. 3d 1236] and amended in 2018 [244 So. 3d 172], on June 23, 2023, on September 8, 2023, on September 12, 2025, and on October 9, 2026.

7.12 DIALOGUE FOR POLLING THE JURY (DEATH PENALTY CASE)

Members of the jury, we are going to ask each of you about the jury's decision[s] that you have just heard.

Do you, [*(name of juror)***] [juror number** *(number of juror)***], agree that the decision[s] as read by the clerk accurately reflect[s] what the jury decided?**

Comment

This instruction was adopted in 1981 and was amended in 1997, 2017 [214 So. 3d 1236], 2018 [244 So. 3d 172], and on June 23, 2023.

7.13 MURDER – RECLASSIFIED (BY VICTIM'S EMPLOYMENT AS LAW ENFORCEMENT OFFICER, CORRECTIONAL OFFICER, ETC.)

§ 782.065, Fla. Stat.

In Ramroop v. State, 214 So. 3d 657 (Fla. 2017), the Florida Supreme Court held that § 782.065(2), Fla. Stat. is a reclassification statute that creates a substantive offense. Accordingly, the trial judge should add the three elements below to the elements section of the appropriate Murder crime (See Instruction 7.2, 7.3, 7.4, 7.5, or 7.6).

(Victim) **was a [law enforcement officer] [part-time law enforcement officer] [auxiliary law enforcement officer] [correctional officer] [part-time correctional officer] [auxiliary correctional officer] [correctional probation officer] [part-time correctional probation officer] [auxiliary correctional probation officer].**

(Defendant) **knew that** (victim) **was a [law enforcement officer] [part-time law enforcement officer] [auxiliary law enforcement officer] [correctional officer] [part-time correctional officer] [auxiliary correctional officer] [correctional probation officer] [part-time correctional probation officer] [auxiliary correctional probation officer].**

(Victim) **was engaged in the lawful performance of a legal duty.**

Definitions. § 943.10, Fla. Stat. Give as applicable.

"Law enforcement officer" means any person who is elected, appointed, or employed full time by any municipality or the State or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the State. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.

"Employing agency" means any agency or unit of government or any municipality or the State or any political subdivision thereof, or any agent thereof, which has constitutional or statutory authority to employ or appoint persons as officers. The term also includes any private entity which has contracted with the State or county for the operation and maintenance of a nonjuvenile detention facility.

"Correctional officer" means any person who is appointed or employed full time by the State or any political subdivision thereof, or by any private entity which has contracted with the State or county, and whose primary responsibility is the supervision, protection, care, custody, and control, or investigation, of inmates within a correctional institution; however, the term "correctional officer" does not include any secretarial, clerical, or professionally trained personnel.

"Correctional probation officer" means a person who is employed full time by the State whose primary responsibility is the supervised custody, surveillance, and control of assigned inmates, probationers, parolees, or community controllees within institutions of the Department of Corrections or within the community. The term includes supervisory personnel whose duties include, in whole or in part, the supervision, training, and guidance of correctional probation officers, but excludes management and administrative personnel above, but not including, the probation and parole regional administrator level.

"Part-time law enforcement officer" means any person employed or appointed less than full time, as defined by an employing agency, with or without compensation, who is vested with authority to bear arms and make arrests and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the State.

"Part-time correctional officer" means any person who is employed or appointed less than full time, as defined by the employing or appointing agency, with or without compensation, whose responsibilities include the supervision, protection, care, custody, and control of inmates within a correctional institution.

"Auxiliary law enforcement officer" means any person employed or appointed, with or without compensation, who aids or assists a full-time or part-time law enforcement officer and who, while under the direct supervision of a full-time or part-time law enforcement officer, has the authority to arrest and perform law enforcement functions.

"Auxiliary correctional officer" means any person employed or appointed, with or without compensation, who aids or assists a full-time or part-time correctional officer and who, while under the supervision of a full-time or part-time correctional officer, has the same authority as a full-time or part-time correctional officer for the purpose of providing supervision, protection, care, custody, and control of inmates within a correctional institution or a county or municipal detention facility.

Lesser Included Offenses

FIRST DEGREE PREMEDITATED MURDER RECLASSIFIED — 782.04(1)(a) AND 782.065			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
First Degree Premeditated Murder		782.04(1)(a)	7.2
Second Degree Murder – Reclassified		782.04(2) and 782.065	7.4 and 7.13
Second Degree Murder		782.04(2)	7.4
Manslaughter		782.07	7.7
	Second Degree (Felony) Murder – Reclassified	782.04(3) and 782.065	7.5 and 7.13
	Second Degree (Felony) Murder	782.04(3)	7.5
	Attempted Felony Murder - Reclassified	782.051(1) and 782.065	6.3 and 6.7
	Attempted Felony Murder	782.051(1)	6.3
	Attempted Premeditated Murder - Reclassified	782.041(1), 777.04, and 782.065	6.2 and 6.7
	Attempted Premeditated Murder	782.04(1) and 777.04	6.7
	Attempted Second Degree Murder - Reclassified	782.04(2), 777.04, and 782.065	6.4 and 6.7
	Attempted Second Degree Murder	782.04(2), 777.04	6.4
	Attempted Felony Murder- Reclassified	782.05(2) and 782.065	6.3 and 6.7
	Attempted Felony Murder	782.051(2)	6.3
	Third Degree Felony Murder - Reclassified	782.04(4) and 782.065	7.6 and 7.13
	Third Degree Felony Murder	782.04(4)	7.6
	Vehicular Homicide	782.071	7.5
	Attempted Felony Murder - Reclassified	782.051(3) and 782.065	6.3(a) and 6.7
	Attempted Felony Murder	782.051(3)	6.3(a)
	Aggravated battery	784.045	8.4

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
	Attempted Manslaughter by Act	782.07 and 777.04	6.6
	Felony battery	784.041(1)	8.5
	Aggravated Assault	784.021	8.2
	Battery	784.03	8.3
	Culpable Negligence	784.05(2)	8.9
	Culpable Negligence		8.9
	Assault	784.011	8.1

Comments

The reclassification in § 782.065, Fla. Stat., does not apply to the lesser included offense of Manslaughter.

This instruction was adopted in 2018.

7.14 ENMUND/TISON FINDINGS

This instruction should be added to instruction #7.11 only in multi-participant First Degree Felony Murder cases where there is a factual dispute about whether the defendant alone killed the victim.

If (defendant) **did not act alone in committing the First Degree Felony Murder, for the death penalty to be considered as a possible sentence, the State must also prove beyond a reasonable doubt that at least one of the following four circumstances existed:**

1. (Defendant) **was the person who actually killed** (victim)**;**

or

2. (Defendant) **intended to kill** (victim)**;**

or

3. (Defendant) **intended for deadly force to be used in the course of the** (name of felony) **that led to** (victim's) **death;**

or

4. (Defendant) **was a major participant in the** (name of felony) **that led to** (victim's) **death and exhibited reckless indifference to human life.**

"Deadly force" means force likely to cause death or great bodily harm. "Great bodily harm" means great as distinguished from slight, trivial, minor, or moderate harm.

Reckless indifference means with a conscious and intentional indifference to consequences and with knowledge that a human being could be killed.

If the State did not prove beyond a reasonable doubt to all of you that at least one of these four circumstances existed, then the defendant is not eligible for the death penalty on the charge of First Degree Felony Murder.

Interrogatories should be added to instruction #3.12(e) if Enmund/Tison findings are required.

Check "YES" or "NO" to reflect the jury's findings for all the questions below:

1. **We the jury unanimously find that the defendant [himself] [herself] killed** (victim)**.**

   ___YES ___NO

2. **We the jury unanimously find that the defendant intended to kill** (victim)**.**

   ___YES ___NO

3. **We the jury unanimously find that the defendant intended for deadly force to be used in the course of the** (name of felony) **that led to** (victim's) **death.**

   ___YES ___NO

4. **We the jury unanimously find that the defendant was a major participant in the** (name of felony) **that led to** (victim's) **death and exhibited reckless indifference to human life.**

   ___YES ___NO

Comment

This instruction was adopted on December 15, 2023.

7.15 KILLING AN UNBORN CHILD BY [AN INJURY TO] [OR] [THE DEATH OF] THE MOTHER

§ 782.09, Fla. Stat.

In the absence of an express concession that the homicide was not excusable or justified, the trial judge must also read Instruction 7.1, Introduction to Homicide.

To prove the crime of Killing an Unborn Child by [an Injury to] [or] [the Death of] the Mother, the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **committed an act that caused [an injury to] [or] [the death of]** (mother)**.**

2. **At the time,** (mother) **was pregnant.**

3. **The unborn child died as a result of [the injury to] [or] [the death of]** (mother)**.**

Give if mother died.

You must also determine whether the State proved beyond a reasonable doubt that the death of (mother) **constituted [First Degree Murder] [Second Degree Murder] [Third Degree Murder] [Manslaughter] by** (defendant)**.**

Give if mother was injured but did not die.

You must also determine whether the State proved beyond a reasonable doubt that the injury inflicted upon (mother) **was of a type that would have constituted [First Degree Murder] [Second Degree Murder] [Third Degree Murder] [Manslaughter] if** (mother) **had died as a result of** (defendant's) **act.**

Give in all cases.

The definition[s] of [First Degree Murder] [Second Degree Murder] [Third Degree Murder] [Manslaughter] [is] [are] as follows: (*Insert elements for the relevant types of homicides.)*

An "unborn child" means a member of the species *Homo sapiens*, at any stage of development, who is carried in the womb.

There will be a place on the verdict form for you to make appropriate findings.

If you find that the defendant's act would not have constituted [First Degree Murder] [Second Degree Murder] [Third Degree Murder] [Manslaughter] of the mother [if she had died], you must find (defendant) **not guilty [of this count in the [information] [indictment]].**

Lesser Included Offense

The lesser included offenses are included within the brackets in this instruction.

Comment

This instruction was adopted on October 9, 2026.

CHAPTER 8 — ASSAULT, BATTERY, STALKING, CULPABLE NEGLIGENCE, THREATS TO KILL/DO SERIOUS BODILY INJURY, EXTORTION, AND VIOLATION OF INJUNCTIONS

8.1 ASSAULT

§ 784.011, Fla. Stat.

To prove the crime of Assault, the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **intentionally and unlawfully threatened, either by word or act, to do violence to** (victim)**.**

2. **At the time,** (defendant) **appeared to have the ability to carry out the threat.**

3. **The act of** (defendant) **created in the mind of** (victim) **a well-founded fear that the violence was about to take place.**

Lesser Included Offenses

ASSAULT — 784.011

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempt	777.04(1)	5.1

Comment

This instruction was adopted in 1981 and amended in 1997.

8.2 AGGRAVATED ASSAULT

§ 784.021, Fla. Stat.

To prove the crime of Aggravated Assault, the State must prove the following four elements beyond a reasonable doubt. The first three elements define Assault.

1. (Defendant) **intentionally and unlawfully threatened, either by word or act, to do violence to** (victim)**.**

2. **At the time,** (defendant) **appeared to have the ability to carry out the threat.**

3. **The act of** (defendant) **created in the mind of** (victim) **a well-founded fear that the violence was about to take place.**

Give 4a or 4b or both as applicable. If 4b is alleged, give the elements of the felony charged.

4. a. **The assault was made with a deadly weapon.**

   b. **The assault was made with a fully-formed, conscious intent to commit** (felony charged) **upon** (victim)**.**

Give if applicable. McClain v. State, 383 So. 2d 1146 (Fla. 4th DCA 1980); Smithson v. State, 689 So. 2d 1226 (Fla. 5th DCA 1997); Gilbert v. State, 347 So. 2d 1087 (Fla. 3d DCA 1977).

If the circumstances were such as to ordinarily induce a well-founded fear in the mind of a reasonable person, then (victim) **may be found to have been in fear, and actual fear on the part of** (victim) **need not be shown.**

Give if 4a alleged.

A "deadly weapon" is any object that will likely cause death or great bodily harm if used or threatened to be used in the ordinary and usual manner contemplated by its design and construction.

Give if applicable.

An object not designed to inflict bodily harm may nonetheless be a "deadly weapon" if it was used or threatened to be used in a manner likely to cause death or great bodily harm.

"Great bodily harm" means great as distinguished from slight, trivial, minor, or moderate harm, and as such does not include mere bruises.

Give if 4a alleged.

It is not necessary for the State to prove that the defendant had an intent to kill.

Lesser Included Offenses

AGGRAVATED ASSAULT — 784.021			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
Improper exhibition of a dangerous weapon or firearm, if § 784.021(1)(a), Fla. Stat., is charged*		790.10*	10.5*
Assault		784.011	8.1
	Attempt	777.04(1)	5.1
	Discharging a firearm in public	790.15	10.6

Comments

*It is not clear whether a charging document that tracks the statute for Aggravated Assault with a Deadly Weapon necessarily charges Improper Exhibition. Contrast *Christ v. State*, 104 So. 3d 1262 (Fla. 2d DCA 2013) and *Michaud v. State*, 47 So. 3d 374 (Fla. 5th DCA 2010) with *Mack v. State*, 305 So. 2d 264 (Fla. 3d DCA 1974).

Num-chucks, which were originally designed as a farm tool, can be a deadly weapon. *R.V. v. State,* 497 So. 2d 912 (Fla. 5th DCA 1986). Jurors could find that a 7-inch straight-edged razor might be a dangerous weapon. *R.R. v. State,* 826 So. 2d 465 (Fla. 5th DCA 2002). In trials involving these types of objects, the judge should consider a special instruction informing jurors that an object can be a deadly weapon if its sole modern use is to cause great bodily harm or death. A special instruction may also be necessary in cases where the deadly weapon was an animal or a substance or something that is not commonly referred to as an "object."

This instruction was approved in 1981 and amended in 2013 [131 So. 3d 755], 2016 [195 So. 3d 356], and on April 3, 2020.

8.3 BATTERY

§ 784.03, Fla. Stat.

To prove the crime of Battery, the State must prove the following element beyond a reasonable doubt:

Give a. or b. or both depending on the charging document.

a. (Defendant) **actually and intentionally touched or struck** (victim) **against [his] [her] will.**

[or]

b. (Defendant) **intentionally caused bodily harm to** (victim)**.**

Give only if applicable. Fey v. State, 125 So. 3d 828 (Fla. 4th DCA 2013).

An intentional touching or striking includes situations where a defendant knows that a touch or strike is substantially certain to result from his or her act.

Give only if applicable. Nash v. State, 766 So. 2d 310 (Fla. 4th DCA 2000).

A Battery may be found as a result of the intentional touching or intentional striking of something other than the actual body of the person. However, the object that is touched or struck must have such an intimate connection with the person that it is to be regarded as a part or as an extension of the person, such as the clothing worn or an object held by the person.

Give only if applicable. Clark v. State, 783 So. 2d 967 (Fla. 2001).

In cases where a person intentionally drove into another occupied vehicle, it is for you to determine whether the vehicle that was struck should be considered as a part or as an extension of the person inside that vehicle. This determination may include consideration about whether the person was "touched" through the force of impact by being jostled or otherwise impacted through the transfer of energy from the collision.]

Give only if applicable and only if the jury is not instructed on option b. above (defendant intentionally caused bodily injury). Clark v. State, 746 So. 2d 1237 (Fla. 1st DCA 1999).

Under Florida law, a Battery does not require there to be any injury.

Dolan v. State, 187 So. 3d 262 (Fla. 2nd DCA 2016) states that the fact of a prior conviction must be proven to the jury beyond a reasonable doubt. Accordingly, the paragraph below should be given in a bifurcated proceeding if § 784.03(2), Fla. Stat. was charged and if the jury found the defendant guilty of Battery.

Now that you have found the defendant guilty of Battery, you must further determine whether the State proved beyond a reasonable doubt that the defendant was previously convicted of [Battery] [Aggravated Battery] [Felony Battery] [Resisting an Officer with Violence].

"Convicted" means a determination of guilt that was the result of a plea or a trial, regardless of whether adjudication was withheld or a plea of nolo contendere was entered.

Lesser Included Offense

BATTERY — 784.03

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempt	777.04(1)	5.1

Comments

Out-of-state convictions for crimes that have the same elements as the qualifying crimes listed in § 784.03(2), Fla. Stat., may be used to enhance a misdemeanor Battery to a felony. *See Osborn v. State,* 177 So. 3d 1034 (Fla. 1st DCA 2015).

The qualifying crime of Resisting an Officer with Violence in § 784.03(2), Fla. Stat., became effective on July 1, 2026.

This instruction was approved in 1981 and amended in 2018 [260 So. 3d 930], and on October 9, 2026.

8.4 AGGRAVATED BATTERY

§784.045(1)(a), Fla. Stat.

To prove the crime of Aggravated Battery, the State must prove the following two elements beyond a reasonable doubt. The first element is a definition of Battery.

Give 1a or 1b or both as applicable.

1. (Defendant)

a. actually and intentionally touched or struck (victim) **against [his] [her] will.**

b. intentionally caused bodily harm to (victim)**.**

Give 2a or 2b or both as applicable.

2. (Defendant)**, in committing the Battery,**

a. intentionally or knowingly caused

[great bodily harm to (victim)**].**

[permanent disability to (victim)**].**

[permanent disfigurement to (victim)**].**

b. used a deadly weapon.

Give only if 2b alleged.

A "deadly weapon" is any object that will likely cause death or great bodily harm if used or threatened to be used in the ordinary and usual manner contemplated by its design and construction.

Give if applicable.

An object not designed to inflict bodily harm may nonetheless be a "deadly weapon" if it was used or threatened to be used in a manner likely to cause death or great bodily harm.

Give if applicable.

"Great bodily harm" means great as distinguished from slight, trivial, minor, or moderate harm, and as such does not include mere bruises.

Give only if applicable. Fey v. State, 125 So. 3d 828 (Fla. 4th DCA 2013).

An intentional touching or striking includes situations where a defendant knows that a touch or strike is substantially certain to result from his or her act.

Give only if applicable. Clark v. State, 783 So. 2d 967 (Fla. 2001).

A battery may be found as a result of the intentional touching or intentional striking of something other than the actual body of the person. However, the object that is touched or struck must have such an intimate connection with the person that it is to be regarded as a part or as an extension of the person. [For example, in cases where a person intentionally drove into another occupied vehicle, it is for you to determine whether the vehicle that was struck should be considered as a part or as an extension of the person inside that vehicle. This determination may include consideration about whether the person was "touched" through the force of impact by being jostled or otherwise impacted through the transfer of energy from the collision.]

Lesser Included Offenses

AGGRAVATED BATTERY — 784.045(1)(a)			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
Felony Battery*		784.041	8.5
Battery		784.03	8.3
	Attempt	777.04(1)	5.1
	Improper exhibition of dangerous weapons or firearms	790.10	10.5
	Discharging firearm in public	790.15	10.6

Comments

*The lesser included offense of Felony Battery is applicable only if element 2a is charged.

Florida law on alternative conduct statutes is unsettled. For example, in a DUI case, it is permissible for some jurors to conclude the State proved only driving while impaired, and other jurors to conclude the State proved only driving with an unlawful breath alcohol level. *Euceda v. State*, 711 So. 2d 122 (Fla. 3d DCA 1998). However, according to the Second District, it is improper for some jurors to conclude the State proved only that the defendant intentionally caused great bodily harm, and other jurors to conclude the State proved only that the defendant used a deadly weapon. *Miller v. State*, 123 So. 3d 595 (Fla. 2d DCA 2013). Unless the case law changes, in Aggravated Battery

cases where the State has charged both alternatives, trial judges must give a special instruction that informs jurors they must be unanimous on each alternative theory.

Num-chucks, which were originally designed as a farm tool, can be a deadly weapon. *R.V. v. State*, 497 So. 2d 912 (Fla. 5th DCA 1986). Jurors could find that a 7-inch straight-edged razor might be a dangerous weapon. *R.R. v. State*, 826 So. 2d 465 (Fla. 5th DCA 2002). In trials involving these types of objects, the judge should consider a special instruction informing jurors that an object can be a deadly weapon if its sole modern use is to cause great bodily harm or death. A special instruction may also be necessary in cases where the deadly weapon was an animal or a substance or something that is not commonly referred to as an "object."

This instruction was approved in 1981 and amended in 1989 [543 So.2d 1205], 2007 [962 So. 2d 310], and on April 3, 2020.

8.4(a) AGGRAVATED BATTERY (PREGNANT VICTIM)

§ 784.045(1)(b), Fla. Stat.

To prove the crime of Aggravated Battery, the State must prove the following three elements beyond a reasonable doubt. The first element is a definition of Battery.

Bracketed language depends on the charging document.

1. (Defendant) **[actually and intentionally touched or struck** (victim) **against her will] [intentionally caused bodily harm to** (victim)**].**

2. (Victim) **was pregnant at the time.**

3. (Defendant) **in committing the battery knew or should have known that** (victim) **was pregnant.**

Give only if applicable. Fey v. State, 125 So. 3d 828 (Fla. 4th DCA 2013).

An intentional touching or striking includes situations where a defendant knows that a touch or strike is substantially certain to result from his or her act.

Give only if applicable. Clark v. State, 783 So. 2d 967 (Fla. 2001).

A battery may be found as a result of the intentional touching or intentional striking of something other than the actual body of the person. However, the object that is touched or struck must have such an intimate connection with the person that it is to be regarded as a part or as an extension of the person. [For example, in cases where a person intentionally drove into another occupied vehicle, it is for you to determine whether the vehicle that was struck should be considered as a part or as an extension of the person inside that vehicle. This determination may include consideration about whether the person was "touched" through the force of impact by being jostled or otherwise impacted through the transfer of energy from the collision.]

Lesser Included Offenses

AGGRAVATED BATTERY (PREGNANT VICTIM) – 784.045(1)(b)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Battery		784.03	8.3
	Attempt	777.04(1)	5.1

Comment

This instruction was approved in 2007 [962 So. 2d 310] and amended in 2018.

8.5 FELONY BATTERY

§ 784.041(1), Fla. Stat.

To prove the crime of Felony Battery, the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) **actually and intentionally touched or struck** (victim) **against [his] [her] will; and**

2. (Defendant) **caused** (victim) **great bodily harm, permanent disability, or permanent disfigurement.**

Give only if applicable. Great bodily harm. Wheeler v. State, 203 So. 3d 1007 (Fla. 4th DCA 2016).

"Great bodily harm" means great as distinguished from slight, trivial, minor, or moderate harm, and as such does not include mere bruises.

Give only if applicable. Fey v. State, 125 So. 3d 828 (Fla. 4th DCA 2013).

An intentional touching or striking includes situations where a defendant knows that a touch or strike is substantially certain to result from his or her act.

Give only if applicable. Clark v. State, 783 So. 2d 967 (Fla. 2001).

A battery may be found as a result of the intentional touching or intentional striking of something other than the actual body of the person. However, the object that is touched or struck must have such an intimate connection with the person that it is to be regarded as a part or as an extension of the person. [For example, in cases where a person intentionally drove into another occupied vehicle, it is for you to determine whether the vehicle that was struck should be considered as a part or as an extension of the person inside that vehicle. This determination may include consideration about whether the person was "touched" through the force of impact by being jostled or otherwise impacted through the transfer of energy from the collision.]

Lesser Included Offenses

FELONY BATTERY — 784.041(1)			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
Battery		784.03	8.3
	None		

Comment

This instruction was adopted in 2000 [765 So. 2d 692] and amended in 2018.

8.5(a) DOMESTIC BATTERY BY STRANGULATION

§ 784.041(2)(a), Fla. Stat.

To prove the crime of Domestic Battery by Strangulation, the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **knowingly and intentionally impeded the normal [breathing] [or] [circulation of the blood] of** (victim)**, against [his] [her] will, [by applying pressure on the throat or neck of** (victim)**] [or] [by blocking the nose or mouth of** (victim)**].**

2. **In so doing,** (Defendant) **[created a risk of great bodily harm] [or] [caused great bodily harm] to** (victim)**.**

3. (Defendant) **was [a family or household member of** (victim)**] [or] [in a dating relationship with** (victim)**].**

Give as applicable.

"Family or household member" means spouses, former spouses, persons related by blood or marriage, persons who are presently residing together as if a family or who have resided together in the past as if a family, and persons who are parents of a child in common regardless of whether they have been married. With the exception of persons who have a child in common, the family or household members must be currently residing or have in the past resided together in the same single dwelling unit.

"Dating relationship" means a continuing and significant relationship of a romantic or intimate nature.

Wheeler v. State, 203 So. 3d 1007 (Fla. 4th DCA 2016).

"Great bodily harm" means great as distinguished from slight, trivial, minor, or moderate harm, and as such does not include mere bruises.

Lesser Included Offenses

DOMESTIC BATTERY BY STRANGULATION – 784.041(2)(a)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Battery by Strangulation		784.031	8.5(b)
Battery		784.03	8.3
	Attempt	777.04(1)	5.1

Comment

This instruction was adopted in 2008 [994 So. 2d 1038] and amended in 2019 [267 So. 3d 980], and on March 8, 2024.

8.5(b) BATTERY BY STRANGULATION

§ 784.031, Fla. Stat.

To prove the crime of Battery by Strangulation, the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) **knowingly and intentionally impeded the normal [breathing] [or] [circulation of the blood] of** (victim)**, against [his] [her] will, [by applying pressure on the throat or neck of** (victim)**] [or] [by blocking the nose or mouth of** (victim)**].**

2. **In so doing,** (Defendant) **[created a risk of great bodily harm] [or] [caused great bodily harm] to** (victim)**].**

Wheeler v. State, 203 So. 3d 1007 (Fla. 4th DCA 2016).

"Great bodily harm" means great as distinguished from slight, trivial, minor, or moderate harm, and as such does not include mere bruises.

Lesser Included Offenses

BATTERY BY STRANGULATION – 784.031

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Battery		784.03	8.3
	Attempt	777.04(1)	5.1

Comment

This instruction was adopted on March 8, 2024.

8.6 STALKING

§ 784.048(2), Fla. Stat.

To prove the crime of Stalking, the State must prove the following element beyond a reasonable doubt:

(Defendant) **willfully, maliciously, and repeatedly [followed] [harassed] [or] [cyberstalked]** (victim)**.**

Patterson v. State, 512 So. 2d 1109 (Fla. 1st DCA 1987).

"Willfully" means knowingly, intentionally, and purposely.

Seese v. State, 955 So. 2d 1145 (Fla. 4th DCA 2007).

"Maliciously" means wrongfully, intentionally, and without lawful justification or excuse.

Give if applicable.

§ 784.048, Fla. Stat.; Pallas v. State, 636 So. 2d 1358 (Fla. 3d DCA 1994).

"Harass" means to engage in a course of conduct directed at (victim), that

1. **served no legitimate purpose;**
2. **would cause substantial emotional distress to a reasonable person; and**
3. **did cause substantial emotional distress to** (victim)**.**

"Course of conduct" means a pattern of conduct composed of a series of acts over a period of time, however short, which evidences a continuity of purpose.

"Cyberstalk" means [to engage in a course of conduct to communicate, or to cause to be communicated, directly or indirectly, words, images, or language by or through the use of electronic mail or electronic communication, directed at or pertaining to a specific person,] [or] [to access or attempt to access the online accounts or Internet-connected home electronic systems of another person without that person's permission,] serving no legitimate purpose, causing substantial emotional distress to that person, and that would cause substantial emotional distress to a reasonable person.

Lesser Included Offense

STALKING — 784.048(2)			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
None			
	Harassment based on Religious or Ethnic Heritage	784.0493	8.32
	Attempt	777.04(1)	5.1

Comments

A special instruction will be necessary if the defendant claims that his or her behavior was protected by the First Amendment.

This instruction was approved in 1995 [657 So. 2d 1152] and amended in 2007 [953 So. 2d 495], 2013 [131 So. 3d 755], 2020 [288 So. 3d 530], and on December 15, 2021, and on March 8, 2024.

8.7(a) AGGRAVATED STALKING

§ 784.048(3), Fla. Stat.

To prove the crime of Aggravated Stalking, the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) **willfully, maliciously, and repeatedly [followed] [harassed] [or] [cyberstalked]** (victim)**; and**

2. (Defendant) **made a credible threat to** (victim)**.**

Patterson v. State, 512 So. 2d 1109 (Fla. 1st DCA 1987).

"Willfully" means knowingly, intentionally, and purposely.

Seese v. State, 955 So. 2d 1145 (Fla. 4th DCA 2007).

"Maliciously" means wrongfully, intentionally, and without lawful justification or excuse.

Give if applicable.

§ 784.048, Fla. Stat.; Pallas v. State, 636 So. 2d 1358 (Fla. 3d DCA 1994).

"Harass" means to engage in a course of conduct directed at (victim)**, that**

1. **served no legitimate purpose;**
2. **would cause substantial emotional distress to a reasonable person; and**
3. **did cause substantial emotional distress to** (victim)**.**

"Course of conduct" means a pattern of conduct composed of a series of acts over a period of time, however short, which evidences a continuity of purpose.

"Cyberstalk" means [to engage in a course of conduct to communicate, or to cause to be communicated, directly or indirectly, words, images, or language by or through the use of electronic mail or electronic communication, directed at or pertaining to a specific person,] [or] [to access or attempt to access the online accounts or Internet-connected home electronic systems of another person without that person's permission,] serving no legitimate purpose, causing substantial emotional distress to that person, and that would cause substantial emotional distress to a reasonable person.

Give in all cases. § 784.048(1)(c), Fla. Stat.

"Credible threat" means a verbal or nonverbal threat, or a combination of the two, including threats delivered by electronic communication or implied by a pattern of conduct, which places the person who is the target of the threat in reasonable fear for his or her safety or the safety of his or her family members or individuals closely associated with the person, and which is made with the apparent ability to carry out the threat to cause such harm.

It is not necessary for the State to prove that the person making the threat had the actual intent to carry out the threat; however, the State is required to prove beyond a reasonable doubt that the defendant was aware that a reasonable person who heard or saw the threat could regard it as a serious expression of an intent to commit an act of violence.

Give if applicable.

The present incarceration of the person making the threat is not a bar to prosecution.

Lesser Included Offenses

AGGRAVATED STALKING — 784.048(3)			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
Stalking		784.048(2)	8.6
	Attempt	777.04(1)	5.1
	Assault	784.011	8.1
	Improper exhibition of dangerous weapon	790.10	10.5
	Harassment based on religious or ethnic heritage	784.0493	8.32

Comments

A special instruction will be necessary if the defendant claims that his or her behavior was protected by the First Amendment.

This instruction was approved in 1995 [657 So. 2d 1152] and amended in 2007 [953 So. 2d 495], 2013 [131 So. 3d 755], 2020 [288 So. 3d 530], on December 15, 2021, and on March 8, 2024.

8.7(b) AGGRAVATED STALKING (INJUNCTION ENTERED)

§ 784.048(4), Fla. Stat.

To prove the crime of Aggravated Stalking, the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **knowingly, willfully, maliciously, and repeatedly [followed] [harassed] [or] [cyberstalked]** (victim)**.**

Give 2a or 2b or both as applicable.

2. **At the time of the [following] [harassing] [or] [cyberstalking],**

   a. **an injunction for protection against [repeat] [sexual] [dating] [domestic] violence had been entered against** (defendant) **for the benefit of** (victim)**.**

   b. **a court had imposed a prohibition of conduct on** (defendant) **toward** (victim) **or** (victim's property)**.**

3. (Defendant) **knew that the [injunction] [court-imposed prohibition of conduct] had been entered against [him] [her].**

Patterson v. State, 512 So. 2d 1109 (Fla. 1st DCA 1987).

"Willfully" means intentionally and purposely.

Seese v. State, 955 So. 2d 1145 (Fla. 4th DCA 2007).

"Maliciously" means wrongfully, intentionally, and without lawful justification or excuse.

Give if applicable.

§ 784.048, Fla. Stat.; Pallas v. State, 636 So. 2d 1358 (Fla. 3d DCA 1994).

"Harass" means to engage in a course of conduct directed at (victim)**, that**

1. **served no legitimate purpose;**

2. **would cause substantial emotional distress to a reasonable person; and**

3. **did cause substantial emotional distress to** (victim)**.**

"Course of conduct" means a pattern of conduct composed of a series of acts over a period of time, however short, which evidences a continuity of purpose.

"Cyberstalk" means [to engage in a course of conduct to communicate, or to cause to be communicated, directly or indirectly, words, images, or language by or through the use of electronic mail or electronic communication, directed at or pertaining to a specific person,] [or] [to access or attempt to access the online accounts or Internet-connected home electronic systems of another person without that person's permission,] serving no legitimate purpose, causing substantial emotional distress to that person, and that would cause substantial emotional distress to a reasonable person.

Lesser Included Offenses

AGGRAVATED STALKING (INJUNCTION ENTERED) — 784.048(4)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Stalking		784.048(2)	8.6
	Attempt	777.04(1)	5.1
	Violation of injunction for protection against domestic violence	741.31(4)	8.18
	Violation of injunction for protection against repeat, sexual, or dating violence	784.047	8.19
	Violation of injunction for protection against stalking or cyberstalking	784.0487(4)	8.24
	Harassment based on Religious or Ethnic Heritage	784.0493	8.32

Comments

A special instruction will be necessary if the defendant claims that his or her behavior was protected by the First Amendment.

This instruction was adopted in 1995 [657 So. 2d 1152] and was amended in 2007 [953 So. 2d 495], 2008 [995 So. 2d 476], 2013 [131 So. 3d 755], 2020 [288 So. 3d 530], on December 15, 2021, and on March 8, 2024.

8.7(c) AGGRAVATED STALKING (VICTIM UNDER 16 YEARS OF AGE)

§ 784.048(5), Fla. Stat.

To prove the crime of Aggravated Stalking, the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) **willfully, maliciously, and repeatedly [followed] [harassed] [or] [cyberstalked]** (victim)**; and,**

2. **At the time of** (defendant's) **actions,** (victim) **was under 16 years of age.**

Patterson v. State, 512 So. 2d 1109 (Fla. 1st DCA 1987).

"Willfully" means knowingly, intentionally, and purposely.

Seese v. State, 955 So. 2d 1145 (Fla. 4th DCA 2007).

"Maliciously" means wrongfully, intentionally, and without lawful justification or excuse.

Give if applicable.

§ 784.048, Fla. Stat., Pallas v. State, 636 So. 2d 1358 (Fla. 3d DCA 1984).

"Harass" means to engage in a course of conduct directed at (victim)**, that**

1. **served no legitimate purpose;**

2. **would cause substantial emotional distress to a reasonable person; and**

3. **did cause substantial emotional distress to** (victim)**.**

"Course of conduct" means a pattern of conduct composed of a series of acts over a period of time, however short, which evidences a continuity of purpose.

"Cyberstalk" means [to engage in a course of conduct to communicate, or to cause to be communicated, directly or indirectly, words, images, or language by or through the use of electronic mail or electronic communication, directed at or pertaining to a specific person,] [or] [to access or attempt to access the online accounts or Internet-connected home electronic systems of another person without that person's permission,] serving no legitimate purpose, causing substantial

emotional distress to that person, and that would cause substantial emotional distress to a reasonable person.

Lesser Included Offenses

AGGRAVATED STALKING (VICTIM UNDER 16 YEARS OF AGE) — 784.048(5)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Stalking		784.048(2)	8.6
	Attempt	777.04(1)	5.1
	Violation of injunction for protection against domestic violence	741.31(4)	8.18
	Violation of injunction for protection against repeat, sexual, or dating violence	784.047	8.19
	Violation of injunction for protection against stalking or cyberstalking	784.0487(4)	8.24
	Harassment based on Religious or Ethnic Heritage	784.0493	8.32

Comments

A special instruction will be necessary if the defendant claims that his or her behavior was protected by the First Amendment.

This instruction was adopted in 2000 [765 So. 2d 692] and amended in 2007 [953 So. 2d 495], 2013 [131 So. 3d 755], 2020 [288 So. 3d 530], on December 15, 2021, and on March 8, 2024.

8.7(d) AGGRAVATED STALKING (DEFENDANT PREVIOUSLY SENTENCED FOR SEX OFFENSE AND WAS PROHIBITED FROM CONTACTING VICTIM)

§ 784.048(7), Fla. Stat.

To prove the crime of Aggravated Stalking, the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **was sentenced for [sexual battery] [violating Fla. Stat. 800.04] [violating Fla. Stat. 847.0135(5)].**

2. **As part of that sentencing,** (defendant) **was ordered to have no contact with** (victim)**.**

3. **After the sentencing,** (defendant) **willfully, maliciously, and repeatedly [followed] [harassed] [or] [cyberstalked]** (victim).

Patterson v. State, 512 So. 2d 1109 (Fla. 1st DCA 1987).

"Willfully" means knowingly, intentionally, and purposely.

Seese v. State, 955 So. 2d 1145 (Fla. 4th DCA 2007).

"Maliciously" means wrongfully, intentionally, and without lawful justification or excuse.

Give if appliable.

§ 784.048, Fla. Stat.; Pallas v. State, 636 So. 2d 1358 (Fla. 3d DCA 1984).

"Harass" means to engage in a course of conduct directed at (victim)**, that**

1. **served no legitimate purpose;**

2. **would cause substantial emotional distress to a reasonable person; and**

3. **did cause substantial emotional distress to** (victim).

"Course of conduct" means a pattern of conduct composed of a series of acts over a period of time, however short, which evidences a continuity of purpose.

"Cyberstalk" means [to engage in a course of conduct to communicate, or to cause to be communicated, directly or indirectly, words, images, or language by or through the use of electronic mail or

electronic communication, directed at or pertaining to a specific person,] [or] [to access or attempt to access the online accounts or Internet-connected home electronic systems of another person without that person's permission,] serving no legitimate purpose, causing substantial emotional distress to that person, and that would cause substantial emotional distress to a reasonable person.

Lesser Included Offenses

AGGRAVATED STALKING (DEFENDANT PREVIOUSLY SENTENCED FOR SEX OFFENSE AND WAS PROHIBITED FROM CONTACTING VICTIM) — 784.048(7)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Stalking		784.048(2)	8.6
	Attempt	777.04(1)	5.1
	Violation of injunction for protection against domestic violence	741.31(4)	8.18
	Violation of injunction for protection against repeat, sexual, or dating violence	784.047	8.19
	Violation of injunction for protection against stalking or cyberstalking	784.0487(4)	8.24
	Harassment based on Religious or Ethnic Heritage	784.0493	8.32

Comments

This instruction was adopted in 2013 [131 So. 3d 755] and amended in 2020 [288 So. 3d 530], on December 15, 2021, and on March 8, 2024.

8.8 [ASSAULT] [AGGRAVATED ASSAULT] [BATTERY] [AGGRAVATED BATTERY] ON A CODE INSPECTOR

§ 784.083, Fla. Stat.

To prove the crime of [Assault] [Aggravated Assault] [Battery] [Aggravated Battery] on a Code Inspector, the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **committed a[n] [Assault] [Aggravated Assault] [Battery] [Aggravated Battery] against** (victim).

2. **At the time,** (victim) **was a code inspector engaged in the lawful performance of [his] [her] duties.**

3. **At the time,** (defendant) **knew or had reason to know** (victim) **was a code inspector.**

A[n] [Assault] [Aggravated Assault] [Battery] [Aggravated Battery] is legally defined as (insert applicable portions of instructions 8.1, 8.2, 8.3, 8.4, and/or 8.4(a))**.**

§ 162.04, Fla. Stat.

"Code Inspector" means any authorized agent or employee of the county or municipality whose duty it is to assure code compliance.

Lesser Included Offense

See relevant instructions on crimes in element 1 for appropriate lesser included offenses.

Comment

This instruction was adopted on May 21, 2024.

8.9 CULPABLE NEGLIGENCE

§ 784.05, Fla. Stat.

To prove the crime of Culpable Negligence, the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant)

Give 1a or 1b as applicable.

a. exposed (victim) **to personal injury.**

a. inflicted actual personal injury on (victim)**.**

2. [He] [She] did so through culpable negligence.

Give only if 1a is read to the jury.

Actual injury is not required.

I will now define "culpable negligence" for you. Each of us has a duty to act reasonably toward others. If there is a violation of that duty, without any conscious intention to harm, that violation is negligence. But culpable negligence is more than a failure to use ordinary care for others. For negligence to be culpable, it must be gross and flagrant. Culpable negligence is a course of conduct showing a grossly careless disregard for the safety and welfare of the public. The negligent act or omission must have been committed with an utter disregard for the safety of another.

Lesser Included Offense

CULPABLE NEGLIGENCE — 784.05(2)			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
Culpable negligence		784.05(1)	8.9
	None		

Comment

This instruction was adopted in 1981 and amended in 1985 [477 So. 2d 985], and on June 12, 2026.

8.10 ASSAULT ON A[N] [LAW ENFORCEMENT OFFICER] [INSERT VICTIM'S JOB]

§ 784.07(2)(a), Fla. Stat.

To prove the crime of Assault on a[n] [Law Enforcement Officer] [Firefighter] [Emergency Medical Care Provider] [Hospital Personnel] [Traffic Accident Investigation Officer] [Traffic Infraction Enforcement Officer] [Parking Enforcement Specialist] [Security Officer Employed by the Board of Trustees of a Community College] [Law Enforcement Explorer] [Non-sworn Law Enforcement Agency Employee Certified as an Agency Inspector] [Blood Alcohol Analyst] [Breath Test Operator] [Railroad Special Officer] [Licensed Security Officer] [Utility Worker], the State must prove the following six elements beyond a reasonable doubt. The first three elements define the crime of Assault.

1. (Defendant) **intentionally and unlawfully threatened, either by word or act, to do violence to** (victim)**.**

2. **At the time,** (defendant) **appeared to have the ability to carry out the threat.**

3. **The act of** (defendant) **created in the mind of** (victim) **a well-founded fear that the violence was about to take place.**

4. (Victim) **was at the time a[n] [law enforcement officer] [firefighter] [emergency medical care provider] [hospital personnel] [traffic accident investigation officer] [traffic infraction enforcement officer] [parking enforcement specialist] [security officer employed by the board of trustees of a community college] [law enforcement explorer] [non-sworn law enforcement agency employee who was certified as an agency inspector] [blood alcohol analyst] [breath test operator while such employee was in uniform and engaged in processing, testing, evaluating, analyzing, or transporting a person who was detained or under arrest for DUI] [railroad special officer] [licensed security officer who wore a uniform that bore at least one patch or emblem that was visible at all times that clearly identified the employing agency and that clearly identified the person as a licensed security officer] [utility worker engaged in work on critical infrastructure].**

5. (Defendant) **knew** (victim) **was a[n] [law enforcement officer] [firefighter] [emergency medical care provider] [hospital personnel] [traffic accident investigation officer] [traffic**

infraction enforcement officer] [parking enforcement specialist] [security officer employed by the board of trustees of a community college] [law enforcement explorer] [non-sworn law enforcement agency employee who was certified as an agency inspector] [blood alcohol analyst] [breath test operator] [railroad special officer] [licensed security officer] [utility worker].

6. **At the time of the Assault,** (victim) **was engaged in the lawful performance of [his] [her] duties.**

For cases where the alleged victim is a law enforcement officer, do not refer to the victim by name when instructing on the sentence below. Instead, the instruction must state the class of officers to which the victim belongs, e.g., deputy sheriff, probation officer, correctional officer. See Wright v. State, 586 So. 2d 1024 (Fla. 1991).

The Court instructs you that a (name of official position of victim designated in charge) **is a law enforcement officer.**

For cases involving other types of victims, insert definitions from § 784.07(1)(a)-(h), Fla. Stat., as appropriate. For utility workers, insert the definition of "critical infrastructure" from § 812.141, Fla. Stat.

Give if applicable. McClain v. State, 383 So. 2d 1146 (Fla. 4th DCA 1980); Smithson v. State, 689 So. 2d 1226 (Fla. 5th DCA 1997); Gilbert v. State, 347 So. 2d 1087 (Fla. 3d DCA 1977).

If the circumstances were such as to ordinarily induce a well-founded fear in the mind of a reasonable person, then (victim) **may be found to have been in fear, and actual fear on the part of** (victim) **need not be shown.**

Lesser Included Offenses

ASSAULT ON [LAW ENFORCEMENT OFFICER] [INSERT VICTIM'S JOB] — 784.07(2)(a)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Assault		784.011	8.1
	Attempt	777.04(1)	5.1

Comments

See Spurgeon v. State, 114 So. 3d 1042 (Fla. 5th DCA 2013) (holding that a conviction for a violation of § 784.07(2), Fla. Stat., had to be vacated because

the statute does not include physicians, employees, agents, or volunteers of facilities that do not satisfy the definition of a hospital under chapter 395).

This instruction was adopted in 1981 [431 So. 2d 594] and amended in 1992 [603 So. 2d 1175], 1995 [657 So. 2d 1152], 2007 [962 So. 2d 310], 2008 [994 So. 2d 1038], 2015 [157 So. 3d 1027], 2016 [195 So. 3d 396], on March 8, 2024, and on January 8, 2026.

8.11 BATTERY ON A[N] [LAW ENFORCEMENT OFFICER] [INSERT VICTIM'S JOB]

§ 784.07(2)(b), Fla. Stat.

To prove the crime of Battery on a[n] [Law Enforcement Officer] [Firefighter] [Emergency Medical Care Provider] [Hospital Personnel] [Traffic Accident Investigation Officer] [Traffic Infraction Enforcement Officer] [Parking Enforcement Specialist] [Security Officer Employed by the Board of Trustees of a Community College] [Law Enforcement Explorer] [Non-sworn Law Enforcement Agency Employee Certified as an Agency Inspector] [Blood Alcohol Analyst] [Breath Test Operator] [Railroad Special Officer] [Licensed Security Officer] [Utility Worker], the State must prove the following four elements beyond a reasonable doubt. The first element defines the crime of Battery.

Give 1a or 1b or both depending on the charging document.

1. (Defendant)

a. actually and intentionally touched or struck (victim) **against [his] [her] will.**

b. intentionally caused bodily harm to (victim)**.**

2. (Victim) **was a[n] [law enforcement officer] [firefighter] [emergency medical care provider] [hospital personnel] [traffic accident investigation officer] [traffic infraction enforcement officer] [parking enforcement specialist] [security officer employed by the board of trustees of a community college] [law enforcement explorer] [non-sworn law enforcement agency employee who was certified as an agency inspector] [blood alcohol analyst] [breath test operator while such employee was in uniform and engaged in processing, testing, evaluating, analyzing, or transporting a person who was detained or under arrest for DUI] [railroad special officer] [licensed security officer who wore a uniform that bore at least one patch or emblem that was visible at all times that clearly identified the employing agency and that clearly identified the person as a licensed security officer] [utility worker engaged in work on critical infrastructure].**

3. (Defendant) **knew** (victim) **was a[n] [law enforcement officer] [firefighter] [emergency medical care provider] [hospital personnel] [traffic accident investigation officer] [traffic infraction enforcement officer] [parking enforcement specialist]**

[security officer employed by the board of trustees of a community college] [law enforcement explorer] [non-sworn law enforcement agency employee who was certified as an agency inspector] [blood alcohol analyst] [breath test operator] [railroad special officer] [licensed security officer] [utility worker].

4. (Victim) **was engaged in the lawful performance of [his] [her] duties when the Battery was committed.**

Give only if applicable. Fey v. State, 125 So. 3d 828 (Fla. 4th DCA 2013).

An intentional touching or striking includes situations where a defendant knows that a touch or strike is substantially certain to result from his or her act.

Give only if applicable. Clark v. State, 783 So. 2d 967 (Fla. 2001).

A Battery may be found as a result of the intentional touching or intentional striking of something other than the actual body of the person. However, the object that is touched or struck must have such an intimate connection with the person that it is to be regarded as a part or as an extension of the person. [For example, in cases where a person intentionally drove into another occupied vehicle, it is for you to determine whether the vehicle that was struck should be considered as a part or as an extension of the person inside that vehicle. This determination may include consideration about whether the person was "touched" through the force of impact by being jostled or otherwise impacted through the transfer of energy from the collision.]

For cases where the alleged victim is a law enforcement officer, do not refer to the victim by name when instructing on the sentence below. Instead, the instruction must state the class of officers to which the victim belongs, e.g., deputy sheriff, probation officer, correctional officer. See Wright v. State, 586 So. 2d 1024 (Fla. 1991).

The Court instructs you that a (name of official position of victim designated in charge) **is a law enforcement officer.**

For cases involving other types of victims, insert definitions from § 784.07(1)(a)-(h), Fla. Stat., as appropriate. For utility workers, insert the definition of "critical infrastructure" from § 812.141, Fla. Stat.

Lesser Included Offenses

BATTERY ON A[N] [LAW ENFORCEMENT OFFICER] [INSERT VICTIM'S JOB] — 784.07(2)(b)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Battery		784.03	8.3
	Attempt	777.04(1)	5.1

Comments

See Spurgeon v. State, 114 So. 3d 1042 (Fla. 5th DCA 2013) (holding that a conviction for a violation of § 784.07(2), Florida Statutes, had to be vacated because the statute does not include physicians, employees, agents, or volunteers of facilities that do not satisfy the definition of a hospital under chapter 395).

This instruction was adopted in 1981 [431 So. 2d 594] and amended in 1992 [603 So. 2d 1175], 1995 [657 So. 2d 1152], 2007 [962 So. 2d 310], 2008 [994 So. 2d 1038], 2015 [157 So. 3d 1027], 2018 [260 So. 3d 930], on March 8, 2024, and on January 8, 2026.

8.12 AGGRAVATED ASSAULT ON A[N] [LAW ENFORCEMENT OFFICER] [INSERT VICTIM'S JOB]

§ 784.07(2)(c), Fla. Stat.

To prove the crime of Aggravated Assault on a[n] [Law Enforcement Officer] [Firefighter] [Emergency Medical Care Provider] [Hospital Personnel] [Traffic Accident Investigation Officer] [Traffic Infraction Enforcement Officer] [Parking Enforcement Specialist] [Law Enforcement Explorer] [a Non-sworn Law Enforcement Agency Employee Certified as an Agency Inspector] [Blood Alcohol Analyst] [Breath Test Operator] [Railroad Special Officer] [Licensed Security Officer] [Security Officer Employed by the Board of Trustees of a Community College] [Utility Worker], the State must prove the following seven elements beyond a reasonable doubt. The first three elements define the crime of Assault.

1. (Defendant) **intentionally and unlawfully threatened, either by word or act, to do violence to** (victim)**.**

2. **At the time,** (defendant) **appeared to have the ability to carry out the threat.**

3. **The act of** (defendant) **created in the mind of** (victim) **a well-founded fear that the violence was about to take place.**

Give 4a or 4b or both as applicable. If 4b is alleged, give the elements of the felony charged.

4. **a. The Assault was made with a deadly weapon.**

   b. The Assault was made with a fully-formed, conscious intent to commit (felony charged) **upon** (victim)**.**

5. (Victim) **was at the time a[n] [law enforcement officer] [firefighter] [emergency medical care provider] [hospital personnel] [traffic accident investigation officer] [traffic infraction enforcement officer] [parking enforcement specialist] [security officer employed by the board of trustees of a community college] [law enforcement explorer] [nonsworn law enforcement agency employee who was certified as an agency inspector] [blood alcohol analyst] [breath test operator while such employee was in uniform and engaged in processing, testing, evaluating, analyzing, or transporting a person who was detained or under arrest for DUI] [railroad special officer] [licensed security officer who wore a uniform that bore at least one patch or emblem that was visible at all times that clearly identified the employing agency and that**

clearly identified the person as a licensed security officer] [utility worker engaged in work on critical infrastructure].

6. (Defendant) **knew** (victim) **was a[n] [law enforcement officer] [firefighter] [emergency medical care provider] [hospital personnel] [traffic accident investigation officer] [traffic infraction enforcement officer] [parking enforcement specialist] [security officer employed by the board of trustees of a community college] [law enforcement explorer][nonsworn law enforcement agency employee who was certified as an agency inspector] [blood alcohol analyst] [a breath test operator] [railroad special officer] [licensed security officer] [utility worker].**

7. At the time of the Assault, (victim) **was engaged in the lawful performance of [his] [her] duties.**

For cases where the alleged victim is a law enforcement officer, do not refer to the victim by name when instructing on the sentence below. Instead, the instruction must state the class of officers to which the victim belongs, e.g., deputy sheriff, probation officer, correctional officer. See Wright v. State, 586 So. 2d 1024 (Fla. 1991).

The Court instructs you that a (name of official position of victim designated in charge) **is a law enforcement officer.**

For cases involving other types of victims, insert definitions from § 784.07(1)(a)-(h), Fla. Stat., as appropriate. For utility workers, insert the definition of "critical infrastructure" from § 812.141, Fla. Stat.

Give if applicable. McClain v. State, 383 So. 2d 1146 (Fla. 4th DCA 1980); Smithson v. State, 689 So. 2d 1226 (Fla. 5th DCA 1997); Gilbert v. State, 347 So. 2d 1087 (Fla. 3d DCA 1977).

If the circumstances were such as to ordinarily induce a well-founded fear in the mind of a reasonable person, then (victim) **may be found to have been in fear, and actual fear on the part of** (victim) **need not be shown.**

Give if element 4a alleged.

A "deadly weapon" is any object that will likely cause death or great bodily harm if used or threatened to be used in the ordinary and usual manner contemplated by its design and construction.

Give if applicable.

An object not designed to inflict bodily harm may nonetheless be a "deadly weapon" if it was used or threatened to be used in a manner likely to cause death or great bodily harm.

"Great bodily harm" means harm that is more than slight, trivial, minor, or moderate.

It is not necessary for the State to prove that the defendant had an intent to kill.

Lesser Included Offenses

AGGRAVATED ASSAULT ON A[N] [LAW ENFORCEMENT OFFICER] [INSERT VICTIM'S JOB]—784.07(2)(c)

CATEGORY ONE	CATEGORY TWO	FLA. STAT	INS. NO.
Aggravated assault		784.021	8.2
Assault on law enforcement officer		784.07(2)(a)	8.10
Improper exhibition of a dangerous weapon or firearm, if § 784.021(1)(a), Fla. Stat., is charged*		790.10*	10.5*
Assault		784.011	8.1
	Attempt	777.04(1)	5.1
	Discharging a firearm in public	790.15	10.6

Comments

*It is not clear whether a charging document that tracks the statute for Aggravated Assault with a Deadly Weapon necessarily charges Improper Exhibition. Contrast *Christ v. State*, 104 So. 3d 1262 (Fla. 2d DCA 2013) and *Michaud v. State*, 47 So. 3d 374 (Fla. 5th DCA 2010) with *Mack v. State*, 305 So. 2d 264 (Fla. 3d DCA 1974).

See Spurgeon v. State, 114 So. 3d 1042 (Fla. 5th DCA 2013)(holding that a conviction for a violation of § 784.07(2), Fla. Stat., had to be vacated because the statute does not include physicians, employees, agents, or volunteers of facilities that do not satisfy the definition of a hospital under chapter 395).

Num-chucks, which were originally designed as a farm tool, can be a deadly weapon. *R.V. v. State*, 497 So. 2d 912 (Fla. 5th DCA 1986). Jurors could find that a 7-inch straight-edged razor might be a dangerous weapon. *R.R. v. State*, 826 So. 2d 465 (Fla. 5th DCA 2002). In trials involving these types of objects, the judge should consider a special instruction informing jurors that

an object can be a deadly weapon if its sole modern use is to cause great bodily harm or death. A special instruction may also be necessary in cases where the deadly weapon was an animal or a substance or something that is not commonly referred to as an "object."

This instruction was approved in 1992 [603 So. 2d 1175] and amended in 1995 [657 So. 2d 1152], 2007 [962 So. 2d 310], 2008 [994 So. 2d 1038], 2013 [131 So. 3d 755], 2015 [157 So. 3d 1027], 2016 [195 So. 3d 356], on April 3, 2020, on March 24, 2024, and on January 8, 2026.

8.13 AGGRAVATED BATTERY ON A[N] [LAW ENFORCEMENT OFFICER] [INSERT VICTIM'S JOB]

§ 784.07(2)(d), Fla. Stat.

To prove the crime of Aggravated Battery on a[n] [Law Enforcement Officer] [Firefighter] [Emergency Medical Care Provider] [Hospital Personnel] [Traffic Accident Investigation Officer] [Traffic Infraction Enforcement Officer] [Parking Enforcement Specialist] [Security Officer Employed by the Board of Trustees of a Community College] [Law Enforcement Explorer] [Non-sworn Law Enforcement Agency Employee Certified as an Agency Inspector] [Blood Alcohol Analyst] [Breath Test Operator] [Railroad Special Officer] [Licensed Security Officer] [Utility Worker], the State must prove the following five elements beyond a reasonable doubt. The first element defines the crime of Battery.

Give 1a or 1b or both as applicable.

1. (Defendant)

a. actually and intentionally touched or struck (victim) **against [his] [her] will.**

b. intentionally caused bodily harm to (victim)**.**

Give 2a or 2b or both as applicable.

2. (Defendant)**, in committing the Battery,**

a. intentionally or knowingly caused [great bodily harm] [permanent disability] [permanent disfigurement] to (victim)**.**

b. used a deadly weapon.

3. (Victim) **was a[n] [law enforcement officer] [firefighter] [emergency medical care provider] [hospital personnel] [traffic accident investigation officer] [traffic infraction enforcement officer] [parking enforcement specialist] [security officer employed by the board of trustees of a community college] [law enforcement explorer] [non-sworn law enforcement agency employee who was certified as an agency inspector] [blood alcohol analyst] [breath test operator while such employee was in uniform and engaged in processing, testing, evaluating, analyzing, or transporting a person who was detained or**

under arrest for DUI] [licensed security officer who wore a uniform that bore at least one patch or emblem that was visible at all times that clearly identified the employing agency and that clearly identified the person as a licensed security officer] [railroad special officer] [utility worker engaged in work on critical infrastructure].

4. (Defendant) **knew** (victim) **was a[n] [law enforcement officer] [firefighter] [emergency medical care provider] [hospital personnel] [traffic accident investigation officer] [traffic infraction enforcement officer] [parking enforcement specialist] [security officer employed by the board of trustees of a community college] [law enforcement explorer] [non-sworn law enforcement agency employee who was certified as an agency inspector] [blood alcohol analyst] [breath test operator] [railroad special officer] [licensed security officer] [utility worker].**

5. (Victim) **was engaged in the lawful performance of [his] [her] duties when the Battery was committed against [him] [her].**

For cases where the alleged victim is a law enforcement officer, do not refer to the victim by name when instructing on the sentence below. Instead, the instruction must state the class of officers to which the victim belongs, e.g., deputy sheriff, probation officer, correctional officer. See Wright v. State, 586 So. 2d 1024 (Fla. 1991).

The Court instructs you that a (name of official position of victim designated in charge) **is a law enforcement officer.**

For cases involving other types of victims, insert definitions from § 784.07(1)(a)-(h), Fla. Stat., as appropriate. For utility workers, also insert definition of "critical infrastructure" from § 812.141, Fla. Stat.

Give if element 2b alleged.

A "deadly weapon" is any object that will likely cause death or great bodily harm if used or threatened to be used in the ordinary and usual manner contemplated by its design and construction.

Give if applicable.

An object not designed to inflict bodily harm may nonetheless be a "deadly weapon" if it was used or threatened to be used in a manner likely to cause death or great bodily harm.

Give if applicable.

"Great bodily harm" means harm that is more than slight, trivial, minor, or moderate.

Give only if applicable. Fey v. State, 125 So. 3d 828 (Fla. 4th DCA 2013).

An intentional touching or striking includes situations where a defendant knows that a touch or strike is substantially certain to result from his or her act.

Give only if applicable. Clark v. State, 783 So. 2d 967 (Fla. 2001).

A Battery may be found as a result of the intentional touching or intentional striking of something other than the actual body of the person. However, the object that is touched or struck must have such an intimate connection with the person that it is to be regarded as a part or as an extension of the person. For example, in cases where a person intentionally drove into another occupied vehicle, it is for you to determine whether the vehicle that was struck should be considered as a part or as an extension of the person inside that vehicle. This determination may include consideration about whether the person was "touched" through the force of impact by being jostled or otherwise impacted through the transfer of energy from the collision.

Lesser Included Offenses

AGGRAVATED BATTERY ON A[N] [LAW ENFORCEMENT OFFICER] [INSERT VICTIM'S JOB] — 784.07(2)(d)

CATEGORY ONE	CATEGORY TWO	FLA. STAT	INS. NO.
Aggravated battery		784.045	8.4
Felony battery*		784.041*	8.5*
Battery on a law enforcement officer		784.07(2)(b)	8.11
Battery		784.03	8.3
	Attempt	777.04(1)	5.1

Comments

*The lesser included offense of Felony Battery is applicable only if element 2a is charged.

See Spurgeon v. State, 114 So. 3d 1042 (Fla. 5th DCA 2013) (holding that a conviction for a violation of § 784.07(2), Florida Statutes, had to be vacated because the statute does not include physicians, employees, agents, or volunteers of facilities that do not satisfy the definition of a hospital under chapter 395).

Florida law on alternative conduct statutes is unsettled. For example, in a DUI case, it is permissible for some jurors to conclude the State proved only driving while impaired, and other jurors to conclude the State proved only driving with an unlawful breath alcohol level. *Euceda v. State*, 711 So. 2d 122 (Fla. 3d DCA 1998). However, according to the Second District, it is improper for some jurors to conclude the State proved only that the defendant intentionally caused great bodily harm, and other jurors to conclude the State proved only that the defendant used a deadly weapon. *Miller v. State*, 123 So. 3d 595 (Fla. 2d DCA 2013). Unless the case law changes, in Aggravated Battery cases where the State has charged both alternatives, trial judges must give a special instruction that informs jurors they must be unanimous on each alternative theory.

Num-chucks, which were originally designed as a farm tool, can be a deadly weapon. *R.V. v. State*, 497 So. 2d 912 (Fla. 5th DCA 1986). Jurors could find that a 7-inch straight-edged razor might be a dangerous weapon. *R.R. v. State*, 826 So. 2d 465 (Fla. 5th DCA 2002). In trials involving these types of objects, the judge should consider a special instruction informing jurors that an object can be a deadly weapon if its sole modern use is to cause great bodily harm or death. A special instruction may also be necessary in cases where the deadly weapon was an animal or a substance or something that is not commonly referred to as an "object."

This instruction was adopted in 1992 [603 So. 2d 1175] and was amended in 1995 [657 So. 2d 1152], 2007 [962 So. 2d 310], 2008 [994 So. 2d 1038], 2015 [157 So. 3d 1027], on April 3, 2020, on March 8, 2024, and on January 8, 2026.

8.14 AGGRAVATED BATTERY ON PERSON 65 YEARS OF AGE OR OLDER

784.08(2)(a), Fla. Stat.

To prove the crime of Aggravated Battery on a Person 65 Years of Age or Older, the State must prove the following three elements beyond a reasonable doubt. The first element is a definition of Battery.

Give 1a or 1b or both as applicable.

1. (Defendant)

a. actually and intentionally touched or struck (victim) against [his] [her] will.

b. intentionally caused bodily harm to (victim)**.**

Give 2a or 2b or both as applicable.

2. (Defendant) **in committing the Battery**

a. intentionally or knowingly caused

[great bodily harm to (victim)**].**

[permanent disability to (victim)**].**

[permanent disfigurement to (victim)**].**

b. used a deadly weapon.

3. (Victim) **was at the time 65 years of age or older.**

§ 784.08(2), Fla. Stat.

It is not necessary for the State to prove that (defendant) **knew or had reason to know the age of** (victim)**.**

Give if 2b alleged.

A "deadly weapon" is any object that will likely cause death or great bodily harm if used or threatened to be used in the ordinary and usual manner contemplated by its design and construction.

Give if applicable.

An object not designed to inflict bodily harm may nonetheless be a "deadly weapon" if it was used or threatened to be used in a manner likely to cause death or great bodily harm.

Give if applicable.

"Great bodily harm" means great as distinguished from slight, trivial, minor, or moderate harm, and as such does not include mere bruises.

Give only if applicable. Fey v. State, 125 So. 3d 828 (Fla. 4th DCA 2013).

An intentional touching or striking includes situations where a defendant knows that a touch or strike is substantially certain to result from his or her act.

Give only if applicable. Clark v. State, 783 So. 2d 967 (Fla. 2001).

A battery may be found as a result of the intentional touching or intentional striking of something other than the actual body of the person. However, the object that is touched or struck must have such an intimate connection with the person that it is to be regarded as a part or as an extension of the person. For example, in cases where a person intentionally drove into another occupied vehicle, it is for you to determine whether the vehicle that was struck should be considered as a part or as an extension of the person inside that vehicle. This determination may include consideration about whether the person was "touched" through the force of impact by being jostled or otherwise impacted through the transfer of energy from the collision.

Lesser Included Offenses

AGGRAVATED BATTERY ON PERSON 65 YEARS OF AGE OR OLDER – 784.08(2)(a)

CATEGORY ONE	CATEGORY TWO	FLA. STAT	INS. NO.
Aggravated battery		784.045	8.4
Felony battery*		784.041	8.5
Battery on person 65 years of age or older		784.08(2)(c)	8.16
Battery		784.03	8.3
	Attempt	777.04(1)	5.1
	Improper exhibition of dangerous weapons or firearms	790.10	10.5

CATEGORY ONE	CATEGORY TWO	FLA. STAT	INS. NO.
	Discharging firearms in public	790.15	10.6

Comments

*The lesser included offense of Felony Battery is applicable only if element 2a is charged and proved.

Florida law on alternative conduct statutes is unsettled. For example, in a DUI case, it is permissible for some jurors to conclude the State proved only driving while impaired, and other jurors to conclude the State proved only driving with an unlawful breath alcohol level. *Euceda v. State*, 711 So. 2d 122 (Fla. 3d DCA 1998). However, according to the Second District, it is improper for some jurors to conclude the State proved only that the defendant intentionally caused great bodily harm, and other jurors to conclude the State proved only that the defendant used a deadly weapon. *Miller v. State*, 123 So. 3d 595 (Fla. 2d DCA 2013). Unless the case law changes, in Aggravated Battery cases where the State has charged both alternatives, trial judges must give a special instruction that informs jurors they must be unanimous on each alternative theory.

Num-chucks, which were originally designed as a farm tool, can be a deadly weapon. *R.V. v. State*, 497 So. 2d 912 (Fla. 5th DCA 1986). Jurors could find that a 7-inch straight-edged razor might be a dangerous weapon. *R.R. v. State*, 826 So. 2d 465 (Fla. 5th DCA 2002). In trials involving these types of objects, the judge should consider a special instruction informing jurors that an object can be a deadly weapon if its sole modern use is to cause great bodily harm or death. A special instruction may also be necessary in cases where the deadly weapon was an animal or a substance or something that is not commonly referred to as an "object."

This instruction was adopted in 1997 [697 So.2d 84] and amended in 2007 [962 So. 2d 310], and on April 3, 2020.

8.15 AGGRAVATED ASSAULT ON PERSON 65 YEARS OF AGE OR OLDER

§ 784.08(2)(b), Fla. Stat.

To prove the crime of Aggravated Assault on a Person 65 Years of Age or Older, the State must prove the following five elements beyond a reasonable doubt. The first three elements define Assault.

1. (Defendant) **intentionally and unlawfully threatened, either by word or act, to do violence to** (victim)**.**

2. **At the time,** (defendant) **appeared to have the ability to carry out the threat.**

3. **The act of** (defendant) **created in the mind of** (victim) **a well-founded fear that the violence was about to take place.**

Give 4a or 4b or both as applicable. If 4b is alleged, give the elements of the felony charged.

4. **a. The assault was made with a deadly weapon.**

   b. The assault was made with a fully-formed conscious intent to commit (felony charged) **upon** (victim)**.**

5. (Victim) **was at the time 65 years of age or older.**

§ 784.08(2), Fla. Stat.

It is not necessary for the State to prove that (defendant) **knew or had reason to know the age of** (victim)**.**

Give if applicable. McClain v. State, 383 So. 2d 1146 (Fla. 4th DCA 1980); Smithson v. State, 689 So. 2d 1226 (Fla. 5th DCA 1997); Gilbert v. State, 347 So. 2d 1087 (Fla. 3d DCA 1977).

If the circumstances were such as to ordinarily induce a well-founded fear in the mind of a reasonable person, then (victim) **may be found to have been in fear, and actual fear on the part of** (victim) **need not be shown.**

Give if 4a alleged.

A "deadly weapon" is any object that will likely cause death or great bodily harm if used or threatened to be used in the ordinary and usual manner contemplated by its design and construction.

Give if applicable.

An object not designed to inflict bodily harm may nonetheless be a "deadly weapon" if it was used or threatened to be used in a manner likely to cause death or great bodily harm.

"Great bodily harm" means great as distinguished from slight, trivial, minor, or moderate harm, and as such does not include mere bruises.

It is not necessary for the State to prove that the defendant had an intent to kill.

Lesser Included Offenses

AGGRAVATED ASSAULT ON PERSON 65 YEARS OF AGE OR OLDER — 784.08(2)(b)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Aggravated assault		784.021	8.2
Assault on person 65 years of age or older		784.08(2)(d)	8.17
Improper exhibition of a dangerous weapon or firearm, if § 784.021(1)(a), Fla. Stat., is charged*		790.10*	10.5*
Assault		784.011	8.1
	Attempt	777.04(1)	5.1
	Discharging a firearm in public	790.15	10.6

Comments

*It is not clear whether a charging document that tracks the statute for Aggravated Assault with a Deadly Weapon necessarily charges Improper Exhibition. Contrast *Christ v. State*, 104 So. 3d 1262 (Fla. 2d DCA 2013) and *Michaud v. State*, 47 So. 3d 374 (Fla. 5th DCA 2010) with *Mack v. State*, 305 So. 2d 264 (Fla. 3d DCA 1974).

Num-chucks, which were originally designed as a farm tool, can be a deadly weapon. *R.V. v. State*, 497 So. 2d 912 (Fla. 5th DCA 1986). Jurors could find that a 7-inch straight-edged razor might be a dangerous weapon. *R.R. v. State*, 826 So. 2d 465 (Fla. 5th DCA 2002). In trials involving these types of objects, the judge should consider a special instruction informing jurors that an object can be a deadly weapon if its sole modern use is to cause great bodily

harm or death. A special instruction may also be necessary in cases where the deadly weapon was an animal or a substance or something that is not commonly referred to as an "object."

This instruction was adopted in 1997 [697 So. 2d 84] and amended in 2013 [131 So. 3d 755], 2016 [195 So. 3d 356], and on April 3, 2020.

8.16 BATTERY ON PERSON 65 YEARS OF AGE OR OLDER

§ 784.08(2)(c), Fla. Stat.

To prove the crime of Battery on a Person 65 Years of Age or Older, the State must prove the following two elements beyond a reasonable doubt:

Give 1a and/or 1b depending on the charging document.

1. (Defendant)

a. actually and intentionally touched or struck (victim) **against [his] [her] will.**

b. intentionally caused bodily harm to (victim).

2. (Victim) **was at the time 65 years of age or older.**

§ 784.08(2), Fla. Stat.

It is not necessary for the State to prove that (defendant) **knew or had reason to know the age of** (victim)**.**

Give only if applicable. Fey v. State, 125 So. 3d 828 (Fla. 4th DCA 2013).

An intentional touching or striking includes situations where a defendant knows that a touch or strike is substantially certain to result from his or her act.

Give only if applicable. Clark v. State, 783 So. 2d 967 (Fla. 2001).

A battery may be found as a result of the intentional touching or intentional striking of something other than the actual body of the person. However, the object that is touched or struck must have such an intimate connection with the person that it is to be regarded as a part or as an extension of the person. [For example, in cases where a person intentionally drove into another occupied vehicle, it is for you to determine whether the vehicle that was struck should be considered as a part or as an extension of the person inside that vehicle. This determination may include consideration about whether the person was "touched" through the force of impact by being jostled or otherwise impacted through the transfer of energy from the collision.]

Lesser Included Offenses

BATTERY ON PERSON 65 YEARS OF AGE OR OLDER — 784.08(2)(c)			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
Battery		784.03	8.3
	Attempt	777.04(1)	5.1

Comment

This instruction was adopted in 1997 [697 So. 2d 84] and amended in 2018.

8.17 ASSAULT ON PERSON 65 YEARS OF AGE OR OLDER

§ 784.08(2)(d), Fla. Stat.

To prove the crime of Assault on a Person 65 years of Age or Older, the State must prove the following four elements beyond a reasonable doubt:

1. (Defendant) **intentionally and unlawfully threatened, either by word or act, to do violence to** (victim)**.**

2. **At the time,** (defendant) **appeared to have the ability to carry out the threat.**

3. **The act of** (defendant**) created in the mind of** (victim) **a well-founded fear that the violence was about to take place.**

4. (Victim) **was at the time 65 years of age or older.**

Lesser Included Offenses

ASSAULT ON PERSON 65 YEARS OF AGE OR OLDER — 784.08(2)(d)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Assault		784.011	8.1
	Attempt	777.04(1)	5.1

Comment

This instruction was adopted in 1997.

8.18 VIOLATION OF AN INJUNCTION FOR PROTECTION AGAINST DOMESTIC VIOLENCE

§ 741.31(4)(a), Fla. Stat.

To prove the crime of Violation of an Injunction for Protection Against Domestic Violence, the State must prove the following two elements beyond a reasonable doubt:

1. **A temporary or final injunction for protection against domestic violence was issued by a court against** (defendant) **for the benefit of** (victim)**.**

2. (Defendant) **willfully violated the injunction by (alleged violation* of section 741.31(4)(a)).**

"Willfully" means knowingly, intentionally, and purposely.

If the allegation involves the defendant committing an act of domestic violence, define "domestic violence" from § 741.28(2), Fla. Stat.

Give if applicable if the jury finds the defendant guilty of Violation of Domestic Violence Injunction. § 741.31(4)(c), Fla. Stat.

Now that you have found the defendant guilty of Violation of Domestic Violence Injunction, you must further determine whether the State has proven beyond a reasonable doubt that the defendant was previously convicted two times or more of Violation of an Injunction against the same person.

"Conviction" means a determination of guilt that is the result of a plea or a trial, regardless of whether adjudication is withheld or a plea of nolo contendere is entered.

Lesser Included Offense

VIOLATION OF DOMESTIC VIOLENCE INJUNCTION – 741.31			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
None			
	Attempt	777.04(1)	5.1

Comments

*If more than one method of violating the injunction is alleged, the courts will likely require a unanimous verdict for each alternative. *Jacobs v. State,* 272 So. 3d 838 (Fla. 2d DCA 2019).

This instruction can be used for the Violation of a Domestic Violence Injunction based on prior convictions. For Felony Violation of a Domestic Violence Injunction based on prior convictions, it is error to inform the jury of prior Violation of Injunction convictions until the verdict on the underlying Violation of a Domestic Violence Injunction is rendered. Therefore, if the information or indictment contains an allegation of prior Violation of Injunction convictions, do not read that allegation and do not send the information or indictment into the jury room. If the defendant is found guilty of Violation of a Domestic Violence Injunction, the historical fact of prior convictions shall be determined separately by the jury in a bifurcated proceeding. *See State v. Harbaugh*, 754 So. 2d 691 (Fla. 2000).

This instruction was adopted in 2007 [965 So. 2d 811] and amended in 2016 [206 So. 3d 14], and on June 6, 2022.

8.19 VIOLATION OF AN INJUNCTION FOR PROTECTION AGAINST [REPEAT] [SEXUAL] [DATING] VIOLENCE

§ 784.047, Fla. Stat.

To prove the crime of Violation of an Injunction for Protection Against [Repeat] [Sexual] [Dating] Violence, the State must prove the following two elements beyond a reasonable doubt:

1. **An injunction for protection against [repeat] [sexual] [dating] violence was issued by a court against** (defendant) **for the benefit of** (victim)**.**

2. (Defendant) **willfully violated the injunction by** (alleged violation* of section 784.047)**.**

"Willfully" means knowingly, intentionally, and purposely.

If the allegation involves the defendant committing an act of repeat, sexual, or dating violence against the victim, give the appropriate definitions of "violence," "repeat violence," and/or "dating violence" from § 784.046(1), Fla. Stat., and the elements of any appropriate crime(s) supported by the evidence.

Give if applicable if the jury finds the defendant guilty of Violation of a [Repeat][Sexual][Dating] Violence Injunction. § 784.047(2), Fla. Stat.

Now that you have found the defendant guilty of Violation of a [Repeat] [Sexual] [Dating] Violence Injunction, you must further determine whether the State has proven beyond a reasonable doubt that the defendant was previously convicted two times or more of Violation of an Injunction against the same person.

"Conviction" means a determination of guilt that is the result of a plea or a trial, regardless of whether adjudication is withheld or a plea of nolo contendere is entered.

Lesser Included Offense

VIOLATION OF REPEAT VIOLENCE, SEXUAL VIOLENCE, OR DATING VIOLENCE INJUNCTION – 784.047

CATEGORY ONE	CATEGORY TWO	FLA. STAT	INS. NO.
None			
	Attempt	777.04(1)	5.1

Comments

*If more than one method of violating the injunction is alleged, the courts will likely require a unanimous verdict for each alternative. *Jacobs v. State,* 272 So. 3d 838 (Fla. 2d DCA 2019).

This instruction can be used for Violation of a [Repeat] [Sexual] [Dating] Violence Injunction based on prior convictions. For Felony Violation of a [Repeat] [Sexual] [Dating] Violence Injunction based on prior convictions, it is error to inform the jury of prior Violation of Injunction convictions until the verdict on the underlying Violation of a [Repeat] [Sexual] [Dating] Violence Injunction is rendered. Therefore, if the information or indictment contains an allegation of prior Violation of Injunction convictions, do not read that allegation and do not send the information or indictment into the jury room. If the defendant is found guilty of Violation of a [Repeat] [Sexual] [Dating] Violence Injunction, the historical fact of prior convictions shall be determined separately by the jury in a bifurcated proceeding. *See State v. Harbaugh,* 754 So. 2d 691 (Fla. 2000).

This instruction was adopted in 2007 [965 So. 2d 811] and amended in 2016 [206 So. 3d 14], and on June 6, 2022.

8.20 BATTERY ON FACILITY EMPLOYEE (THROWING, TOSSING, OR EXPELLING CERTAIN FLUIDS OR MATERIALS)

§ 784.078, Fla. Stat.

To prove the crime of Battery on a Facility Employee, the State must prove the following five elements beyond a reasonable doubt:

1. (Defendant) **was detained in a facility.**

2. (Defendant) **caused or attempted to cause** (victim) **to come into contact with blood, saliva, masticated food, regurgitated food, seminal fluid, urine, or feces by throwing, tossing, or expelling such fluid or material.**

3. (Defendant) **did so with the intent to harass, annoy, threaten, or alarm** (victim)**.**

4. (Victim) **was a facility employee.**

5. (Defendant) **knew** (victim) **or reasonably should have known that** (victim) **was a facility employee.**

Definitions.

§ 784.078(1), Fla. Stat.

A "facility" is any state correctional institution, contractor-operated correctional facility, county, municipal, or regional jail or other detention facility of local government, or any secure facility operated and maintained by the Department of Corrections or the Department of Juvenile Justice.

§ 944.710, Fla. Stat.

A "contractor-operated correctional facility" is any facility, which is not operated by the Department of Corrections, for the incarceration of adults or juveniles who have been sentenced by a court and committed to the custody of the Department of Corrections.

Additional definitions of the specific type of facility can be found in other statutes.

§ 784.078(2), Fla. Stat.

An "employee" is any person [employed by or performing contractual services for a public or private entity operating a facility] [or]

[employed by or performing contractual services for the corporation operating the prison enhancement programs or the correctional work programs, pursuant to part II of chapter 946] [or] [who is a parole examiner with the Florida Commission on Offender Review].

Lesser Included Offenses

BATTERY ON FACILITY EMPLOYEE — 784.078			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
None			
	Battery	784.03(1)(a)	8.3
	Assault	784.011	8.1

Comment

This instruction was adopted in 2003 [850 So. 2d 1272] and amended in 2018 [260 So. 2d 930], and on September 20, 2024.

8.21 [ASSAULT] [AGGRAVATED ASSAULT] [BATTERY] [AGGRAVATED BATTERY] BY A DETAINEE UPON [ANOTHER DETAINEE] [A VISITOR]

§ 784.082, Fla. Stat.

To prove the crime of (*insert crime)***, the State must prove the following three elements beyond a reasonable doubt:**

1. (Defendant) **was detained in a [prison] [jail] [detention facility].**

2. At the time, (defendant) **committed [an assault] [an aggravated assault] [a battery] [an aggravated battery] against** (victim).

3. (Victim) **was a [detainee] [visitor] in that facility.**

Give as applicable.

An assault is legally defined as (*insert applicable portions of instruction 8.1*)**.**

An aggravated assault is legally defined as (*insert applicable portions of instruction 8.2*)**.**

A battery is legally defined as (*insert applicable portions of instruction 8.3*)**.**

An aggravated battery is legally defined as (*insert applicable portions of instruction 8.4 and/or 8.4(a)***.**

Lesser Included Offenses

See relevant instructions on offenses in element 2 for appropriate lesser-included offenses.

Comment

This instruction was adopted in 2013.

8.22 WRITTEN [OR ELECTRONIC] THREAT TO [KILL] [DO BODILY INJURY] [CONDUCT A MASS SHOOTING] [CONDUCT AN ACT OF TERRORISM]

§ 836.10, Fla. Stat.

To prove the crime of Written [or Electronic] Threat to [Kill] [Do Bodily Injury] [Conduct a Mass Shooting] [Conduct an Act of Terrorism], the State must prove the following four elements beyond a reasonable doubt:

1. (Defendant) **made a threat to [kill] [or] [do bodily harm to another person] [or] [conduct a mass shooting] [or] [conduct an act of terrorism] in a writing [or other record].**

2. (Defendant) **[sent, posted, or transmitted] [or] [procured the sending, posting, or transmission of] that writing [or other record].**

3. (Defendant) **did so in any manner in which it may be viewed by another person.**

4. (Defendant) **intended the threat to be a true threat.**

A true threat is a serious expression of an intent to commit an act of violence.

Give if applicable.

To "procure" means to persuade, induce, prevail upon, or cause a person to do something.

Give if applicable.

"**Other record" includes an electronic record. The term "electronic record" means any record created, modified, archived, received, or distributed electronically which contains any combination of text, graphics, video, audio, or pictorial represented in digital form, but does not include a telephone call.**

Give if applicable. § 775.30(1), Fla. Stat. The judge may need to instruct on certain criminal laws that are violent acts or acts dangerous to human life, or a violation of § 815.06, Fla. Stat. (Instructions # 12.6-12.8).

"Terrorism" means an activity that:

(a) involves:

1. a violent act or an act dangerous to human life which is a violation of the criminal laws of this state or of the United States; or

2. A violation of s. 815.06;

and

(b) is intended to:

1. intimidate, injure, or coerce a civilian population;

2. influence the policy of a government by intimidation or coercion; or

3. affect the conduct of government through destruction of property, assassination, murder, kidnapping, or aircraft piracy.

Lesser Included Offenses

WRITTEN [OR ELECTRONIC] THREAT TO [KILL] [DO BODILY INJURY] [CONDUCT A MASS SHOOTING] [CONDUCT AN ACT OF TERRORISM] – 836.10

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempt	777.04(1)	5.1
	Assault	784.011	8.1

Comments

T.R.W. v. State, 363 So. 3d 1081 (Fla. 4th DCA 2023) and *Counterman v. Colorado,* 600 U.S. 66 (2023) require a *mens rea* element to be added to the statute. As of November 2023, it was unclear whether other district courts of appeal or the Florida Supreme Court will determine that intent is not required because a recklessness standard is sufficient.

As of November 2023, it is unclear whether the courts will require the state to prove either that the victim felt threatened or that a reasonable person in victim's position would have felt threatened.

This instruction was adopted in 2013 [131 So. 3d 720] and amended in 2018 [260 So. 3d 1024], on December 15, 2021, on January 6, 2023, on May 5, 2023, and on December 15, 2023.

8.22(a) THREAT TO [KILL] [DO SERIOUS BODILY HARM TO] A [PUBLIC OFFICIAL] [FAMILY MEMBER OF A PUBLIC OFFICIAL]

§ 836.12(2), Fla. Stat.

To prove the crime of Threat to [Kill] [Do Serious Bodily Harm to] a [Public Official] [Family Member of a Public Official], the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **knowingly and willfully threatened to [kill] [do serious bodily harm to]** (person receiving threat).

2. **At the time,** (person receiving threat) **was a[n] [family member of a[n]] [law enforcement officer] [state attorney] [assistant state attorney] [firefighter] [judge] [justice] [judicial assistant] [a clerk of court or clerk personnel] [elected official] [general magistrate] [special magistrate] [child support enforcement hearing officer] [administrative assistant].**

3. **At the time,** (defendant) **knew** (person receiving threat) **was a[n] [family member of a[n]] [law enforcement officer] [state attorney] [assistant state attorney] [firefighter] [judge] [justice] [judicial assistant] [a clerk of court or clerk personnel] [elected official] [general magistrate] [special magistrate] [child support enforcement hearing officer] [administrative assistant].**

"Willfully" means intentionally and purposely.

Virginia v. Black, 538 U.S. 343 (2003); Romero v. State, 314 So. 3d 699 (Fla. 3d DCA 2021).

"Threatened" means to communicate, by word or act, a serious expression of an intent to commit an act of violence to a particular individual.

It is not necessary for the State to prove that (defendant) **intended to actually commit the threatened act of violence.**

Give as applicable.

"Family member" means:

1. **An individual related to another individual by blood or marriage; or**

2. **An individual who stands in loco parentis to another individual. "In loco parentis" means in place of a parent.**

"Law enforcement officer" means any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state.

Definitions for part-time and auxiliary law enforcement officers can be found in § 943.10, Fla. Stat.

"Law enforcement officer" includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.

Federal law enforcement officer.

"Law enforcement officer" includes a person who is employed by the Federal Government as a full-time law enforcement officer as defined by federal law, who is empowered to effect an arrest for violations of the United States Code, who is authorized to carry firearms in the performance of her or his duties, and who has received law enforcement training equivalent to that prescribed for state law enforcement officers.

"Administrative assistant" means a court employee assigned to the office of a specific general magistrate, special magistrate, or child support enforcement hearing officer.

"Judicial assistant" means a court employee assigned to the office of a specific judge or justice responsible for providing administrative, secretarial, and clerical support to the assigned judge or justice.

"Firefighter" means an individual who holds a current and valid Firefighter Certificate of Compliance or Special Certificate of Compliance issued by the Division of State Fire Marshal under Florida law.

§ 836.12, Fla. Stat. The section below can be used if a prior violation is not treated as a recidivist fact that can be proven to a judge at sentencing. If the prior violation is an element of the felony crime, it is error to inform the jury of the prior violation until the verdict on the underlying crime is rendered. Therefore, if the information or indictment contains an allegation of a prior violation, that allegation must not be read to the jury before the verdict and the information or indictment must not be given to the jurors before the verdict. If the defendant is found guilty, the historical fact of a prior violation shall be determined separately

by the jury in a bifurcated proceeding. See State v. Harbaugh, 754 So. 2d 691 (Fla. 2000).

Now that you have found the defendant guilty of Threat to [Kill] [Do Serious Bodily Harm to] a [Public Official] [Family Member of a Public Official], you must further determine whether the State has proven beyond a reasonable doubt that the defendant was previously convicted of the same crime.

"Conviction" means a determination of guilt that is the result of a plea or a trial, regardless of whether adjudication is withheld or a plea of nolo contendere is entered.

Lesser Included Offenses

THREAT TO [KILL] [DO SERIOUS BODILY HARM TO] A [PUBLIC OFFICIAL] [FAMILY MEMBER OF A PUBLIC OFFICIAL] — 836.12(2)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Assault on a law enforcement officer	784.07(2)(a)	8.10
	Assault	784.011	8.1
	Attempt	777.04(1)	5.1

Comments

As of February 2026, it is unclear whether the courts will require the state to prove either that the victim felt threatened or that a reasonable person in victim's position would have felt threatened.

This instruction was adopted in 2017 [217 So. 3d 965] and amended on April 5, 2021, on January 7, 2022, on December 15, 2023, and on March 20, 2026.

8.22(b) HARASSING A PUBLIC OFFICIAL WITH INTENT TO AFFECT A LAWFUL DUTY

§ 836.12(3), Fla. Stat.

To prove the crime of Harassing a Public Official with Intent to Affect a Lawful Duty, the State must prove the following four elements beyond a reasonable doubt:

1. (Defendant) **knowingly and willfully harassed** (name of public official)**.**

2. **At the time,** (name of public official) **was a[n] [law enforcement officer] [state attorney] [assistant state attorney] [firefighter] [judge] [justice] [judicial assistant] [clerk of court or clerk personnel] [elected official] [general magistrate] [special magistrate] [child support enforcement hearing officer] [administrative assistant].**

3. (Defendant) **knew** (name of public official) **was a[n] [law enforcement officer] [state attorney] [assistant state attorney] [firefighter] [judge] [justice] [judicial assistant] [clerk of court or clerk personnel] [elected official] [general magistrate] [special magistrate] [child support enforcement hearing officer] [administrative assistant].**

4. (Defendant) **did so with the intent to intimidate or coerce** (name of public official) **to perform or refrain from performing a lawful duty.**

"Willfully" means intentionally and purposely.

"To intimidate" means that (name of public official) **would reasonably be in fear of harm as a result of the defendant's behavior.**

Give as applicable.

"Law enforcement officer" means any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state.

Definitions for part-time and auxiliary law enforcement officers can be found in § 943.10, Fla. Stat.

"Law enforcement officer" includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.

Federal law enforcement officer.

"Law enforcement officer" includes a person who is employed by the Federal Government as a full-time law enforcement officer as defined by federal law, who is empowered to effect an arrest for violations of the United States Code, who is authorized to carry firearms in the performance of her or his duties, and who has received law enforcement training equivalent to that prescribed for state law enforcement officers.

"Administrative assistant" means a court employee assigned to the office of a specific general magistrate, special magistrate, or child support enforcement hearing officer.

"Judicial assistant" means a court employee assigned to the office of a specific judge or justice responsible for providing administrative, secretarial, and clerical support to the assigned judge or justice.

"Firefighter" means an individual who holds a current and valid Firefighter Certificate of Compliance or Special Certificate of Compliance issued by the Division of State Fire Marshal under Florida law.

Lesser Included Offense

HARASSING A PUBLIC OFFICIAL WITH INTENT TO AFFECT A LAWFUL DUTY — 836.12(3)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempt	777.04(1)	5.1

Comments

As of February 2026, it was unclear if the definition of "harass" in the Stalking statute (§ 784.048, Fla. Stat.) or the Criminal Use of Personal Identification statute (§ 817. 568), or some other definition, applies to this statute.

As of February 2026, it is unclear whether the courts will require the state to prove either that the victim felt harassed or that a reasonable person in the victim's position would have felt harassed.

This instruction was adopted on December 15, 2023, and amended on March 20, 2026.

8.23 EXTORTION

§ 836.05, Fla. Stat.

To prove the crime of Extortion, the State must prove the following [four] [five] elements beyond a reasonable doubt:

1. (Defendant) **made a [written] [printed] [verbal] communication to** (name of person)**.**

2. In that communication, (defendant) **threatened to**

Give as applicable.

a. accuse another person of any [crime] [offense].

b. injure another person.

c. injure the [property] [reputation] of another person.

d. expose another person to disgrace.

e. expose any secret affecting another person.

f. impute any deformity or lack of chastity to another person.

3. (Defendant's) **threat was made maliciously.**

4. (Defendant's) **threat was made with the intent to**

Give as applicable.

g. extort money [or any pecuniary advantage whatsoever] from [(name of person)**] [any person].**

h. compel [(name of person)**] [any person] to do any act or refrain from doing any act against [his] [or] [her] will.**

If the person in element #1 is not the same person in element #4, then the defendant's threat was indirect. In those cases, the trial judge must also instruct on element #5. See Calamia v. State, 125 So. 3d 1007 (Fla. 5th DCA 2013).

5. At the time (defendant) **made the threat, [he] [she] intended that the threat be communicated to** (insert name of person in element #4 who was extorted or compelled)**.**

Tomlinson v. State, 369 So. 3d 1142 (Fla. 2023).

"Maliciously" means intentionally and without any lawful justification.

§ 893.05(2) Fla. Stat. Give only if applicable.

If you find the defendant guilty of Extortion, you must further determine whether the State proved beyond a reasonable doubt that at the time of the Extortion, [he] [she] was acting as a foreign agent and with the intent of benefiting a foreign country of concern.

§ 812.081, Fla. Stat.

A "foreign agent" means any officer, employee, proxy, servant, delegate, or representative of a foreign government.

§ 692.201, Fla. Stat.

A "foreign country of concern" means the People's Republic of China, the Russian Federation, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Republic of Cuba, the Venezuelan regime of Nicolás Maduro, or the Syrian Arab Republic, including any agency of or any other entity of significant control of such foreign country of concern.

Lesser Included Offenses

No lesser-included offenses have been identified for this crime. Attempted extortion is not a crime. *Achin v. State*, 436 So. 2d 30 (Fla. 1982).

Comments

It is not necessary for the State to prove the actual intent to do harm nor the ability to carry out the threat. Threats to cause mental or psychological damage are prohibited under this statute. *Duan v. State,* 970 So. 2d 903 (Fla. 1st DCA 2007).

As of November 2023, it is unclear whether the courts will require the state to prove either that the victim felt threatened or that a reasonable person in victim's position would have felt threatened.

This instruction was adopted in 2014 [143 So. 3d 893] and amended on December 15, 2023.

8.24 VIOLATION OF AN INJUNCTION FOR PROTECTION AGAINST [STALKING] [CYBERSTALKING]

§ 784.0487(4), Fla. Stat.

To prove the crime of Violation of an Injunction for Protection Against [Stalking] [Cyberstalking], the State must prove the following two elements beyond a reasonable doubt:

1. **An injunction for protection against [stalking] [cyberstalking] was issued by a court against** (defendant) **for the benefit of** (victim)**.**

2. (Defendant) **willfully violated the injunction by:**

*Give as alleged.**

   a. **going to, or being within 500 feet of,** (victim's) **residence, school, place of employment, or a specified place frequented regularly by** (victim) **and any named family members or individuals closely associated with** (victim)**.**

   b. **committing an act of stalking against** (victim)**.**

   c. **committing any other violation of the injunction through an intentional unlawful threat, word, or act to do violence to** (victim)**.**

   d. **telephoning, contacting, or otherwise communicating with** (victim), **directly or indirectly, unless the injunction specifically allows indirect contact through a third party.**

   e. **knowingly and intentionally coming within 100 feet of** (victim's) **motor vehicle, whether or not that vehicle is occupied.**

   f. **destroying** (victim's) **personal property, including** (victim's) **motor vehicle.**

   g. **refusing to surrender firearms or ammunition if ordered to do so by the court.**

"Willfully" means knowingly, intentionally, and purposely.

If the allegation involves the defendant committing an act of stalking against victim, give the elements of stalking from Instruction 8.6.

Give if applicable if the jury finds the defendant guilty of Violation of Domestic Violence Injunction. § 784.0487(4)(b), Fla. Stat.

Now that you have found the defendant guilty of Violation of an Injunction for Protection Against [Stalking] [Cyberstalking], you must further determine whether the State has proven beyond a reasonable doubt that the defendant was previously convicted two times or more of Violation of an Injunction against the same person.

"Conviction" means a determination of guilt that is the result of a plea or a trial, regardless of whether adjudication is withheld or a plea of nolo contendere is entered.

Lesser Included Offense

VIOLATION OF INJUNCTION FOR PROTECTION AGAINST [STALKING] [CYBERSTALKING] – 784.0487(4)

CATEGORY ONE	CATEGORY TWO	FLA. STAT	INS. NO.
None			
	Attempt	777.04(1)	5.1

Comments

*The courts require a unanimous verdict for each alternative way to violate an injunction for protection against stalking or cyberstalking. *See Jacobs v. State,* 272 So. 3d 838 (Fla. 2d DCA 2019).

This instruction can be used for Violation of an Injunction for Protection Against [Stalking] [Cyberstalking] based on prior convictions. For Felony Violation of an Injunction for Protection Against [Stalking] [Cyberstalking] based on prior convictions, it is error to inform the jury of prior Violation of Injunction convictions until the verdict on the underlying Violation of an Injunction for Protection Against [Stalking] [Cyberstalking] is rendered. Therefore, if the information or indictment contains an allegation of prior Violation of Injunction convictions, do not read that allegation and do not send the information or indictment into the jury room. If the defendant is found guilty of Violation of an Injunction for Protection Against [Stalking] [Cyberstalking], the historical fact of prior convictions shall be determined separately by the jury in a bifurcated proceeding. *See State v. Harbaugh,* 754 So. 2d 691 (Fla. 2000).

This instruction was adopted in 2013 [131 So. 3d 755] and amended in 2016 [206 So. 3d 14], and on June 6, 2022.

8.25 VIOLATION OF A CONDITION OF PRETRIAL RELEASE FROM A DOMESTIC VIOLENCE CHARGE

§ 741.29(7), Fla. Stat.

To prove the crime of Violation of a Condition of Pretrial Release from a Domestic Violence Charge, the State must prove the following four elements beyond a reasonable doubt:

1. (Defendant) **was arrested for an act of domestic violence.**

2. **Before [his] [her] trial,** (defendant's) **release on the domestic violence charge was set with a condition of** (insert condition of pretrial release in Fla. Stat. 903.047)**.**

3. (Defendant) **knew that a condition of [his] [her] pretrial release was** (insert condition)**.**

4. (Defendant) **willfully violated that condition of pretrial release by** (insert the manner* in which the defendant is alleged to have violated pretrial release)**.**

§ 741.28, Fla. Stat.

"Domestic violence" means any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member.

"Family or household members" means spouses, former spouses, persons related by blood or marriage, persons who are presently residing together as if a family or who have resided together in the past as if a family, and persons who are parents of a child in common regardless of whether they have been married. With the exception of persons who have a child in common, the family or household members must be currently residing or have in the past resided together in the same single dwelling unit.

"Willfully" means knowingly, intentionally, and purposely.

Give as applicable and if the defendant is charged with violating a no contact order.

§ 903.047(1)(b), Fla. Stat.

An order of "no contact" is effective immediately and is valid for the duration of the pretrial release or until it is modified by a judge.

Unless otherwise stated by the judge, "no contact" means it is prohibited for (defendant) **to have communicated orally or in any written form, either in person, telephonically, electronically, or in any other manner, either directly or indirectly through a third person, with [**(victim)**] [or] [**(any other person named in the order)**].**

It is also a violation of a "no contact" order if (defendant)**:**

a. **had physical or violent contact with** (victim) **[or] [**(other named person)**] or [his] [or] [her] property.**

b. **was within 500 feet of** (victim's) **[or] [**(other named person's)**] residence, even if the defendant and** (victim) **[or] [**(other named person)**] share the residence.**

c. **was within 500 feet of** (victim's) **[or] [**(other named person's)**] [vehicle] [place of employment] [or] [**(a specified place frequented regularly by such person)**].**

Lesser Included Offense

VIOLATION OF A CONDITION OF PRETRIAL RELEASE FROM A DOMESTIC VIOLENCE CHARGE — 741.29(7)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempt	777.04(1)	5.1

Comments

*If more than one method of violating the condition of pretrial release is alleged, the courts will likely require a unanimous verdict for each alternative. *Jacobs v. State,* 272 So. 3d 838 (Fla. 2d DCA 2019).

This instruction was adopted in 2014 [141 So. 3d 1201] and amended in 2017 [213 So. 3d 680], and on June 6, 2022.

8.26 SEXUAL CYBERHARASSMENT FOR FINANCIAL GAIN

§ 784.049(4), Fla. Stat.

To prove the crime of Sexual Cyberharassment for Financial Gain, the State must prove the following four elements beyond a reasonable doubt:

1. (Defendant) **willfully and maliciously [published to an internet website] [or] [disseminated through electronic means to another person] a sexually explicit image of** (victim)**.**

2. (Victim) **did not consent to the [publication] [or] [dissemination].**

3. **The [publication] [or] [dissemination] was contrary to** (victim's) **reasonable expectation that the image would remain private.**

4. (Defendant) **did so for pecuniary gain or other financial gain.**

"Willfully" means knowingly, intentionally, and purposely.

A person has a reasonable expectation that a sexually explicit image would remain private if:

1. **The image contains or conveys the personal identification information of the depicted person;**

   or

2. **The personal identification information of the depicted person is not contained or conveyed in the image itself, but is contemporaneously published or disseminated in such a manner that a person viewing the personal identification information would reasonably know that such information directly relates to the person depicted in the sexually explicit image.**

Evidence that the depicted person sent a sexually explicit image to another person does not, on its own, remove his or her reasonable expectation of privacy for that image.

"Sexually explicit image" means any image depicting nudity or depicting any person engaging in sexual conduct or depicting the display of semen or vaginal secretion on a person.

"Image" includes but is not limited to, any photograph, picture, motion picture, film, video, or representation.

"Nudity" means showing of the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering; or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple; or the depiction of covered male genitals in a discernibly turgid state. [A mother breastfeeding her baby does not under any circumstance constitute "nudity," irrespective of whether or not the nipple is covered during or incidental to feeding.]

If necessary, insert additional definitions from § 847.001, Fla. Stat.

"Sexual conduct" means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual lewd exhibition of the genitals; actual physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed. [A mother breastfeeding her baby does not under any circumstance constitute "sexual conduct."]

"Personal identification information" means any information that identifies a person, and includes, but is not limited to, any name, postal or electronic mail address, telephone number, social security number, date of birth, or any unique physical representation.

As of February 2026, the courts had not determined whether the sexual cyberharassment statute requires actual malice or legal malice. The explanation of the two can be found in Seese v. State, 955 So. 2d 1145 (Fla. 4th DCA 2007). In the absence of clarification, trial judges must choose one of the following:

"Maliciously" means intentionally and without any lawful justification.

"Maliciously" means with ill will, hatred, spite, or an evil intent.

Lesser Included Offenses

SEXUAL CYBERHARASSMENT FOR FINANCIAL GAIN— 784.049(4)			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT**	**INS. NO.**
Sexual Cyberharassment		784.049(3)	8.26
	Attempt	777.04(1)	5.1

Comments

Sexual Cyberharassment for Financial Gain is a third degree felony. Simple Sexual Cyberharassment is a first degree misdemeanor. This instruction can be used for a misdemeanor Sexual Harassment trial if element #4 is not read to the jury.

Both Sexual Cyberharassment for Financial Gain and simple Sexual Cyberharassment can be bumped up one degree in severity based on the existence of a prior conviction. For purposes of this statute, the term "conviction" means a determination of guilt that is the result of a plea or a trial, regardless of whether adjudication is withheld or a plea of nolo contendere is entered.

As of February 2026, it is unclear whether the existence of a prior conviction should be treated as an element of the crime that must be found by the jury or whether a prior conviction can be proven to the judge at sentencing. If treated as an element, it would be error to inform the jury of a prior conviction. Therefore, if the information or indictment contains an allegation of a prior conviction, do not read the allegation and do not send the information or indictment into the jury room. If the defendant is found guilty, the historical fact of a previous conviction would be determined beyond a reasonable doubt in a bifurcated proceeding. *See State v. Harbaugh*, 754 So. 2d 691 (Fla. 2000).

This instruction was adopted in 2018 [238 So. 3d 192] and was amended in 2020 [290 So. 3d 864], and on March 20, 2026.

8.27 VIOLATION OF AN INJUNCTION FOR PROTECTION AGAINST EXPLOITATION OF A [VULNERABLE ADULT] [PERSON 65 YEARS OF AGE OR OLDER]

§ 825.1036(4), Fla. Stat.; § 817.5695(6), Fla. Stat.

To prove the crime of Violation of an Injunction for Protection Against Exploitation of a [Vulnerable Adult] [Person 65 Years of Age or Older], the State must prove the following two elements beyond a reasonable doubt:

1. **A [temporary] [final] injunction for protection against exploitation of a [vulnerable adult] [person 65 years of age or older] was issued by a court against** (defendant) **for the benefit of** (victim)**.**

2. (Defendant) **willfully violated the injunction by** (alleged violation* of § 825.1036(4)(a)1.–7., Fla. Stat.)**.**

"Willfully" means knowingly, intentionally, and purposely.

If the allegation involves the defendant exploiting a vulnerable adult, define "exploitation" from § 825.103(1), Fla. Stat.

Lesser Included Offense

VIOLATION OF AN INJUNCTION FOR PROTECTION AGAINST EXPLOITATION OF A [VULNERABLE ADULT] [PERSON 65 YEARS OF AGE OR OLDER] — 825.1036

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempt	777.04(1)	5.1

Comments

*If more than one method of violating the injunction is alleged, the courts will likely require a unanimous verdict for each alternative. *Jacobs v. State,* 272 So. 3d 838 (Fla. 2d DCA 2019).

The crime of Violation of an Injunction for Protection Against Exploitation of a Vulnerable Adult is bumped up from a first-degree misdemeanor to a third-degree felony if the defendant had two or more prior convictions for violating either an injunction or a foreign protection order involving the same victim. It is unclear whether the courts will require the historical fact of the prior convictions against the same victim to be proven to the jury or whether only the

sentencing judge may find that the prior convictions against the same victim exist. If the issue is to be submitted to a jury, it is error to inform the jury of the allegation of prior convictions until the verdict on the underlying Violation of an Injunction is rendered. Therefore, if the charging document contains an allegation of prior Violation of Injunction convictions, do not read that allegation and do not send the information or indictment into the jury room prior to a verdict. If the defendant is found guilty of Violation of an Injunction for Protection Against Exploitation of a Vulnerable Adult, the historical fact of prior convictions against the same victim shall be determined separately in a bifurcated proceeding. *State v. Harbaugh,* 754 So. 2d 691 (Fla. 2000). The term "conviction" means a determination of guilt that is the result of a plea or a trial, regardless of whether adjudication is withheld or a plea of nolo contendere is entered. § 825.1036(4)(b), Fla. Stat.

Exploitation of a vulnerable adult includes a person 65 years of age or older who is or may be subject to exploitation as described in § 817.5695, Fla. Stat. *See* § 825. 1036, Fla. Stat. and Instruction 14.9(a).

This instruction was adopted in 2018 [259 So. 3d 753], and amended on June 6, 2022, and on March 8, 2024.

8.28 VIOLATION OF A RISK PROTECTION ORDER

§ 790.401(11)(b), Fla. Stat.

To prove the crime of Violation of a Risk Protection Order, the State must prove the following three elements beyond a reasonable doubt:

1. **A [temporary] [final] risk protection order was issued by a court against** (defendant)**.**

2. (Defendant) **knew that [he] [she] was prohibited from [possessing] [or] [having in [his] [her] custody or control] [or] [receiving] [or] [purchasing] [a firearm] [or] [ammunition] because of that court order.**

3. (Defendant) **violated the court order by knowingly [possessing] [or] [having in [his] [her] custody or control] [or] [receiving] [or] [purchasing] [a firearm] [or] [ammunition].**

Give as applicable.

§ 790.001, Fla. Stat.

A "firearm" means any weapon [including a starter gun] which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; [the frame or receiver of any such weapon;] [any firearm muffler or firearm silencer;] [any destructive device;] [any machine gun]. [The term "firearm" does not include an antique firearm unless the antique firearm is used in the commission of another crime. An antique firearm is *(insert definition in § 790.001, Fla. Stat.)***] [A destructive device is** (*insert definition in § 790.001, Fla. Stat.)***]**.

§ 790.001, Fla. Stat.

"Ammunition" means an object consisting of all of the following:

a. **A fixed metallic or nonmetallic hull or casing containing a primer.**

b. **One or more projectiles, one or more bullets, or shot.**

c. **Gunpowder.**

Possession.

To prove (defendant) **"possessed" [a firearm] [or] [ammunition], the State must prove beyond a reasonable doubt that [he] [she] a) knew of the existence of the [firearm] [or] [ammunition] and b) intentionally exercised control over it.**

Give if applicable.

Control can be exercised over [a firearm] [or] [ammunition] whether it is carried on a person, near a person, or in a completely separate location. Mere proximity to [a firearm] [or] [ammunition] 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 the [firearm] [or] [ammunition] or the present ability to direct its control by another.**

Joint possession.

Possession of [a firearm] [or] [ammunition] may be sole or joint, that is, two or more persons may possess it.

Lesser Included Offense

VIOLATION OF A RISK PROTECTION ORDER —790.401(11)(b)

CATEGORY ONE	CATEGORY TWO	FLA. STAT	INS. NO.
None			
	Attempt	777.04(1)	5.1

Comment

This instruction was adopted in 2018.

8.29 CYBERINTIMIDATION BY PUBLICATION

§ 836.115, Fla. Stat.

To prove the crime of Cyberintimidation by Publication, the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) **electronically published** (victim's) **personal identification information.**

2. (Defendant) **did so with the intent to [or with the intent that a third party will use the information to] [incite violence or commit a crime against** (victim)**] [or] [threaten or harass** (victim), **placing** (victim) **in reasonable fear of bodily harm].**

§ 836.115(1)(a), Fla. Stat.

"Electronically publish" means to disseminate, post, or otherwise disclose information to an Internet site or forum.

§§ 836.115(1)(c), 817.568(1)(f), Fla. Stats.

"Personal identification information" means any name or number that may be used, alone or in conjunction with any other information, to identify a specific person, including any:

1. **Name, postal or electronic mail address, telephone number, social security number, date of birth, mother's maiden name, official state-issued or United States-issued driver license or identification number, alien registration number, government passport number, employer or taxpayer identification number, Medicaid or food assistance account number, bank account number, credit or debit card number, or personal identification number or code assigned to the holder of a debit card by the issuer to permit authorized electronic use of such card;**

2. **Unique biometric data, such as fingerprint, voice print, retina or iris image, or other unique physical representation;**

3. **Unique electronic identification number, address, or routing code;**

4. **Medical records;**

5. **Telecommunication identifying information or access device; or**

6. Other number or information that can be used to access a person's financial resources.

Give if applicable. §§ 836.115(1)(b), 817.568(1)(c), Fla. Stats.

"Harass" means to engage in conduct directed at a specific person that is intended to cause substantial emotional distress to such person and serves no legitimate purpose. "Harass" does not mean to use personal identification information for accepted commercial purposes. The term does not include constitutionally protected conduct such as organized protests or the use of personal identification information for accepted commercial purposes.

Lesser Included Offense

CYBERINTIMIDATION BY PUBLICATION — 836.115			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
None			
	Attempt	777.04(1)	5.1

Comment

This instruction was adopted on March 7, 2022.

8.30 [HARASSING] [OR] [OBSCENE] TELEPHONE CALL[S] [OR] KNOWINGLY PERMITTING [HARASSING] [OR] [OBSCENE] TELEPHONE CALL[S]

§ 365.16(1) and (2), Fla. Stat.

To prove the crime of (name of crime), **the State must prove the following [two] [three] elements beyond a reasonable doubt:**

Give as applicable.

§ 365.16(1)(a), Fla. Stat.

1. (Defendant) **made a telephone call to a location at which the person receiving the call had a reasonable expectation of privacy.**

2. **During the call,** (defendant) **made a comment, request, suggestion, or proposal that was obscene, lewd, lascivious, filthy, vulgar, or indecent.**

3. **At the time,** (defendant's) **call or language was intended by [him] [her] to abuse, threaten, or harass any person at the called number.**

§ 365.16(1)(b), Fla. Stat.

1. (Defendant) **made a telephone call, whether or not conversation ensued.**

2. **During the call,** (defendant) **did not disclose [his] [her] identity.**

3. **At the time,** (defendant) **had the intent to abuse, threaten, or harass any person at the called number.**

§ 365.16(1)(c), Fla. Stat.

1. (Defendant) **made or caused the telephone of another to repeatedly or continuously ring.**

2. **At the time,** (defendant) **had the intent to harass any person at the called number.**

§ 365.16(1)(d), Fla. Stat.

1. (Defendant) **made repeated telephone calls during which conversation ensued.**

2. (Defendant) **made the calls solely to harass any person at the called number.**

§ 365.16(2), Fla. Stat.

1. (Defendant) **knowingly permitted any telephone under [his] [her] control to be used by another person.**

2. (Defendant) **did so knowing that the telephone was being or would be used to:**

Give as applicable.

a. make a telephone call to a location at which the person receiving the call had a reasonable expectation of privacy during which the caller makes any comment, request, suggestion, or proposal which is obscene, lewd, lascivious, filthy, vulgar, or indecent with the intent to abuse, threaten, or harass any person at the called number.

b. make a telephone call, whether or not conversation ensues, without disclosing his or her identity, with the intent to threaten or harass any person at the called number.

c. make or cause the telephone of another to repeatedly or continuously ring with the intent to harass any person at the called number.

d. make repeated telephone calls, during which conversation ensues, solely to harass any person at the called number.

Definitions. Give as applicable.

§ 365.161(1), Fla. Stat.

"Obscene" means a communication which:

1. The average person applying contemporary community standards would find, taken as a whole, appeals to the prurient interests;

2. Describes, in a patently offensive way, deviate sexual intercourse, sadomasochistic abuse, sexual battery, sexual bestiality, sexual conduct, or sexual excitement; and

3. Taken as a whole, lacks serious literary, artistic, political, or scientific value.

"Deviate Sexual Intercourse" means sexual conduct between persons consisting of contact between the penis and the anus, the mouth and the penis, or the mouth and the vulva.

"**Sadomasochistic abuse" means flagellation or torture by or upon a person or the condition of being fettered, bound, or otherwise physically restrained for the purpose of deriving sexual satisfaction or satisfaction brought about as a result of sadistic violence, from inflicting harm on another or receiving such harm oneself.**

"Sexual Battery" means oral, anal, or female genital* penetration by, or union with, the sexual organ of another or the anal or female genital penetration of another, by any other object.

"Female genitals*" includes the labia minora, labia majora, clitoris, vulva, hymen, and vagina.

Give if applicable.

Lakey v. State, 113 So. 3d 90 (Fla. 5th DCA 2013).

"An object" includes a finger.

Phillips v. State, 238 So. 3d 308 (Fla. 4th DCA 2018).

"Union" means contact.

"Sexual bestiality" means any sexual act, actual or simulated, between a person and an animal involving the sex organ of the one and the mouth, anus, or female genitals of the other.

"Sexual Conduct" means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse or any act or conduct that constitutes sexual battery.

"Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

"Lewd" and "Lascivious" mean the same thing: a wicked, lustful, unchaste, licentious, or sensual intent on the part of the person doing an act.

Lesser Included Offense

HARASSING OR OBSCENE TELEPHONE CALLS OR KNOWINGLY PERMITTING HARASSING OR OBSCENE TELEPHONE CALLS — 365.16(1) AND (2)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempt	777.04(1)	5.1

Comments

*Effective October 1, 2022, the Legislature changed "vagina" to "female genitals" in sex crimes-related statutes. Judges should ensure the jury instructions contain correct statutory terms, which will depend on the date alleged in the charging document. *Flores v. State*, 391So. 3d 481 (Fla. 4th DCA 2024) is an example of an appellate court finding fundamental error when the trial judge expanded the definition of "vaginal penetration" by instructing on "female genital penetration."

As of November 2022, it was unclear whether the definition of "harass" in the stalking statute applies to this statute.

This instruction was adopted on December 21, 2022.

8.31 MALICIOUS [BATTERY] [OR] [INFLICTION OF CRUEL OR INHUMAN TREATMENT] CAUSING [GREAT BODILY HARM] [PERMANENT DISABILITY] [PERMANENT DISFIGUREMENT] BY A STATE CORRECTIONS DEPARTMENT EMPLOYEE UPON AN [INMATE] [OFFENDER]

§ 944.35(3)(a)2., Fla. Stat.

To prove the crime of (name of crime**), the State must prove the following five elements beyond a reasonable doubt:**

Give as applicable.

1. (Defendant)

a. actually and intentionally touched or struck (victim) **against [his] [her] will.**

b. intentionally caused bodily harm to (victim).

c. inflicted cruel or inhuman treatment by neglect or otherwise.

2. (Defendant) **did so with malicious intent.**

3. At the time, (defendant**) was an employee of the Florida Department of Corrections.**

4. At the time, (victim) **was an [inmate] [offender supervised in the community by the Florida Department of Corrections].**

5. In so doing, (defendant) **caused [great bodily harm] [permanent disability] [permanent disfigurement] to** (victim).

As of March 2023, there was no case law about whether the statute requires legal malice or actual malice. In the absence of case law or a statutory amendment, trial judges should instruct on malicious intent as either acting with ill will, hatred, spite, or an evil intent; or wrongfully, intentionally, and without legal justification or excuse.

Give if applicable.

"Great bodily harm" means great as distinguished from slight, trivial, minor, or moderate harm, and as such does not include mere bruises.

Lesser Included Offenses

MALICIOUS [BATTERY] [OR] [INFLICTION OF CRUEL OR INHUMAN TREATMENT] CAUSING [GREAT BODILY HARM] [PERMANENT DISABILITY] [PERMANENT DISFIGUREMENT] BY A STATE CORRECTIONS DEPARTMENT EMPLOYEE UPON AN [INMATE] [OFFENDER]—944.35(3)(a)2.

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Malicious battery upon an inmate or offender (if element 1a or 1b is charged)		944.35(3)(a)1.	--
Battery (if element 1a or 1b is charged)		784.03	8.3
	Attempt	777.04(1)	5.1
	Culpable negligence	784.05	8.9

Comments

A Department of Corrections employee is authorized to apply physical force under circumstances listed in § 944.35(1)(a), Fla. Stat. The provisions in that section are likely to be treated as an affirmative defense to this crime. As of January 2023, there is no case law about whether the burden of persuasion is on the defendant to prove the truth of the defense or on the Statfe to disprove the defense. Assuming judges treat § 944.35(1)(a), Fla. Stat. as an affirmative defense, when at issue, trial judges will also need to decide the standard of proof (preponderance of the evidence, clear and convincing, or beyond a reasonable doubt) for the party that bears the burden of persuasion.

This instruction was adopted on April 25, 2023.

8.32 HARASSMENT OR INTIMIDATION BASED ON RELIGIOUS OR ETHNIC HERITAGE [WITH A CREDIBLE THREAT]

§ 784.0493, Fla. Stat.

To prove the crime of Harassment or Intimidation Based on Religious or Ethnic Heritage [With a Credible Threat], the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) **willfully and maliciously harassed or intimidated** (victim)**.**

2. **The intimidation or harassment was based on** (victim's) **wearing or displaying any indicia relating to any religious or ethnic heritage.**

"Willfully" means intentionally, knowingly, and purposely.

As of August 2023, it was unclear whether the statute requires actual malice or legal malice. In the absence of clarification from the legislature or an appellate court, trial judges must choose one of the following:

"Maliciously" means intentionally and without any lawful justification or excuse.

"Maliciously" means with ill will, hatred, spite, or an evil intent.

"Harass" means to engage in a course of conduct directed at (victim)**, that**

1. **served no legitimate purpose;**

2. **would cause substantial emotional distress to a reasonable person; and**

3. **did cause substantial emotional distress to** (victim)**.**

"Course of conduct" means a pattern of conduct composed of a series of acts over a period of time, however short, which evidences a continuity of purpose.

"Intimidate" means that the defendant's behavior caused (victim) **to be reasonably in fear of harm.**

Give if applicable.

If you find (defendant) **guilty of Harassment or Intimidation Based on Religious or Ethnic Heritage, you must further determine whether the**

State proved beyond a reasonable doubt that in the course of committing the crime, [he] [she] made a credible threat to (victim)**.**

"Credible Threat" is defined as a verbal or nonverbal threat, or a combination of the two, including threats delivered by electronic communication or implied by a pattern of conduct, which places the person who is the target of the threat in reasonable fear for his or her safety or the safety of his or her family members or individuals closely associated with the person, and which is made with the apparent ability to carry out the threat to cause such harm. It is not necessary to prove that the person making the threat had the intent to actually carry out the threat; however, the State is required to prove the defendant was aware that a reasonable person could consider the threat as a serious expression of an intent to commit an act of violence. [The present incarceration of the person making the threat is not a bar to prosecution.]

Lesser Included Offenses*

HARASSMENT OR INTIMIDATION BASED ON RELIGIOUS OR ETHNIC HERITAGE WITH A CREDIBLE THREAT — 784.0493(4)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Harassment or intimidation based on religious/ethnic heritage (no credible threat)		784.0493(2)	8.32
	Aggravated Stalking	784.048(3)	8.7(a)
	Stalking	784.048(2)	8.6
	Attempt	777.04(1)	5.1

Comments

*When the third-degree felony in § 784.0493(4), Fla. Stat., is charged, most judges will likely require the jurors to answer an interrogatory on the verdict form about whether the defendant made a credible threat. If so, there would be no lesser included crime of the first-degree misdemeanor in § 784.0493(3), Fla. Stat.

A special instruction may be necessary if the defendant claims that his or her behavior was protected by the First Amendment.

This instruction was adopted on September 8, 2023.

8.33 BATTERY BY [THROWING] [TOSSING] [PROJECTING] [EXPELLING] [BLOOD] [SEMINAL FLUID] [URINE] [OR] [FECES] ON A CHILD

§ 784.085, Fla. Stat.

To prove the crime of Battery by [Throwing] [Tossing] [Projecting] [Expelling] [Blood] [Seminal Fluid] [Urine] [or] [Feces] on a Child, the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **[knowingly caused] [or] [attempted to cause]** (victim) **to come into contact with [blood] [seminal fluid] [urine] [or] [feces].**

2. (Defendant) **did so by [throwing] [tossing] [projecting] [or] [expelling] such [fluid] [or] [material[s]].**

3. **At the time,** (victim) **was under 18 years of age.**

Lesser Included Offenses

BATTERY BY [THROWING] [TOSSING] [PROJECTING] [EXPELLING] [BLOOD] [SEMINAL FLUID] [URINE] [OR] [FECES] ON A CHILD — 784.085

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Battery	784.03	8.3
	Attempted Battery	777.04, 784.03	5.1, 8.3
	Assault	784.011	8.1
	Attempted Assault	777.04, 784.011	5.1, 8.1

Comments

Because the statute contains an exception clause for the defendant's age, the Committee on Standard Jury Instructions in Criminal Cases concluded it is likely the courts will determine that § 784.085(1), Fla. Stat. creates an affirmative defense, not an element, that the defendant was under the age of 18.

This instruction was adopted on May 21, 2024.

8.34 NON-CONSENSUAL [INSTALLATION] [USE] OF A TRACKING [DEVICE] [APPLICATION]

§ 934.425(2) and (5), Fla. Stat.

To prove the crime of Non-Consensual [Installation] [Use] of a Tracking [Device] [Application], the State must prove the following two elements beyond a reasonable doubt:

Give 1a or 1b or both as applicable.

1. (Defendant) **knowingly**

a. installed or placed a tracking [device] [application] on (victim's) **property.**

b. used a tracking [device] [application] to determine the location or movement of (victim's) **[person] [or] [property].**

2. (Defendant) **did so without** (victim's) **consent**.

Give as applicable. § 934.425, Fla. Stat.

"Tracking device" means any device whose primary purpose is to reveal its location or movement by the transmission of electronic signals.

"Tracking application" means any software program whose primary purpose is to track or identify the location or movement of an individual.

Inference. Give if applicable.

You may infer (victim's) **consent was revoked if:**

(Victim) **and** (defendant) **were lawfully married but a petition for dissolution of marriage was filed.**

Either (victim) **or** (defendant) **filed an injunction for protection against the other person pursuant to § [741.30] [741.315] [784.046] [784.0435], Florida Statutes.**

§ 934.425(5), Fla. Stat. Give if applicable.

If you find (defendant) **guilty of Non-Consensual [Installation] [Use] of a Tracking [Device] [Application], you must further determine whether the State proved beyond a reasonable doubt that [he] [she] committed the crime to commit or to facilitate the commission of a[n]** (insert the name(s) of the dangerous crime(s) listed in § 907.041(5)(a), Fla. Stat.)

A[n] (insert the name(s) of the dangerous crime(s)) **is defined as follows:** (insert the elements of the dangerous crime(s))**.**

Lesser Included Offense

NON-CONSENSUAL [INSTALLATION] [USE] OF A TRACKING [DEVICE] [APPLICATION] — 934.425(2)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempt	777.04(1)	5.1

Comments

The victim in elements #1 and #2 does not have to be one person but cannot be a business entity, which is defined in §934.425(1)(a), Fla. Stat., as any form of corporation, partnership, association, cooperative, joint venture, business trust, or sole proprietorship that conducts business in this state.

§ 934.425(4), Fla. Stat., contains circumstances under which this crime does not apply. The courts may determine those circumstances should be treated as affirmative defenses. If so, trial judges will need to determine which party has the burden of persuasion and what that burden is (preponderance, clear and convincing, or beyond a reasonable doubt).

This instruction was adopted on February 21, 2025, and amended on March 20, 2026.

CHAPTER 9 — KIDNAPING, FALSE IMPRISONMENT, INTERFERENCE WITH CUSTODY, HUMAN TRAFFICKING

9.1 KIDNAPPING

§ 787.01, Fla. Stat.

To prove the crime of Kidnapping, the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **[forcibly] [secretly] [by threat]**

[confined]

[abducted]

[imprisoned]

(victim) **against [his] [her] will.**

2. (Defendant) **had no lawful authority to do so.**

3. (Defendant) **acted with intent to:**

Give 3a, 3b, 3c, or 3d as applicable. If 3b is given, define applicable felony.

a. hold (victim) **for ransom or reward or as a shield or hostage.**

b. commit or facilitate the commission of (applicable felony)**.**

c. inflict bodily harm upon or to terrorize (victim) **or another person.**

d. interfere with the performance of any governmental or political function.

Give when 3b is alleged. Faison v. State, 426 So. 2d 963 (Fla. 1983).

To be Kidnapping, the [confinement] [abduction] [imprisonment]

a. must not be slight, inconsequential, or merely incidental to the (applicable felony)**;**

b. must not be of the kind inherent in the nature of the (applicable felony)**; and**

c. must have some significance independent of the (applicable felony) **in that it makes the** (applicable felony) **substantially**

easier of commission or substantially lessens the risk of detection.

Give if applicable. Bishop v. State, 46 So. 3d 75 (Fla. 5th DCA 2010).

"Secretly" means the defendant intended to isolate or insulate (victim) **from meaningful contact or meaningful communication with the public.**

Read only if confinement is alleged and victim is under 13 years of age.

Confinement of a child under the age of 13 is against the child's will if such confinement is without the consent of the child's parent or legal guardian.

If a violation of § 787.01(3), Fla. Stat., is charged, instruct as follows:

If you find the defendant guilty of Kidnapping, you must also determine whether the State has proved the following aggravating circumstances beyond a reasonable doubt:

1. **At the time of the Kidnapping,** (victim) **was under 13 years of age;**

   and

2. **In the course of committing the Kidnapping,** (defendant) **committed [an Aggravated Child Abuse] [a Sexual Battery against** (victim)**] [a Lewd or Lascivious Battery] [a Lewd or Lascivious Molestation] [a Lewd or Lascivious Conduct] [a Lewd or Lascivious Exhibition] [a Procuring a Child for Prostitution upon** (victim)**] [a Forcing, Compelling, or Coercing Another to Become a Prostitute upon** (victim)**] [an Exploitation of a Child upon** (victim)**] [Human Trafficking for Commercial Sexual Activity in which [a Child under the Age of 18] [an adult believed by the defendant to be a child younger than 18 years of age] [a Mentally Defective Person] [or] [a Mentally Incapacitated Person] was Involved] [Capital Human Trafficking of Vulnerable Persons for Sexual Exploitation].** *Define applicable felony unless included in other instructions.*

If the State has charged and is seeking the adult-on-minor sex offense multiplier in § 921.0024, Fla. Stat., instruct as follows. Alleyne v. United States, 133 S. Ct. 2151 (2013).

If you find the defendant guilty of Kidnapping, you must also determine whether the State has proved the following four elements beyond a reasonable doubt:

1. **At the time of the Kidnapping,** (defendant) **was 18 years of age or older.**

2. **At the time of the Kidnapping,** (victim) **was younger than 18 years of age.**

3. **The Kidnapping was committed on or after October 1, 2014.**

4. **In the course of committing the Kidnapping,** (defendant) **committed [Sexual Battery] [Lewd or Lascivious Battery] [Lewd or Lascivious Molestation] [Lewd or Lascivious Conduct] [Lewd or Lascivious Exhibition] [Lewd or Lascivious Exhibition Over a Computer Service] against** (same victim as in element #2)**.** *Define applicable felony unless included in other instructions.*

§ 787.001, Fla. Stat. Give only if applicable.

The defendant's ignorance of (victim's) **age is not a defense. Additionally, the misrepresentation of** (victim's) **age by any person or the defendant's genuine belief that** (victim) **was over a specified age is not a defense.**

Lesser Included Offenses*

KIDNAPPING* — 787.01			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
False imprisonment**		787.02	9.2
	Attempt	777.04(1)	5.1
	Aggravated assault	784.021	8.2
	Battery	784.03	8.3
	Assault	784.011	8.1

Comments

The Kidnapping statute does not exempt a parent from criminal liability for kidnapping his or his own child. *See Davila v. State*, 75 So. 3d 192 (Fla. 2011).

*If the State alleged the life felony of Kidnapping with aggravating circumstances in § 787.01(3), Fla. Stat., then those aggravating circumstances would be lesser-included crimes.

*If the State charged the defendant in a way to score the adult-on-minor sex offense multiplier in § 921.0024(1)(b), Fla. Stat., then those sex crimes would be lesser-included crimes.

** In *State v. Sanborn*, 533 So. 2d 1169 (Fla. 1988), the Florida Supreme Court held that False Imprisonment was a necessary lesser included offense of Kidnapping. However, in *Smith v. State*, 283 So. 3d 817 (Fla. 4th DCA 2019), the Fourth District Court of Appeal suggested that False Imprisonment is not a necessary lesser included offenses in every instance because the Kidnapping statute contains the act of confining, abducting, or imprisoning the victim while the False Imprisonment statute contains the additional option of the defendant restraining the victim.

This instruction was adopted in 1981 and amended in 1985 [477 So. 2d 985], 2014 [152 So. 3d 475], 2015 [167 So. 3d 443], 2017 [211 So. 3d 995], on April 3, 2020, and on March 20, 2026.

9.2 FALSE IMPRISONMENT

§ 787.02, Fla. Stat.

To prove the crime of False Imprisonment, the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) **[forcibly] [secretly] [by threat]**

[confined]

[abducted]

[imprisoned]

[restrained]

(victim) **against [his] [her] will.**

2. (Defendant) **had no lawful authority to do so.**

Give if applicable. Bishop v. State, 46 So. 3d 75 (Fla. 5th DCA 2010).

"Secretly" means the defendant intended to isolate or insulate (victim) **from meaningful contact or meaningful communication with the public.**

Read only if confinement is alleged and victim is under 13 years of age.

Confinement of a child under the age of 13 is against the child's will if such confinement is without the consent of the child's parent or legal guardian.

If a violation of § 787.02(3), Fla. Stat., is charged, instruct as follows:

If you find the defendant guilty of False Imprisonment, you must also determine whether the State has proved the following aggravating circumstances beyond a reasonable doubt:

1. **At the time of the False Imprisonment,** (victim) **was under 13 years of age;**

   and

2. **In the course of committing the False Imprisonment,** (defendant) **committed [an Aggravated Child Abuse] [a Sexual Battery against** (victim)**] [a Lewd or Lascivious Battery] [a Lewd or Lascivious**

Molestation] [a Lewd or Lascivious Conduct] [a Lewd or Lascivious Exhibition] [a Procuring a Child for Prostitution upon (victim)**] [a Forcing, Compelling, or Coercing Another to Become a Prostitute upon** (victim)**] [an Exploitation of a Child upon** (victim)**] [Human Trafficking for Commercial Sexual Activity in which [a Child under the Age of 18] [an adult believed by the defendant to be a child younger than 18 years of age] [a Mentally Defective Person] [or] [a Mentally Incapacitated Person] was Involved] [Capital Human Trafficking of Vulnerable Persons for Sexual Exploitation].** *Define applicable felony unless included in other instructions.*

If the State has charged and is seeking the adult-on-minor sex offense multiplier in § 921.0024(1)(b), Fla. Stat., instruct as follows. Alleyne v. United States, 133 S. Ct. 2151 (2013).

If you find the defendant guilty of False Imprisonment, you must also determine whether the State has proved the following four elements beyond a reasonable doubt:

1. **At the time of the False Imprisonment,** (defendant) **was 18 years of age or older.**

2. **At the time of the False Imprisonment,** (victim) **was younger than 18 years of age.**

3. **The False Imprisonment was committed on or after October 1, 2014.**

4. **In the course of committing the False Imprisonment,** (defendant) **committed [Sexual Battery] [Lewd or Lascivious Battery] [Lewd or Lascivious Molestation] [Lewd or Lascivious Conduct] [Lewd or Lascivious Exhibition] [Lewd or Lascivious Exhibition Over a Computer Service] against** (same victim as in element #2)**.** *Define applicable felony unless included in other instructions.*

§ 787.001, Fla. Stat. Give only if applicable.

The defendant's ignorance of (victim's) **age is not a defense. Additionally, the misrepresentation of** (victim's) **age by any person or the defendant's genuine belief that** (victim) **was over a specified age is not a defense.**

Lesser Included Offenses*

FALSE IMPRISONMENT* — 787.02			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
None			
	Attempt	777.04(1)	5.1
	Battery	784.03	8.3
	Assault	784.011	8.1

Comments

The *Faison* test for determining whether a particular confinement or movement during the commission of another crime constitutes Kidnapping, does not apply to False Imprisonment. *Sanders v. State,* 905 So. 2d 271 (Fla. 2d DCA 2005).

*If the State alleged the first-degree felony punishable by life of False Imprisonment with aggravating circumstances in § 787.02(3), Fla. Stat., then those aggravating circumstances would be lesser-included crimes.

*If the State charged the defendant in a way to score the adult-on-minor sex offense multiplier in § 921.0024(1)(b), Fla. Stat., then those sex crimes would be lesser-included crimes.

This instruction was adopted in 1981 and was amended in 1985 [477 So. 2d 985], 1998 [723 So. 2d 123], 2014 [152 So. 3d 475], 2015 [167 So. 3d 443], 2017 [211 So. 3d 995], and on March 20, 2026.

9.3(a) INTERFERENCE WITH CUSTODY FROM A PARENT, GUARDIAN, OR CUSTODIAN

§ 787.03(1), Fla. Stat

To prove the crime of Interference with Custody from a Parent, Guardian, or Custodian, the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **knowingly or recklessly [took or enticed] [aided, abetted, hired, or otherwise procured another to take or entice]** (victim) **from the custody of**

Give a.–d. as applicable.

a. [his] [her] parent.

b. [his] [her] guardian.

c. a public agency having lawful charge of (victim)**.**

d. a lawful custodian of (victim)**.**

2. (Defendant) **had no lawful authority to do so.**

3. At the time, (victim) **was [a person under 18 years of age] [an incompetent person].**

In Lindemuth v. State, 247 So. 3d 635 (Fla. 3d DCA 2018), the appellate court held that a trial judge did not err by instructing on the following definition of "entice."

"Entice" means to lure, induce, tempt, incite, or persuade a person to do a thing.

Give if applicable. § 787.001, Fla. Stat.

Ignorance of (victim's) **age is not a defense. Misrepresentation of** (victim's) **age by any person or a genuine belief that** (victim) **was over a specified age is also not a** defense**.**

Give if applicable. As of November 2025, it was unclear what definition of "incompetent person" applies to § 787.03, Fla. Stat. The definition below comes from § 941.38, Fla. Stat.

An incompetent person is a person who because of mental illness, intellectual disability, senility, excessive use of drugs or alcohol, or other

mental incapacity is incapable of managing his or her property or caring for himself or herself or both.

§ 787.03(4), Fla. Stat. contains defenses that may be interpreted as affirmative defenses. If treated as affirmative defenses, one or more of the paragraphs below should be given only if the defendant satisfies his or her burden of producing evidence that supports the defense.

The statute and case law are silent as to (1) which party bears the burden of persuasion of the affirmative defense and (2) the standard for the burden of persuasion. Under the common law, defendants had the burden of persuasion on affirmative defenses by a preponderance of the evidence. See Dixon v. United States, 548 U.S. 1 (2006). As of November 2025, in the absence of case law or a statutory change, trial judges must resolve the issue via a special instruction.

It is a defense to the crime of Interference with Custody from a Parent, Guardian, or Custodian if (defendant) **had reasonable cause to believe that [his] [her] action was necessary to preserve** (victim) **from danger to [his] [her] welfare.**

It is a defense to the crime of Interference with Custody from a Parent, Guardian, or Custodian if (defendant) **was a victim of an act of domestic violence or had reasonable cause to believe that [he] [she] was about to become a victim of domestic violence and [he] [she] had reasonable cause to believe that the action was necessary in order for [him] [her] to escape from, or protect [himself] [herself] from, the domestic violence or to preserve** (victim) **from exposure to the domestic violence.**

"Domestic violence" means (insert necessary definitions from § 741.28, Fla. Stat.)**.**

It is a defense to the crime of Interference with Custody from a Parent, Guardian, or Custodian if (victim) **was taken away at [his] [her] own instigation without enticement and without purpose to commit a criminal offense with or against** (victim) **and** (defendant) **establishes that it was reasonable to rely on the instigating acts of** (victim)**.**

Lesser Included Offenses*

INTERFERENCE WITH CUSTODY FROM A PARENT, GUARDIAN, OR CUSTODIAN — 787.03(1)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	False Imprisonment	787.02	9.2
	Attempt*	777.04(1)	5.1

Comments

§ 787.03(6), Fla. Stat., contains a defense that applies only if the defendant took certain steps. A special instruction will be necessary in those cases.

*As of November 2025, it was unclear whether Attempted Interference with Custody is a lesser included offense or whether the word “entice” makes Attempted Interference with Custody the same crime as a completed Interference with Custody.

This instruction was adopted on December 12, 2025.

9.3(b) INTERFERENCE WITH CUSTODY IN THE ABSENCE OF A COURT ORDER

§ 787.03(2), Fla. Stat.

To prove the crime of Interference with Custody in the Absence of a Court Order, the State must prove the following five elements beyond a reasonable doubt:

1. (Defendant) **took, detained, concealed, or enticed away** (victim)**.**

2. (Defendant) **did so with malicious intent to deprive another person of [his] [her] right to custody of** (victim)**.**

3. **At the time,** (defendant) **was a [natural or adoptive parent of** (victim)**] [stepparent of** (victim**)] [legal guardian of** (victim**)] [relative of** (victim) **who had custody of** (victim)**.**

4. **At the time, there was no court order determining rights to custody or visitation with** (victim).

5. **At the time,** (victim) **was [a person under 18 years of age] [an incompetent person].**

In Lindemuth v. State, 247 So. 3d 635 (Fla. 3d DCA 2018), the appellate court held that a trial judge did not err by instructing on the following definition of "entice."

"Entice" means to lure, induce, tempt, incite, or persuade a person to do a thing.

Give if applicable. § 787.001, Fla. Stat.

Ignorance of (victim's) **age is not a defense. Misrepresentation of** (victim's) **age by any person or a genuine belief that** (victim) **was over a specified age is also not a defense.**

Give if applicable. As of November 2025, it was unclear what definition of "incompetent person" applies to § 787.03, Fla. Stat. The definition below comes from
§ 941.38, Fla. Stat.

An incompetent person is a person who because of mental illness, intellectual disability, senility, excessive use of drugs or alcohol, or other mental incapacity is incapable of managing his or her property or caring for himself or herself or both.

§ 787.03(4), Fla. Stat. contains defenses that may be interpreted as affirmative defenses. If treated as affirmative defenses, one or more of the paragraphs below should be given only if the defendant satisfies his or her burden of producing evidence that supports the defense.

The statute and case law are silent as to (1) which party bears the burden of persuasion of the affirmative defense and (2) the standard for the burden of persuasion. Under the common law, defendants had the burden of persuasion on affirmative defenses by a preponderance of the evidence. See Dixon v. United States, 548 U.S. 1 (2006). As of November 2025, in the absence of case law or a statutory change, trial judges must resolve the issue via a special instruction.

It is a defense to the crime of Interference with Custody in the Absence of a Court Order if (defendant) **had reasonable cause to believe that [his] [her] action was necessary to preserve** (victim) **from danger to [his] [her] welfare.**

It is a defense to the crime of Interference with Custody in the Absence of a Court Order if (defendant) **was a victim of an act of domestic violence or had reasonable cause to believe that [he] [she] was about to become a victim of domestic violence and [he] [she] had reasonable cause to believe that the action was** necessary **in order for [him] [her] to escape from, or protect [himself] [herself] from, the domestic violence or to preserve** (victim) **from exposure to the domestic violence.**

"Domestic violence" means (insert necessary definitions from § 741.28, Fla. Stat.)**.**

It is a defense to the crime of Interference with Custody in the Absence of a Court Order if (victim) **was taken away at [his] [her] own instigation without enticement and without purpose to commit a criminal offense with or against** (victim) **and** (defendant) **establishes that it was reasonable to rely on the instigating acts of** (victim)**.**

Lesser Included Offenses*

INTERFERENCE WITH CUSTODY IN THE ABSENCE OF A COURT ORDER — 787.03(2)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	False Imprisonment	787.02	9.2
	Attempt*	777.04(1)	5.1

Comments

*As of November 2025, it was unclear whether Attempted Interference with Custody is a lesser included offense or whether the word “entice away” makes Attempted Interference with Custody the same crime as a completed Interference with Custody.

§ 787.03(6), Fla. Stat., contains a defense that applies only if the defendant took certain steps. A special instruction will be necessary in those cases.

This instruction was adopted on December 12, 2025.

9.4 CAPITAL HUMAN TRAFFICKING OF VULNERABLE PERSONS FOR SEXUAL EXPLOITATION

§ 787.06(5), Fla. Stat.

To prove the crime of Capital Human Trafficking of Vulnerable Persons for Sexual Exploitation, the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **knowingly [initiated] [organized] [planned] [financed] [directed] [managed] [or] [supervised] a venture that subjected** (victim) **to human trafficking for sexual exploitation.**

2. **At the time,** (victim) **was [under 12 years of age] [mentally defective] [or] [mentally incapacitated].**

3. **At the time,** (defendant) **was 18 years of age or older.**

"Venture" means any group of two or more individuals associated in fact, whether or not a legal entity.

"Human trafficking" means [transporting] [soliciting] [recruiting] [harboring] [providing] [enticing] [maintaining] [purchasing] [patronizing] [procuring] [or] [obtaining] another person for the purpose of exploitation of that person.

***"Sexual exploitation" means the oral, anal, or female genital penetration by, or union with, the sexual organ of another or the anal, or female genital penetration of another by any other object, without the consent of** (victim)**. [Sexual exploitation does not include an act done for a genuine fide medical purpose.]**

"An object" includes a finger.

"Union" means contact.

"Female genitals" includes the labia minora, labia majora, clitoris, vulva, hymen, and vagina.

"Maintain" means in relation to labor or services, to secure or make possible continued performance thereof, regardless of any initial agreement on the part of a victim to perform such type service.

"Obtain" means, in relation to labor, commercial sexual activity, or services, to receive, take possession of, or take custody of another person or to secure performance thereof.

"Mentally incapacitated" means that a person is rendered temporarily incapable of appraising or controlling his or her conduct due to the influence of a narcotic, anesthetic, or intoxicating substance administered to that person without his or her consent, or due to any other act committed upon that person without his or her consent.

"Mentally defective" means that a person suffers from a mental disease or defect that renders that person temporarily or permanently incapable of appraising the nature of his or her conduct.

The defendant's ignorance of (victim's) **age,** (victim's) **misrepresentation of [his] [her] age, or the defendant's bona fide belief of** (victim's) **age is not a defense to the crime charged. "Bona fide" means genuine.**

(Victim's) **lack of chastity or the willingness or consent of** (victim) **is not a defense to this crime if [he] [she] was under 18 years of age at the time of the crime.**

§ 787.001, Fla. Stat. Give only if applicable.

The defendant's ignorance of (victim's) **age is not a defense. Additionally, the misrepresentation of** (victim's) **age by any person or the defendant's genuine belief that** (victim) **was over a specified age is not a defense.**

Lesser Included Offense

CAPITAL HUMAN TRAFFICKING OF VULNERABLE PERSONS FOR SEXUAL EXPLOITATION — 787.06(5)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Human Trafficking	787.06(3)	9.5

Comments

*"Sexual exploitation" means any violation of § 794.011, Fla. Stat., excluding
§ 794.011(10), Fla. Stat. Accordingly, the definition of "sexual exploitation" may need to be modified depending on the evidence.

This instruction was adopted on March 20, 2026.

9.5 HUMAN TRAFFICKING BY A [PARENT] [LEGAL GUARDIAN] [PERSON WITH CUSTODY OR CONTROL] OF A MINOR

§ 787.06(4), Fla. Stat.

To prove the crime of Human Trafficking By a [Parent] [Legal Guardian] [Person with Custody or Control] of a Minor, the State must prove the following four elements beyond a reasonable doubt:

1. (Defendant) **[was a parent] [was a legal guardian] [had custody or control] of** (victim)**.**

2. (Defendant) **[sold or otherwise transferred custody or control of** (victim)**] [offered to sell or offered to otherwise transfer custody of** (victim)**].**

3. (Defendant) **did so [knowing] [or] [in reckless disregard of the fact] that as a consequence of the sale or transfer,** (victim) **would be subjected to human trafficking.**

4. At the time, (victim) **was under the age of 18 years.**

"Human trafficking" means [transporting] [soliciting] [recruiting] [harboring] [providing] [enticing] [maintaining] [purchasing] [patronizing] [procuring] [or] [obtaining] another person for the purpose of exploitation of that person.

"Maintain" means in relation to labor or services, to secure or make possible continued performance thereof, regardless of any initial agreement on the part of a victim to perform such type service.

"Obtain" means, in relation to labor, commercial sexual activity, or services, to receive, take possession of, or take custody of another person or to secure performance thereof.

"Commercial sexual activity" means:

a. (name of chapter 796 crime). (Name of chapter 796 crime) **is defined as** (*insert definition of Chapter 796 crime*)**.**

b. an attempt to commit (name of chapter 796 crime)**. An attempt to commit** (name of chapter 796 crime) **is defined as** (*insert definition of attempt in Instruction 5.1 and then define the Chapter 796 crime*)**.**

c. sexually explicit performances. "Sexually explicit performance" means an act or show, whether public or private,

that is live, photographed, recorded, or videotaped and intended to arouse or satisfy the sexual desires or appeal to the prurient interest.

d. the production of pornography.

Give if requested.

(Victim's) **lack of chastity or the willingness or consent of** (victim) **is not a defense if [he] [she] was under 18 years of age at the time of the offense.**

§ 787.001, Fla. Stat. Give only if applicable.

The defendant's ignorance of (victim's) **age is not a defense. Additionally, the misrepresentation of** (victim's) **age by any person or the defendant's genuine belief that** (victim) **was over a specified age is not a defense.**

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comments

Before April 2026, this instruction had been numbered as 29.25.

This instruction was adopted in 2013 [131 So. 3d 692] and amended in 2015 [176 So. 3d 938], 2018 [242 So. 3d 347], on January 7, 2022, and on March 20, 2026.

9.6 HUMAN SMUGGLING

§ 787.07, Fla. Stat.

To prove the crime of Human Smuggling, the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) **knowingly and willfully transported** (alien) **into Florida.**

2. **At the time,** (defendant) **knew or reasonably should have known:**

   a. (alien) **entered the United States in violation of law;**

   and

   b. (alien) **had not been inspected by the Federal Government since [his] [her] unlawful entry from another country.**

"Willfully" means intentionally and purposely.

Give the following paragraphs only if applicable.

If the defendant knowingly and willfully presented false identification or gave false information to a law enforcement officer who was conducting an investigation of this Human Smuggling statute, you may infer the defendant was aware that (alien) **entered the United States in violation of law and had not been inspected by the Federal Government since [his] [her] unlawful entry.**

If you find the defendant guilty of Human Smuggling, you must also determine whether the State proved beyond a reasonable doubt that (alien) **was less than 18 years of age at the time of the Human Smuggling.**

The defendant's ignorance of (victim's) **age is not a defense. Additionally, the misrepresentation of** (victim's) **age by any person or the defendant's genuine belief that** (victim) **was over a specified age is not a defense.**

A person commits a separate offense of Human Smuggling for each individual transported in violation of elements 1. and 2. above. If you find the defendant guilty of Human Smuggling, you must also determine whether the State proved beyond a reasonable doubt that [he] [she] committed five or more separate offenses of Human Smuggling during a single episode.

*§ 787.07(5), Fla. Stat.**

Now that you have found the defendant guilty of Human Smuggling, you must also determine whether the State proved beyond a reasonable doubt that the defendant was previously convicted of Human Smuggling.

"Convicted" means a determination of guilt that was the result of a plea or a trial, regardless of whether adjudication was withheld or a plea of nolo contendere was entered.

Lesser Included Offense

HUMAN SMUGGLING — 787.07			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
None			
	Attempt	777.04	5.1

Comments

There are multiple federal laws an alien could violate by entering the United States. The Committee on Standard Jury Instructions in Criminal Cases chose not to list those federal laws because it believes the State will likely need to call an immigration officer or other federal agent as a witness to prove Human Smuggling.

*As of February 2026, it was unclear whether the existence of a prior conviction is an element of Human Smuggling (as a second-degree felony) or a recidivist factor to be proven to the trial judge under a preponderance of the evidence standard at sentencing. Generally, it would be improper to allow the jury to hear about a prior conviction. Therefore, if the information or indictment contains an allegation of one or more prior convictions and if a prior conviction is treated an element, do not read that allegation and do not send the information or indictment into the jury room. If the defendant is found guilty, the historical fact of a prior conviction should be determined by the jury beyond a reasonable doubt in a bifurcated proceeding. *State v. Harbaugh*, 754 So. 2d 691 (Fla. 2000).

Before April 2026, this instruction had been numbered as 29.10.

The instruction was adopted on December 15, 2023, and amended on March 20, 2026.

9.7 [ATTEMPTED] LURING OR ENTICING A CHILD

§ 787.025, Fla. Stat.

To prove the crime of [Attempted] Luring or Enticing a Child, the State must prove the following four elements beyond a reasonable doubt:

1. (Defendant) **intentionally lured or enticed [attempted to lure or entice] (victim*)* into or out of a [structure] [dwelling] [conveyance].**

2. **[He] [She] did so for an unlawful purpose.**

3. **At the time,** (victim) **was under the age of 14.**

4. **At the time,** (defendant) **was 18 years of age or older.**

The unlawful purpose in element #2 must be for a purpose other than committing this crime.

Give as applicable.

"Structure" means a building of any kind, either temporary or permanent, that has a roof over it, and the enclosed space of ground and outbuildings immediately surrounding that structure. [The enclosure need not be continuous as it may have an ungated opening for entering and exiting.]

"Dwelling" means a building [or conveyance] of any kind, either temporary or permanent, mobile or immobile, that has a roof over it and is designed to be occupied by people lodging therein at night, together with the enclosed space of ground and outbuildings immediately surrounding it. [The enclosure need not be continuous as it may have an ungated opening for entering and exiting.]

"Conveyance" means any motor vehicle, ship, vessel, railroad car, trailer, aircraft, or sleeping car.

§ 787.001, Fla. Stat. Give only if applicable.

The defendant's ignorance of (victim's) **age is not a defense. Additionally, the misrepresentation of** (victim's) **age by any person or the defendant's genuine belief that** (victim) **was over a specified age is not a defense.**

Give as applicable if the defendant met his or her burden of production on the affirmative defense. Neither § 787.025, Fla. Stat., nor case law, as of

February 2026, explain (1) which party bears the burden of persuasion of the affirmative defense and (2) the standard for the burden of persuasion. Under the common law, defendants had the burden of persuasion on affirmative defenses by a preponderance of the evidence. In the absence of case law, trial judges must resolve the issue via a special instruction.

It is a defense to the crime of [Attempted] Luring or Enticing a Child if:

a. The defendant reasonably believed that [his] [her] action was necessary to prevent (victim) **from being seriously injured.**

b. The defendant's actions were reasonable under the circumstances and the defendant did not have any intent to harm the health, safety, or welfare of (victim)**.**

Lesser Included Offenses

The Committee on Standard Instructions in Criminal Cases identified no lesser included offenses.

Comments

Before October 1, 2025, § 787.025, Fla. Stat., required the state to prove the child was under the age of 12. The Legislature changed the victim's age requirement to under 14 years of age in Chapter 2025-132, Laws of Florida.

§ 787.025(2), Fla. Stat., is written in a way that makes it an element of the crime that the defendant's act was done for a purpose other than a lawful purpose. However, § 787.025(3)(b), Fla. Stat., states that it is an affirmative defense if the defendant's act was done for a lawful purpose. As of February 2026, there was no case law that explained whether the defendant's mental state is an element or an affirmative defense. In an abundance of caution, the Committee on Standard Jury Instructions in Criminal Cases made the defendant's mental state an element.

A person who violates § 787.025, Fla. Stat., and who was previously convicted of § 787.025, Fla. Stat., or of a violation of chapter 794, § 800.04, Fla. Stat., § 847.0135(5), Fla. Stat., or a similar law of another jurisdiction, commits a second degree felony. For purpose of § 787.025, Fla. Stat., a conviction does not require an adjudication of guilt. As of February 2026, it was undetermined whether the fact of the prior conviction is a recidivism factor that can be proven to the judge at sentencing or whether it is an element of the crime that must be proven to the jury under the beyond a reasonable doubt standard. Generally, a jury should not be informed of a prior conviction before

the verdict. If treated as an element, the existence of the prior conviction should be determined in a bifurcated proceeding.

This instruction was adopted on March 20, 2026.

9.8 HUMAN TRAFFICKING

§ 787.06(3), Fla. Stat.

To prove the crime of Human Trafficking, the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) **knowingly, or in reckless disregard of the facts, [engaged in] [attempted to engage in] [benefited financially by receiving something of value from participation in a venture that subjected a person to] human trafficking.**

Give as applicable.

2. *§ 787.06(3)(a)1, Fla. Stat.*

The human trafficking was for the labor or services of [a child] [or] [an adult believed by (defendant) **to be a child].**

§ 787.06(3)(a)2, Fla. Stat.

The human trafficking involved (defendant's) **use of coercion for the labor or services of an adult.**

§ 787.06(3)(b), Fla. Stat.

The human trafficking involved (defendant's) **use of coercion for commercial sexual activity of an adult.**

§ 787.06(3)(c)1, Fla. Stat.

The human trafficking was for the labor or services of [a child] [or] [an adult believed by (defendant) **to be a child], who was an unauthorized alien.**

§ 787.06(3)(c)2, Fla. Stat.

The human trafficking involved (defendant's) **use of coercion for the labor or services of an adult who was an unauthorized alien.**

§ 787.06(3)(d), Fla. Stat.

The human trafficking involved (defendant's) **use of coercion for commercial sexual activity of an adult who was an unauthorized alien.**

§ 787.06(3)(e)1, Fla. Stat.

The human trafficking was for the labor or services of [a child] [or] [an adult believed by (defendant) **to be a child], by the transfer or transport of the [child] [or] [person believed to be a child], from outside Florida to within this state.**

§ 787.06(3)(e)2, Fla. Stat.

The human trafficking involved (defendant's) **use of coercion for the labor or services of an adult by the transfer or transport of the adult from outside Florida to within this state.**

§ 787.06(3)(f)1, Fla. Stat.

The human trafficking was for commercial sexual activity of [a child] [or] [an adult believed by (defendant) **to be a child], by the transfer or transport of the [child] [or] [person believed to be a child], from outside Florida to within this state.**

§ 787.06(3)(f)2, Fla. Stat.

The human trafficking involved (defendant's) **use of coercion for commercial sexual activity of an adult by the transfer or transport of the adult from outside Florida to within this state.**

§ 787.06(3)(g), Fla. Stat.

The human trafficking was for commercial sexual activity in which [a child] [or] [an adult believed by (defendant) **to be a child] [a person who is mentally defective or mentally incapacitated] was involved.**

Reclassification. § 787.06(8), Fla. Stat. Give if applicable.

If you found (defendant) **guilty of Human Trafficking, you must further determine whether the State proved beyond a reasonable doubt that during the commission of the Human Trafficking, [he] [she] caused [great bodily harm] [or] [permanent disability] [or] [permanent disfigurement to [another person] [**(victim)**].**

Give in all cases.

§ 787.06(2)(d), Fla. Stat.

"Human trafficking" means [transporting] [soliciting] [recruiting] [harboring] [providing] [enticing] [maintaining] [purchasing] [patronizing] [procuring] [or] [obtaining] another person for the purpose of exploitation of that person.

"Child" means a person younger than 18 years of age.

"Adult" means a person 18 years of age or older.

Give if applicable.

Wheeler v. State, 203 So. 3d 1007 (Fla. 4th DCA 2016).

"Great bodily harm" means great as distinguished from slight, trivial, minor, or moderate harm, and as such does not include mere bruises.

§ 787.06(2)(a), Fla. Stat.

"Coercion" means:

1. **Using or threatening to use physical force against any person;**

2. **Restraining, isolating, or confining or threatening to restrain, isolate, or confine any person without lawful authority and against her or his will;**

3. **Using lending or other credit methods to establish a debt by any person when labor or services are pledged as a security for the debt, if the value of the labor or services as reasonably assessed is not applied toward the liquidation of the debt, the length and nature of the labor or services are not respectively limited and defined;**

4. **Destroying, concealing, removing, confiscating, withholding, or possessing any actual or purported passport, visa, or other immigration document, or any other actual or purported government identification document, of any person;**

5. **Causing or threatening to cause financial harm to any person;**

6. **Enticing or luring any person by fraud or deceit; or**

7. Providing a controlled substance as outlined in Schedule [I] [II] of Florida Statute 893.03 to any person for the purpose of exploitation of that person.

(Name of controlled substance) **is a Schedule [I] [II] drug within Florida Statute 893.03.**

Give as applicable.

§ 787.06(2)(b), Fla. Stat.

"Commercial sexual activity" means:

a. (name of chapter 796 crime)**.** (Name of chapter 796 crime) **is defined as** (*insert definition of Chapter 796 crime*)**.**

b. an attempt to commit (name of chapter 796 crime)**. An attempt to commit** (name of chapter 796 crime) **is defined as** (*insert definition of attempt in Instruction 5.1 and then define the Chapter 796 crime*)**.**

c. sexually explicit performances. "Sexually explicit performance" means an act or show, whether public or private, that is live, photographed, recorded, or videotaped and intended to arouse or satisfy the sexual desires or appeal to the prurient interest.

d. the production of pornography.

§ 787.06(2)(c), Fla. Stat. Insert definition of loan sharking from §687.071 Fla. Stat. Insert explanation of the statute of frauds from §725.01 Fla. Stat.

"Financial harm" includes [extortionate extension of credit] [loan sharking] [employment contracts that violate the statute of frauds].

§ 787.06(2)(e), Fla. Stat.

"Labor" means work of economic or financial value.

§ 787.06(2)(f), Fla. Stat.

"Maintain" means in relation to labor or services, to secure or make possible continued performance thereof, regardless of any initial agreement on the part of a victim to perform such type service.

§ 787.06(2)(g), Fla. Stat.

"Obtain" means, in relation to labor, commercial sexual activity, or services, to receive, take possession of, or take custody of another person or to secure performance thereof.

§ 787.06(2)(h), Fla. Stat.

"Services" means any act committed at the behest of, under the supervision of, or for the benefit of another. [The term includes, but is not limited to [forced marriage] [servitude] [the removal of organs].]

§ 787.06(2)(j), Fla. Stat. See 8 U.S.C. s. 1324a(h)(3).

"Unauthorized alien" means an alien who is not authorized under federal law to be employed in the United States.

§ 787.06(2)(k), Fla. Stat.

"Venture" means any group of two or more individuals associated in fact, whether or not a legal entity.

§ 787.06(3)(g), 794.011(1), Fla. Stat.

"Mentally incapacitated" means that a person is rendered temporarily incapable of appraising or controlling his or her conduct due to the influence of a narcotic, anesthetic, or intoxicating substance administered to that person without his or her consent, or due to any other act committed upon that person without his or her consent.

"Mentally defective" means that a person suffers from a mental disease or defect that renders that person temporarily or permanently incapable of appraising the nature of his or her conduct.

Give if requested. § 787.06(9), Fla. Stat.

The defendant's ignorance of (victim's) **age,** (victim's) **misrepresentation of [his] [her] age, or the defendant's genuine belief of** (victim's) **age is not a defense to the crime charged.**

Give if requested. § 787.06(11), Fla. Stat.

(Victim's) **lack of chastity or the willingness or consent of** (victim) **is not a defense if [he] [she] was under 18 years of age at the time of the offense.**

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comments

Prior to April 2026, this instruction was numbered 29.24.

A conviction under § 787.06(3)(f)1, Florida Statutes, (human trafficking via commercial sexual activity of a child by transport or transfer into Florida) is a felony of the first degree, punishable by imprisonment for a term of years not exceeding life. However, a conviction under § 787.06(3)(g), Florida Statutes, (human trafficking via commercial sexual activity where a child was involved but without a finding that the child was transported from outside the state) is a life felony.

This instruction was adopted in 2013 [131 So. 3d 692] and amended in 2015 [176 So. 3d 938], 2016 [200 So. 3d 754], 2019 [267 So. 3d 980], and on January 7, 2022.

CHAPTER 10 —WEAPONS OFFENSES

10.1 CARRYING A CONCEALED [FIREARM] [WEAPON] [ELECTRIC WEAPON OR DEVICE]

§ 790.01, Fla. Stat.

To prove the crime of Carrying a Concealed [Firearm] [Weapon] [Electric Weapon or Device], the State must prove the following three* elements beyond a reasonable doubt:

1. (Defendant) **knowingly carried on or about [his] [her] person [a firearm] [a concealed weapon] [an electric weapon or device].**

2. The [firearm] [concealed weapon] [electric weapon or device] was concealed from the ordinary sight of another person.

3. *At that time,

a. [he] [she] was not licensed by the Department of Agriculture and Consumer Services to carry a[n] concealed [firearm] [weapon] [electrical weapon or device];**

and

b. was ineligible to receive and maintain such a license because of (insert reason defendant cannot get a license because he or she does not meet the criteria in § 790.06(2)(a)-(f) and (i)-(n), (3), and (10), Fla. Stat)**.**

Ensor v. State, 403 So. 2d 349 (Fla. 1981); Dorelus v. State, 747 So. 2d 368 (Fla. 1999).

The term "on or about [his] [her] person" means physically on the person or readily accessible to [him] [her].

The term "ordinary sight of another person" means the casual and ordinary observation of another in the normal associations of life. A [firearm] [concealed weapon] [electric weapon or device] need not be completely hidden for you to find that it was concealed. However, a[n] [firearm] [concealed weapon] [electric weapon or device] is not concealed if, although not fully exposed, its status as a[n[[firearm] [concealed weapon] [electric weapon or device] is detectable by ordinary observation.

Give only the applicable paragraphs.

A "firearm" means any weapon [including a starter gun] which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; [the frame or receiver of any such weapon;] [any firearm muffler or firearm silencer;] [any destructive device;] [any machine gun]. [The term "firearm" does not include an antique firearm unless the antique firearm is used in the commission of another crime. An antique firearm is *(insert definition in 790.001, Fla. Stat.)***]. [A destructive device is** *(insert definition in § 790.001, Fla. Stat.)***].**

A "concealed weapon" means any dirk, metallic knuckles, billie, tear gas gun, chemical weapon or device, or other deadly weapon carried on or about a person in such manner as to conceal the weapon from the ordinary sight of another person.

A "deadly weapon" is any object that will likely cause death or great bodily harm if used in the ordinary and usual manner contemplated by its design and construction.

An object not designed to inflict bodily harm may nonetheless be a "deadly weapon" if it was intended to be used [or threatened to be used] in a manner likely to cause death or great bodily harm.

"Great bodily harm" means great as distinguished from slight, trivial, minor, or moderate harm.

"Electric weapon or device" means any device which, through the application or use of electrical current, is designed, redesigned, used, or intended to be used for offensive or defensive purposes, the destruction of life, or the infliction of injury.

"Tear gas gun" and "chemical weapon or device" are defined in § 790.001, Fla. Stat.

§ 790.01(5)(b), Fla. Stat. The statute and case law are silent as to: (1) which party bears the burden of persuasion of the affirmative defense, and (2) the standard for the burden of persuasion. Under the common law, defendants had both the burden of production and the burden of persuasion on affirmative defenses by a preponderance of the evidence. The Florida Supreme Court has often decided, however, that once a defendant meets the burden of production on an affirmative defense, the burden of persuasion is on the State to disprove the affirmative defense beyond a reasonable doubt (e.g., self-defense and consent to enter in a burglary prosecution). In the absence of case law, trial judges must resolve the issue via a special instruction. See the opinion in Dixon v. United States, 548 U.S. 1 (2006), for further guidance.

It is a defense for a person who carries for purposes of lawful self-defense, in a manner concealed from the ordinary sight of another person:

1. **A self-defense chemical spray.**

2. **A nonlethal stun gun or dart-firing stun gun or other nonlethal electric weapon or device that is designed solely for defensive purposes.**

Lesser Included Offenses

CARRYING A CONCEALED [FIREARM] [WEAPON] [ELECTRIC WEAPON OR DEVICE] — 790.01

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempt	777.04(1)	5.1

Comments

A special instruction will be necessary in cases where the deadly weapon was an animal or a substance or something that is not commonly referred to as an "object."

*As of November 2024, it was unclear whether element #3 is required when the concealed item at issue is not listed in § 790.06(1)(a), Fla. Stat. For example, metallic knuckles are listed as a concealed weapon in § 790.001, Fla. Stat., but metallic knuckles are not an item for which someone can obtain a license to carry in a concealed manner. In the absence of appellate case law that interprets the interaction between § 790.01, Fla. Stat., and § 790.06(1)(a), Fla. Stat., trial judges will need to determine whether to instruct on element #3 in certain circumstances.

**§ 790.015, Fla. Stat. allows a resident of the United States but a nonresident of Florida to carry a concealed weapon/firearm if the nonresident is 21 years of age or older, and either satisfies certain criteria to have a concealed weapon/firearm license in Florida or has a valid concealed weapon/firearm license in his or her immediate possession that had been issued to him or her in his or her state of residence. A special jury instruction will be necessary if those circumstances are relevant.

Pursuant to § 790.25, Fla. Stat., a person 18 years of age or older who was in lawful possession of a handgun or other weapon may possess it within the interior of a private conveyance if the handgun or weapon was securely encased or otherwise not readily accessible for immediate use.

This instruction was adopted in 1981 and was amended in 1989 [543 So. 2d 1205], 2013 [131 So. 3d 720], 2018 [253 So. 3d 1040], on April 3, 2020, on January 29, 2021, December 15, 2023, and on December 6, 2024.

10.2 [OPEN CARRYING OF A HANDGUN] [OR][CARRYING A CONCEALED WEAPON OR FIREARM] IN A PROHIBITED PLACE

§ 790.06(12), Fla. Stat.

To prove the crime of [Open Carrying of a Handgun] [or] [Carrying a Concealed Weapon or Firearm] in a Prohibited Place, the State must prove the following element beyond a reasonable doubt:

1. (Defendant) **knowingly and willfully [openly carried a handgun] [or] [carried a concealed firearm or weapon] in**

Give as applicable.

a place of nuisance.

a police, sheriff, or highway patrol station.

a detention facility, prison, or jail.

a courthouse.

a courtroom.

a polling place.

a meeting of the governing body of a county, public school district, municipality, or special district.

a meeting of the Legislature or a committee thereof.

a school, college, or professional athletic event not related to firearms.

an elementary or secondary school facility or administration building.

a career center.

any portion of an establishment licensed to dispense alcoholic beverages for consumption on the premises, which portion of the establishment is primarily devoted to such purpose.

a college or university facility.

the inside of the passenger terminal and sterile area of any airport, provided that no person shall be prohibited from carrying any legal firearm into the terminal, which firearm is

encased for shipment for purposes of checking such firearm as baggage to be lawfully transported on any aircraft.

a place where the carrying of firearms is prohibited by federal law.

"Willfully" means intentionally and purposely.

Use the definitions below if Open Carrying of a Handgun in a Prohibited Place is charged. § 790.001, Fla. Stat.

"Handgun" means a firearm capable of being carried and used by one hand, such as a pistol or revolver.

"Firearm" means any weapon [including a starter gun] which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive [or] [the frame or receiver of any such weapon] [any firearm muffler or firearm silencer] [any destructive device] [any machine gun]. *"Machine gun" and "destructive device" are defined in § 790.001, Fla. Stat.*

Use the definitions below if Carrying a Concealed Weapon or Firearm in a Prohibited Place is charged. § 790.06(1), Fla. Stat.

"Concealed weapon or firearm" means a handgun, electric weapon or device, tear gas gun, knife, or billie, but does not include a machine gun. *"Electric weapon or device" and "tear gas gun" are defined in § 790.001, Fla. Stat.*

"Concealed" means the weapon or firearm was carried on or about a person in such a manner such that it could not be seen from the ordinary sight of another person. The term "on or about [his] [her] person" means physically on the person or readily accessible to [him] [her]. The term "ordinary sight of another person" means the casual and ordinary observation of another in the normal associations of life.

Lesser Included Offense

[OPEN CARRYING OF A HANDGUN] [OR] [CARRYING A CONCEALED WEAPON OR FIREARM] IN A PROHIBITED PLACE —790.06(12)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
	Attempt	777.04(1)	5.1

Comments

As of October 2025, it was not clear that § 790.06(12)(a), Fla. Stat., creates a crime because the statute merely states that a license issued under Chapter 790 does not authorize a person to openly carry a handgun or carry a concealed weapon or concealed firearm into certain places. The statute does not say "It is unlawful for a person to openly carry a handgun or carry a concealed weapon or concealed firearm into …" nor does it say "A person who openly carries a handgun or carries a concealed weapon or concealed firearm into …. is guilty of a second degree misdemeanor. The Committee on Standard Jury Instructions in Criminal Cases drafted this instruction for the benefit of judges who believe the scheme in § 790.06(12)(a) and (12)(d), Fla. Stat., creates a crime.

If a "place of nuisance" is alleged, the court should adopt a definition from
§ 823.05, Fla. Stat. Additional definitions might be appropriate depending on the prohibited place that is alleged.

As of October 2025, it was unclear whether the exceptions for concealed weapons/firearms in courtrooms (§ 790.06(12)(a)5., Fla. Stat.) and college/university facilities (§ 790.06(12)(a)13., Fla. Stat.) are affirmative defenses. A special instruction will be needed if an exception is at issue.

This instruction was adopted on April 3, 2020, and amended on December 15, 2023, and on November 13, 2025.

10.3 PERSONS ENGAGED IN CRIMINAL OFFENSE HAVING [WEAPON] [ELECTRIC WEAPON OR DEVICE] [CONCEALED WEAPON] [FIREARM] [CONCEALED FIREARM]

§§ 790.07(1) and (2), Fla. Stat.

To prove the crime of (crime charged)**, the State must prove the following two elements beyond a reasonable doubt:**

Give 1a or 1b or both as applicable.

1. (Defendant)

a. [displayed] [used] [threatened to use] [attempted to use]

[a weapon].

[a firearm].

[an electric weapon or device].

b. carried a [weapon] [firearm], that was concealed from the ordinary sight of another person.

2. [He] [She] did so while [committing or attempting to commit a[n] (felony alleged)**] [under indictment].**

1. Define the felony alleged. The felony cannot be antitrust violations, unfair trade practices, restraints of trade, nonsupport of dependents, bigamy, or other similar offenses. See § 790.07(3), Fla. Stat.

2. Define "attempt" if applicable (see instruction 5.1).

Give if firearm is applicable. § 790.001, Fla. Stat.

A "firearm" means any weapon [including a starter gun] which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; [the frame or receiver of any such weapon;] [any firearm muffler or firearm silencer;] [any destructive device;] [any machine gun]. [The term "firearm" does not include an antique firearm unless the antique firearm is used in the commission of another crime. An antique firearm is *(insert definition in § 790.001, Fla. Stat.)***]. [A destructive device is** *(insert definition in § 790.001, Fla. Stat.)***].**

Give if weapon in element #1a is applicable. § 790.001, Fla. Stat. Slungshot is defined in § 790.001, Fla. Stat.

A "weapon" is any dirk, knife, metallic knuckles, slungshot, billie, tear gas gun, chemical weapon or device, or other deadly weapon except a firearm or a common pocketknife, plastic knife, or blunt-bladed table knife.

A "deadly weapon" is any object other than a firearm that will likely cause death or great bodily harm if used in the ordinary and usual manner contemplated by its design and construction.

An object not designed to inflict bodily harm may nonetheless be a "deadly weapon" if it was [used] [or] [threatened to be used] [or] [intended to be used] [or] [attempted to be used] in a manner likely to cause death or great bodily harm.

"Great bodily harm" means great as distinguished from slight, trivial, minor, or moderate harm, and as such does not include mere bruises.

There is a conflict within the district courts about whether an open common pocketknife is a weapon:

Give if applicable. Porter v. State, 798 So. 2d 855 (Fla. 5th DCA 2001); J.R.P. v. State, 979 So. 2d 1178 (Fla. 3d DCA 2008).

However, an open pocketknife could constitute a weapon.

Give if applicable. G.R.N. v. State, 220 So. 3d 1267 (Fla. 4th DCA 2017).

If a common pocketknife is open, it is still considered to be a common pocketknife.

Give if electric weapon or device in element # 1a is applicable. § 790.001, Fla. Stat.

"**Electric weapon or device" means any device which, through the application or use of electrical current, is designed, redesigned, used, or intended to be used for offensive or defensive purposes, the destruction of life, or the infliction of injury.**

Give if element # 1b is applicable.

The term "ordinary sight of another person" means the casual and ordinary observation of another in the normal associations of life. A [firearm] [weapon] need not be completely hidden for you to find that it was concealed. However, a [firearm] [weapon] is not concealed if, although

not fully exposed, its status as a [firearm] [weapon] is detectable by ordinary observation.

Give if concealed weapon in element #1b is applicable. § 790.001, Fla. Stat.

A "concealed weapon" means any dirk, metallic knuckles, billie, tear gas gun, chemical weapon or device, or other deadly weapon carried on or about a person in such manner as to conceal the weapon from the ordinary sight of another person.

A "deadly weapon" is any object that will likely cause death or great bodily harm if used in the ordinary and usual manner contemplated by its design and construction.

An object not designed to inflict bodily harm may nonetheless be a "deadly weapon" if it was intended to be used in a manner likely to cause death or great bodily harm.

"Great bodily harm" means great as distinguished from slight, trivial, minor, or moderate harm, and as such does not include mere bruises.

Lesser Included Offenses

PERSONS ENGAGED IN CRIMINAL OFFENSE, HAVING [WEAPON] [ELECTRIC WEAPON OR DEVICE] [CONCEALED WEAPON] [FIREARM] [CONCEALED FIREARM] — 790.07

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempt (may be applicable when concealed weapon is charged)	777.04(1)	5.1
	Carrying concealed firearm	790.01	10.1
	Carrying concealed weapon	790.01	10.1
	Improper exhibition of dangerous weapon	790.10	10.5

Comments

The crimes in § 790.07(1), Florida Statutes, and § 790.07(2), Florida Statutes, are bumped up to a first-degree felony if a defendant has previously been convicted of subsection (1) or (2). *See* § 790.07(4), Fla. Stat. As of November 2019, it is unclear whether the existence of a prior conviction will be treated as an element of the crime that must be found by the jury in a

bifurcated proceeding or whether a prior violation can be proven to the judge at sentencing. It is also unclear whether a conviction includes a withhold of adjudication.

A special instruction will be necessary in cases where the deadly weapon was an animal or a substance or something that is not commonly referred to as an "object."

This instruction was adopted in 1981, and amended in 1989, 1992, and on April 3, 2020.

10.4 [RESERVED]

10.5 IMPROPER EXHIBITION OF A [WEAPON] [FIREARM]

§ 790.10, Fla. Stat.

To prove the crime of Improper Exhibition of a [Weapon] [Firearm], the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **had or carried [a weapon] [a firearm] [a dirk] [a sword] [a sword cane] [an electric weapon or device].**

2. (Defendant) **exhibited the [weapon] [firearm] [dirk] [sword] [sword cane] [electric weapon or device] in a [rude] [careless] [angry] [or] [threatening] manner.**

3. [He] [She] did so in the presence of one or more persons.

Give only applicable paragraphs.

§ 790.001, Fla. Stat. Slungshot is defined in § 790.001, Fla. Stat.

A "weapon" is any dirk, knife, metallic knuckles, slungshot, billie, tear gas gun, chemical weapon or device, or other deadly weapon except a firearm or a common pocketknife, plastic knife, or blunt-bladed table knife.

There is a conflict within the district courts about whether an open common pocketknife is a weapon:

Porter v. State, 798 So. 2d 855 (Fla. 5th DCA 2001); J.R.P. v. State, 979 So. 2d 1178 (Fla. 3d DCA 2008).

However, an open pocketknife could constitute a weapon.

G.R.N. v. State, 220 So. 3d 1267 (Fla. 4th DCA 2017).

If a common pocketknife is open, it is still considered to be a common pocketknife.

A "deadly weapon" is any object other than a firearm that will likely cause death or great bodily harm if used in the ordinary and usual manner contemplated by its design and construction.

Give if applicable.

An object not designed to inflict bodily harm may nonetheless be a "deadly weapon" if it was used, threatened to be used, or intended to be used in a manner likely to cause death or great bodily harm.

"Great bodily harm" means harm that is more than slight, trivial, minor, or moderate.

§ 790.001, Fla. Stat.

"Electric weapon or device" means any device which, through the application or use of electrical current, is designed, redesigned, used, or intended to be used for offensive or defensive purposes, the destruction of life, or the infliction of injury.

§ 790.001, Fla. Stat.

A "firearm" means any weapon [including a starter gun] which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; [the frame or receiver of any such weapon;] [any firearm muffler or firearm silencer;] [any destructive device;] [any machine gun]. [The term "firearm" does not include an antique firearm unless the antique firearm is used in the commission of another crime. An antique firearm is *(insert definition in § 790.001, Fla. Stat.)*]. **[A destructive device is** *(insert definition in § 790.001, Fla. Stat.)*]**.**

Lesser Included Offenses

IMPROPER EXHIBITION OF A WEAPON OR FIREARM — 790.10

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempt	777.04(1)	5.1
	Assault	784.011	8.1

Comments

Read instructions 3.6(f) or 3.6(g) as applicable, if the defendant is claiming self-defense, defense of others, or defense of property.

A special instruction will be necessary in cases where the weapon was an animal or a substance or something that is not commonly referred to as an "object."

This instruction was adopted in 1981 and amended in 2013 [131 So. 3d 720], 2016 [195 So. 3d 356], 2018 [253 So. 3d 1040], on April 3, 2020, and on June 12, 2026.

10.6 DISCHARGING A FIREARM [IN PUBLIC] [ON RESIDENTIAL PROPERTY]

§ 790.15, Fla. Stat.

To prove the crime of Discharging a Firearm [in Public] [on Residential Property], the State must prove the following element beyond a reasonable doubt:

Give a, b, c, and/or d as applicable.

a. (Defendant) **knowingly discharged a firearm in a public place.**

b. (Defendant) **knowingly discharged a firearm [on] [over] the right of way of a paved public road, highway, or street.**

c. (Defendant) **knowingly discharged a firearm over an occupied premises.**

d. (Defendant) **[recklessly] [negligently] discharged a firearm outdoors on property [used primarily as the site of a dwelling] [zoned exclusively for residential use].**

Definitions.

"Knowingly" means with full knowledge and intentionally.

"Recklessly" means with a conscious and intentional indifference to consequences.

"Negligently" means failing to use reasonable care under the circumstances.

Optional Definition.

A "public place" is any place intended or designed to be frequented or resorted to by the public.

§ 810.011(2), Fla. Stat.

"Dwelling" means a building or conveyance of any kind, including any attached porch, whether the building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it, including a tent, and is designed to be occupied by people lodging therein at night.

§ 790.001, Fla. Stat.

A "firearm" is any weapon (including a starter gun) which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive [including any machine gun or any destructive device]. [The term "firearm" does not include an antique firearm unless the antique firearm is used in the commission of a crime.]

§ 790.001, Fla. Stat.

["Antique firearm" means any firearm manufactured in or before 1918 (including any matchlock, flintlock, percussion cap, or similar early type of ignition system) or replica thereof, whether actually manufactured before or after the year 1918, and also any firearm using fixed ammunition manufactured in or before 1918, for which ammunition is no longer manufactured in the United States and is not readily available in the ordinary channels of commercial trade.]

§ 790.001, Fla. Stat.

["Destructive device" means any bomb, grenade, mine, rocket, missile, pipebomb, or similar device containing an explosive, incendiary, or poison gas and includes any frangible container filled with an explosive, incendiary, explosive gas, or expanding gas, which is designed or so constructed as to explode by such filler and is capable of causing bodily harm or property damage; any combination of parts either designed or intended for use in converting any device into a destructive device and from which a destructive device may be readily assembled; any device declared a destructive device by the Bureau of Alcohol, Tobacco, and Firearms; any type of weapon which will, is designed to, or may readily be converted to expel a projectile by the action of any explosive and which has a barrel with a bore of one-half inch or more in diameter; and ammunition for such destructive devices, but not including shotgun shells or any other ammunition designed for use in a firearm other than a destructive device.

"Destructive device" does not include:

a. a device which is not designed, redesigned, used, or intended for use as a weapon;

b. Any device, although originally designed as a weapon, which is redesigned so that it may be used solely as a signaling, line-throwing, safety, or similar device;

c. Any shotgun other than a short-barreled shotgun; or

d. Any nonautomatic rifle (other than a short-barreled rifle) generally recognized or particularly suitable for use for the hunting of big game.]

Affirmative Defense. See § 790.15(1), Fla. Stat.

The statute and case law (with the exception of self-defense, defense of others, and defense of property case law) are silent as to 1) which party bears the burden of persuasion of the affirmative defense and 2) the standard for the burden of persuasion. Under the common law, defendants had both the burden of production and the burden of persuasion on an affirmative defense by a preponderance of the evidence.

The Florida Supreme Court has often decided, however, that once a defendant meets the burden of production on an affirmative defense, the burden of persuasion is on the State to disprove the affirmative defense beyond a reasonable doubt (e.g., self-defense and consent to enter in a burglary prosecution). In the absence of case law, trial judges must resolve the issue via a special instruction. See the opinions in Dixon v. United States, 548 U.S. 1 (2006), for further guidance.

It is a defense to the crime of Discharging a Firearm [in Public] [on Residential Property] if the defendant was [lawfully defending life or property] [performing official duties requiring the discharge of a firearm] [discharging a firearm on public roads or property expressly approved for hunting by the Fish and Wildlife Conservation Commission or Division of Forestry].

If burden of persuasion is on the defendant:

If you find that defendant proved *(insert appropriate burden of persuasion)* **that [he] [she] was [performing official duties requiring the discharge of a firearm] [discharging a firearm on public roads or property expressly approved for hunting by the Fish and Wildlife Conservation Commission or Division of Forestry], you should find [him] [her] not guilty. If the defendant did not prove** *(insert appropriate burden of persuasion)* **that [he] [she] was [performing official duties requiring the discharge of a firearm] [discharging a firearm on public roads or property expressly approved for hunting by the Fish and Wildlife Conservation Commission or Division of Forestry], you should find [him] [her] guilty, if all the elements of the charge have been proven beyond a reasonable doubt.**

If burden of persuasion is on the State:

If you find that the State proved *(insert appropriate burden of persuasion)* **that the defendant was not [lawfully defending life or property] [performing official duties requiring the discharge of a firearm] [discharging a firearm on public roads or property expressly approved for hunting by the Fish and Wildlife Conservation Commission or Division of Forestry], you should find [him] [her] guilty, if all of the elements of the charge have been proven beyond a reasonable doubt. However, if the State failed to prove** *(insert appropriate burden of persuasion)* **that the defendant was not [lawfully defending life or property] [performing official duties requiring the discharge of a firearm] [discharging a firearm on public roads or property expressly approved for hunting by the Fish and Wildlife Conservation Commission or Division of Forestry], you should find [him] [her] not guilty.**

Lesser Included Offenses

DISCHARGING A FIREARM [IN PUBLIC] [ON RESIDENTIAL PROPERTY] — 790.15

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempt	777.04(1)	5.1

Comments

As of October 2020, the term "in a public place" has not been defined for purposes of this statute by the Florida Supreme Court or a District Court of Appeal. Similarly, neither the Florida Supreme Court nor any District Court of Appeal have determined whether cells or common areas inside of a jail or a prison are "in a public place." The term "public place" has been interpreted to include the inside of a vehicle that is located in a public parking lot and the inside of a stall in a public restroom if freely visible from a public area. *See State v. Folks,* 723 So. 2d 369 (Fla. 4th DCA 1998) and *Ward v. State,* 636 So. 2d 68 (Fla. 5th DCA 1994). When crafting a special instruction for unique circumstances, trial judges may also want to consider § 876.11, Fla. Stat., which provides a definition of "public place" that includes all walks, alleys, streets, boulevards, avenues, lanes, roads, highways or other ways or thoroughfares dedicated to public use or owned or maintained by public authority, and all grounds and buildings owned, leased by, operated, or maintained by public authority.

This instruction was adopted in 1981 and was amended in 1989 [543 So. 2d 1205], 2013 [131 So. 3d 755], 2016 [190 So. 3d 614], and on November 20, 2020.

10.6(a) DISCHARGING A FIREARM FROM A VEHICLE WITHIN 1,000 FEET OF A PERSON

§ 790.15(2), Fla. Stat.

To prove the crime of Discharging a Firearm from a Vehicle Within 1,000 Feet of a Person, the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) **was an occupant of a vehicle.**

2. (Defendant) **knowingly and willfully discharged a firearm from that vehicle within 1,000 feet of any person.**

§ 790.001, Fla. Stat.

A "firearm" is legally defined as any weapon, including a starter gun, which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; any destructive device; or any machine gun. [The term "firearm" does not include an antique firearm unless the antique firearm is used in the commission of a crime.] *See § 790.001, Fla. Stat., for the definitions of antique firearm and destructive device.*

"Knowingly" means with full knowledge and intentionally.

"Willfully" means intentionally and purposely.

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

10.6(b) DRIVER OR OWNER OF A VEHICLE KNOWINGLY DIRECTING ANOTHER TO DISCHARGE A FIREARM FROM THE VEHICLE

§ 790.15(3), Fla. Stat.

To prove the crime of Driver or Owner of a Vehicle Knowingly Directing Another to Discharge a Firearm from the Vehicle, the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) **was the driver or owner of a vehicle.**

2. (Defendant) **knowingly directed [another] [**(person alleged)**] to discharge a firearm from that vehicle.**

Give if applicable.

It is not necessary for the State to prove that the owner of the vehicle occupied the vehicle at the time of discharge.

Definitions.

§ 790.001, Fla. Stat.

A "firearm" is legally defined as any weapon, including a starter gun, which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; any destructive device; or any machine gun. [The term "firearm" does not include an antique firearm unless the antique firearm is used in the commission of another crime.] *See § 790.001, Fla. Stat., for the definitions of antique firearm and destructive device.*

Optional Definitions. Shaw v. State, 510 So. 2d 349 (Fla. 2d DCA 1987).

"Knowingly" means with actual knowledge and understanding of the facts or the truth.

"Knowingly" means an act done voluntarily and intentionally and not because of mistake or accident or other innocent reason.

Lesser Included Offense

DRIVER OR OWNER OF A VEHICLE KNOWINGLY DIRECTING ANOTHER TO DISCHARGE A FIREARM FROM THE VEHICLE—790.15(3)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempt	777.04(1)	5.1

Comments

As of February 2018, it was undecided whether the courts would use the definitions of "driver" and "vehicle" in § 316.003, Florida Statutes, for this crime.

This instruction was adopted in 2018.

10.7 [RESERVED]

10.7(a) POSSESSING, THROWING, MAKING, PLACING, PROJECTING, OR DISCHARGING A DESTRUCTIVE DEVICE

§ 790.161(1), Fla. Stat.

To prove the crime of (crime charged)**, the State must prove the following element beyond a reasonable doubt:**

(Defendant) **willfully and unlawfully**

[made]

[possessed]

[threw]

[placed]

[projected]

[discharged]

[attempted to [make] [possess] [throw] [place] [project]

[discharge]]

a destructive device.

A "destructive device" is defined as (adapt from § 790.001, Fla. Stat., as required by the allegations)**.**

"Willfully" means intentionally, knowingly, and purposely.

Possession. Give if applicable.

To prove (defendant) **"possessed a destructive device," the State must prove beyond a reasonable doubt that [he] [she] a) knew of the existence of the destructive device, and b) intentionally exercised control over that destructive device.**

Give if applicable.

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

the destructive device or the present ability to direct its control by another.

Joint possession. Give if applicable.

Possession of a destructive device may be sole or joint, that is, two or more persons may possess a destructive device.

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comment

This instruction was adopted in 1981 and was amended in 1989, 1992, and 2019.

10.7(b) POSSESSING, THROWING, MAKING, PLACING, PROJECTING, OR DISCHARGING A DESTRUCTIVE DEVICE [WITH INTENT TO DO [BODILY HARM] [PROPERTY DAMAGE]] [RESULTING IN DISRUPTION OF [GOVERNMENTAL OPERATIONS] [COMMERCE] [THE PRIVATE AFFAIRS OF ANOTHER PERSON]]

§ 790.161(2), Fla. Stat.

To prove the crime of (crime charged)**, the State must prove the following two elements beyond a reasonable doubt:**

1. (Defendant) **willfully and unlawfully**

[made]

[possessed]

[threw]

[placed]

[projected]

[discharged]

[attempted to [make] [possess] [throw] [place] [project] [discharge]]

a destructive device.

Give those parts of element 2 as applicable.

2. a. (Defendant's) **act was committed with the intent to**

[do bodily harm to another person].

[do property damage].

b. (Defendant's) **act resulted in**

[a disruption of governmental operations].

[a disruption of commerce].

[a disruption of the private affairs of another person].

A "destructive device" is defined as (adapt from § 790.001, Fla. Stat., as required by the allegations)**.**

"Willfully" means intentionally, knowingly, and purposely.

Possession. Give if applicable.

To prove (defendant) **"possessed a destructive device," the State must prove beyond a reasonable doubt that [he] [she] a) knew of the existence of the destructive device, and b) intentionally exercised control over that destructive device.**

Give if applicable.

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

Joint possession. Give if applicable.

Possession of a destructive device may be sole or joint, that is, two or more persons may possess a destructive device.

Lesser Included Offenses

POSSESSING, THROWING, MAKING, PLACING, PROJECTING, OR DISCHARGING DESTRUCTIVE DEVICE, ETC. — 790.161(2)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Possessing, throwing, making placing, projecting, or discharging destructive device		790.161(1)	10.7(a)
	Aggravated assault	784.021	8.2
	Assault	784.011	8.1

Comment

This instruction was adopted in 1992 and amended in 2019.

10.7(c) POSSESSING, THROWING, MAKING, PLACING, PROJECTING, OR DISCHARGING A DESTRUCTIVE DEVICE RESULTING IN [BODILY HARM TO ANOTHER PERSON] [PROPERTY DAMAGE]

§ 790.161(3), Fla. Stat.

To prove the crime of (crime charged)**, the State must prove the following two elements beyond a reasonable doubt:**

1. (Defendant) **willfully and unlawfully**

[made]

[possessed]

[threw]

[placed]

[projected]

[discharged]

[attempted to [make] [possess] [throw] [place] [project]

[discharge]]

a destructive device.

2. (Defendant's) **act resulted in**

[bodily harm to another person].

[property damage].

A "destructive device" is defined as (adapt from § 790.001, Fla. Stat., as required by the allegations)**.**

"**Willfully" means intentionally, knowingly, and purposely.**

Possession. Give if applicable.

To prove (defendant) **"possessed a destructive device," the State must prove beyond a reasonable doubt that [he] [she] a) knew of the existence of the destructive device, and b) intentionally exercised control over that destructive device.**

Give if applicable.

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

Joint possession. Give if applicable.

Possession of a destructive device may be sole or joint, that is, two or more persons may possess a destructive device.

Lesser Included Offenses

POSSESSING, THROWING, MAKING, PLACING, PROJECTING, OR DISCHARGING DESTRUCTIVE DEVICE RESULTING IN [BODILY HARM TO ANOTHER PERSON] [PROPERTY DAMAGE]— 790.161(3)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Possessing, throwing, making, placing, projecting, or discharging destructive device		790.161(1)	10.7(a)
	Possessing, throwing, making, placing, projecting, or discharging destructive device, etc.	790.161(2)	10.7(b)
	Aggravated assault	784.021	8.2
	Assault	784.011	8.1

Comment

This instruction was adopted in 1992 and amended in 2019.

10.7(d) POSSESSING, THROWING, MAKING, PLACING, PROJECTING, OR DISCHARGING A DESTRUCTIVE DEVICE RESULTING IN DEATH

§ 790.161(4), Fla. Stat.

In the absence of an express concession that the homicide was not excusable or justified, the trial judge must also read Instruction 7.1, Introduction to Homicide.

To prove the crime of (crime charged)**, the State must prove the following two elements beyond a reasonable doubt:**

1. (Defendant) **willfully and unlawfully**

[made]

[possessed]

[threw]

[placed]

[projected]

[discharged]

[attempted to [make] [possess] [throw] [place] [project] [discharge]]

a destructive device.

2. The act resulted in the death of another person.

A "destructive device" is defined as (adapt from § 790.001, Fla. Stat., as required by the allegations)**.**

"Willfully" means intentionally, knowingly, and purposely.

Possession. Give if applicable.

To prove (defendant) **"possessed a destructive device," the State must prove beyond a reasonable doubt that [he] [she] a) knew of the existence of the destructive device and b) intentionally exercised control over that destructive device.**

Give if applicable.

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

Joint possession. Give if applicable.

Possession of a destructive device may be sole or joint, that is, two or more persons may possess a destructive device.

Lesser Included Offenses

POSSESSING, THROWING, MAKING, PLACING, PROJECTING, OR DISCHARGING DESTRUCTIVE DEVICE — 790.161(4)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Possessing, throwing, making, placing, projecting, or discharging destructive device resulting in bodily harm		790.161(3)	10.7(c)
Possessing, throwing, making, placing, projecting, or discharging destructive device		790.161(1)	10.7(a)
	Possessing, throwing, making, placing, projecting, or discharging destructive device, etc.	790.161(2)	10.7(b)
	Aggravated assault	784.021	8.2
	Assault	784.011	8.1

Comment

This instruction was adopted in 1992 and amended in 2018.

10.8 THREAT TO THROW, PLACE, PROJECT, OR DISCHARGE ANY DESTRUCTIVE DEVICE

§ 790.162, Fla. Stat.

To prove the crime of Threat to [Throw] [Place] [Project] [Discharge] Any Destructive Device, the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) **threatened to [throw] [place] [project] [discharge] a destructive device.**

2. **The threat conveyed an intent to do [bodily harm to] [damage to the property of] any person.**

Give if requested. Valdes v. State, 443 So. 2d 221 (Fla. 1st DCA 1983); Reid v. State, 405 So. 2d 500 (Fla. 2d DCA 1981).

It is not necessary for the State to prove the defendant had the actual intent to cause [harm] [or] [damage], or that [he] [she] had the ability to carry out the threat, or that there was an actual destructive device.

Definition. Adapt as appropriate. § 790.001, Fla. Stat.

A "destructive device" means any bomb, grenade, mine, rocket, missile, pipebomb, or similar device containing an explosive, incendiary, or poison gas and includes any frangible container filled with an explosive, incendiary, explosive gas, or expanding gas, which is designed or so constructed as to explode by such filler and is capable of causing bodily harm or property damage; any combination of parts either designed or intended for use in converting any device into a destructive device and from which a destructive device may be readily assembled; any device declared a destructive device by the Bureau of Alcohol, Tobacco, and Firearms; any type of weapon which will, is designed to, or may readily be converted to expel a projectile by the action of any explosive and which has a barrel with a bore of one-half inch or more in diameter; and ammunition for such destructive devices, but not including shotgun shells or any other ammunition designed for use in a firearm other than a destructive device.

"Destructive device" does not include:

a. **A device which is not designed, redesigned, used, or intended for use as a weapon;**

b. Any device, although originally designed as a weapon, which is redesigned so that it may be used solely as a signaling, line-throwing, safety, or similar device;

c. Any shotgun other than a short-barreled shotgun; or

d. Any nonautomatic rifle (other than a short-barreled rifle) generally recognized or particularly suitable for use for the hunting of big game.

Lesser Included Offenses

THREAT TO THROW, PROJECT, PLACE, OR DISCHARGE ANY DESTRUCTIVE DEVICE — 790.162

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempt	777.04(1)	5.1
	Aggravated Assault	784.021	8.2
	Assault	784.011	8.1

Comment

This instruction was adopted in 1981 and was amended in 1989 and 2017.

10.9 FALSE REPORT CONCERNING THE [PLACING OR PLANTING OF A BOMB, DYNAMITE, OTHER DEADLY EXPLOSIVE, OR A WEAPON OF MASS DESTRUCTION] [USE OF FIREARMS IN A VIOLENT MANNER AGAINST A PERSON]

§ 790.163(1), Fla. Stat.

To prove the crime of False Report Concerning the [Placing or Planting of a Bomb, Dynamite, Other Deadly Explosive, or a Weapon of Mass Destruction] [Use of Firearms in a Violent Manner Against a Person], the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **made a false report to any person concerning [the placing or planting of a bomb, dynamite, other deadly explosive, or a weapon of mass destruction] [the use of firearms in a violent manner against a person].**

2. (Defendant) **knew the report was false.**

3. **The report was made with intent to deceive, mislead, or otherwise misinform any person.**

§ 790.163(3), Fla. Stat.

You may infer that a person who knowingly made a false report had the intent to deceive, mislead, or otherwise misinform any person.

Definitions. Give if applicable.

§ 790.166(1)(a), Fla. Stat.

"Weapon of mass destruction" means:

1. **Any device or object that is designed or intended to cause death or serious bodily injury to any human or animal, or severe emotional or mental harm to any human, through the release, dissemination, or impact of toxic or poisonous chemicals, or their precursors;**

2. **Any device or object involving a biological agent;**

3. **Any device or object that is designed or intended to release radiation or radioactivity at a level dangerous to human or animal life; or**

4. **Any biological agent, toxin, vector, or delivery system.**

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comments

There are no definitions for "bomb," "dynamite," or "deadly explosive" in the statutes or case law, although there is a definition of "explosive" in § 790.001, Fla. Stat.

A special instruction may be necessary in cases where there is a dispute about whether the report pertained to a present threat or a threat of future action. A threat of future action is not covered by § 790.163(1), Fla. Stat. *See J.A.W. v. State*, 283 So. 3d 896 (Fla. 1st DCA 2019).

This instruction was adopted in 1981 and was amended in 1985, 2017 [217 So. 3d 965], and on July 9, 2021.

10.10 FALSE REPORT CONCERNING [THE PLACING OR PLANTING OF A BOMB, DYNAMITE, OTHER DEADLY EXPLOSIVE, OR A WEAPON OF MASS DESTRUCTION] [AN ACT OF ARSON OR OTHER VIOLENCE] TO PROPERTY OWNED BY THE STATE [OR ANY POLITICAL SUBDIVISION]

§ 790.164(1), Fla. Stat.

To prove the crime of False Report Concerning [the Placing or Planting of a Bomb, Dynamite, Other Deadly Explosive or a Weapon of Mass Destruction] [an Act of Arson or Other Violence] to Property Owned by the State [or any Political Subdivision], the State must prove the following four elements beyond a reasonable doubt:

1. (Defendant) **made a false report to any person concerning [the placing or planting of a bomb, dynamite, other deadly explosive, or a weapon of mass destruction] [an act of arson or other violence] to property.**

2. **The property was owned by the State [or any political subdivision].**

3. (Defendant) **knew the report was false.**

4. **The report was made with the intent to deceive, mislead, or otherwise misinform any person.**

§ 790.164(3), Fla. Stat.

You may infer that a person who knowingly made a false report had the intent to deceive, mislead, or otherwise misinform any person.

Definitions. Give if applicable.

§ 790.166(1)(a), Fla. Stat.

"Weapon of mass destruction" means:

1. **Any device or object that is designed or intended to cause death or serious bodily injury to any human or animal, or severe emotional or mental harm to any human, through the release, dissemination, or impact of toxic or poisonous chemicals, or their precursors;**

2. **Any device or object involving a biological agent;**

3. Any device or object that is designed or intended to release radiation or radioactivity at a level dangerous to human or animal life; or

4. Any biological agent, toxin, vector, or delivery system.

§ 1.01(8), Fla. Stat.

"Political subdivision" means counties, cities, towns, villages, special tax school districts, special road and bridge districts, bridge districts, and all other districts in this state.

Lesser Included Offenses

FALSE REPORT CONCERNING THE [PLACING OR PLANTING OF A BOMB, DYNAMITE, OTHER DEADLY EXPLOSIVE, OR A WEAPON OF MASS DESTRUCTION] [AN ACT OF ARSON OR OTHER VIOLENCE] TO PROPERTY OWNED BY THE STATE [OR ANY POLITICAL SUBDIVISION] — 790.164(1)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
False report concerning the placing or planting of a bomb, dynamite, other deadly explosive, or a weapon of mass destruction (if charged)		790.163(1)	10.9
	Attempt	777.04(1)	5.1
	False report concerning the use of firearms in a violent manner against a person*	790.163(1)*	10.9*

Comments

*Although the crime set forth in § 790.164(1), Fla. Stat., includes language covering a false report concerning the use of firearms in a violent manner against a person, that part of the statute does not pertain to a threat against property owned by the state or a political subdivision. For an allegation involving a false report concerning the use of firearms in a violent manner against a person, the trial judge should refer to Instruction 10.9

There are no definitions for "bomb," "dynamite," or "deadly explosive" in the statutes or case law, although there is a definition of "explosive" in § 790.001, Fla. Stat.

A special instruction may be necessary is cases where there is a dispute about whether the report pertained to a present threat or a threat of future action. A threat of future action is not covered by § 790.164(1), Fla. Stat. *See J.A.W. v. State*, 283 So. 3d 896 (Fla. 1st DCA 2019).

This instruction was adopted in 1981 and was amended in 1985, 2017 [217 So. 3d 965], and on July 9, 2021.

10.11 FURNISHING [FIREARM] [WEAPON] TO MINOR [OR] [FURNISHING DANGEROUS WEAPON TO PERSON OF UNSOUND MIND]

§ 790.17, Fla. Stat.

To prove the crime of (name of crime)**, the State must prove the following two elements beyond a reasonable doubt:**

Give as applicable.

1. a. (Defendant) **[sold] [hired] [bartered] [lent] [transferred] [gave]** (name of minor) **a [weapon] [dirk] [electric weapon or device] without the permission of the [parent] [guardian] of** (name of minor)**.**

b. (Defendant) **[sold] [hired] [bartered] [lent] [transferred] [gave] [an electric weapon or device] [a dangerous weapon] to** (name of person of unsound mind)**.**

c. (Defendant) **knowingly or willfully transferred a firearm to** (name of minor) **without the permission of the [parent] [guardian] of** (name of minor)**.**

d. (Defendant) **knowingly or willfully sold a firearm to** (name of minor)**.**

Give as applicable.

2. a. (Minor alleged) **was at the time under 18 years of age.**

b. (Person of unsound mind) **was at the time a person of unsound mind.**

Definitions. Give only those paragraphs that are applicable.

§ 790.001, Fla. Stat. Slungshot is defined in § 790.001, Fla. Stat.

A "weapon" is any dirk, knife, metallic knuckles, slungshot, billie, tear gas gun, chemical weapon or device, or other deadly weapon except a firearm or a common pocketknife, plastic knife, or blunt-bladed table knife.

A "deadly weapon" is any object other than a firearm that will likely cause death or great bodily harm if used in the ordinary and usual manner contemplated by its design and construction.

An object not designed to inflict bodily harm may nonetheless be a "deadly weapon" if the defendant knew that the object would be used or threatened to be used in a manner likely to cause death or great bodily harm.

The following two paragraphs are applicable only if element #1b is charged.

A "dangerous weapon" is any object [other than **an ordinary pocketknife] that is readily capable of inflicting death or great bodily harm if used in the ordinary manner contemplated by its design and construction.**

An object not designed to inflict bodily harm [other than an ordinary pocketknife] may nonetheless be a "dangerous weapon" if the defendant knew that the object would be used or threatened to be used in a manner likely to inflict death or great bodily harm.

"Great bodily harm" means great as distinguished from slight, trivial, minor, or moderate harm, and as such does not include mere bruises.

§ 790.001, Fla. Stat.

"Electric weapon or device" means any device which, through the application or use of electrical current, is designed, redesigned, used, or intended to be used for offensive or defensive purposes, the destruction of life, or the infliction of injury.

§ 790.001, Fla. Stat.

A "firearm" means any weapon [including a starter gun] which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; [the frame or receiver of any such weapon;] [any firearm muffler or firearm silencer;] [any destructive device;] [any machine gun]. [The term "firearm" does not include an antique firearm unless the antique firearm is used in the commission of another crime. An antique firearm is *(insert definition in § 790.001, Fla. Stat.)***]. [A destructive device is** *(insert definition in § 790.001, Fla. Stat.)***].**

"Willfully" means intentionally and purposely.

Lesser Included Offense

FURNISHING [FIREARM] [WEAPON] TO MINOR UNDER 18 YEARS OF AGE, ETC. — 790.17

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempt	777.04(1)	5.1

Comments

A special instruction will be necessary in cases where the weapon was an animal or a substance or something that is not commonly referred to as an "object."

It is unclear whether a person may lawfully sell a firearm to a minor under 18 years of age if the parent or guardian has given permission.

This instruction was adopted in 1981 and amended on April 3, 2020.

10.12 DEALER SELLING ARMS TO MINORS

§ 790.18, Fla. Stat.

To prove the crime of a Dealer Selling Arms to a Minor, the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **was engaged in the business of dealing in arms as a source of revenue.**

2. **In the course of that business** (defendant) **sold to** (minor alleged) **the** (weapon alleged)**.**

3. (Minor alleged) **was at the time under the age of 18 years.**

Definitions

A "dealer in arms" is a person who buys and sells weapons or firearms.

A "(weapon or firearm alleged)" **is legally defined as** (adapt from § 790.001, Fla. Stat., as required by the allegations)**.**

Lesser Included Offenses

SELLING ARMS TO MINORS BY DEALERS — 790.18

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempt	777.04(1)	5.1

Comment

This instruction was adopted in 1981 and was amended in 1992.

10.13 SHOOTING OR THROWING A [MISSILE] [STONE] [HARD SUBSTANCE] [AT] [WITHIN] [INTO] [IN] A[N] [BUILDING] [VEHICLE] [VESSEL] [AIRCRAFT]

§ 790.19, Fla. Stat.

To prove the crime of (crime charged)**, the State must prove the following three elements beyond a reasonable doubt:**

Give 1a–1c as applicable.

1. (Defendant)

a. [shot] [or] [threw] a missile that would produce death or great bodily harm.

b. hurled or projected a stone or other hard substance that would produce death or great bodily harm.

c. *shot a firearm that would produce death or great bodily harm.

Give 2a–2f as applicable.

2. [He] [She] did so [at] [within] [into] [in]

a. a public or private building, occupied or unoccupied.

b. a public or private bus, that was being used or occupied by any person.

c. a train, locomotive, railway car, caboose, cable railway car, street railway car, or monorail car that was being used or occupied by any person.

d. a vehicle of any kind that was being used or occupied by any person.

e. a boat, vessel, ship, or barge lying in or plying the waters of this state.

f. an aircraft flying through the air space of this state.

3. The defendant's act was done wantonly or maliciously.

State v. Kettell, 980 So. 2d 1061 (Fla. 2008).

"Wantonly" means consciously and intentionally, with reckless indifference to consequences and with the knowledge that damage is likely to be done to some person.

State v. Kettell, 980 So. 2d 1061 (Fla. 2008).

"Maliciously" means wrongfully, intentionally, without legal justification or excuse, and with the knowledge that injury or damage will or may be caused to another person or the property of another person.

Give if applicable. § 790.001, Fla. Stat.

A "firearm" means any weapon [including a starter gun] which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; [the frame or receiver of any such weapon;] [any firearm muffler or firearm silencer;] [any destructive device;] [any machine gun]. [The term "firearm" does not include an antique firearm unless the antique firearm is used in the commission of another crime. An "antique firearm" is *(insert definition in 790.001, Fla. Stat.)***].** *Destructive device is defined in § 790.001, Fla. Stat.*

Wheeler v. State, 203 So. 3d 1007 (Fla. 4th DCA 2016).

"Great bodily harm" means great as distinguished from slight, trivial, minor, or moderate harm, and as such does not include mere bruises.

Give if applicable. Polite v. State, 454 So. 2d 769 (Fla. 1st DCA 1984).

It is not necessary for the State to prove a defendant acted with malevolence toward a vehicle or structure itself if the State proved [he] [she] acted with a wanton or malicious attitude directed toward an individual within or near the vehicle or structure.

Lesser Included Offenses

SHOOTING OR THROWING A [MISSILE] [STONE] [HARD SUBSTANCE [[AT] [WITHIN] [INTO] [IN] A[N] [BUILDING] [VEHICLE] [VESSEL] [AIRCRAFT] — 790.19

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempt	777.04(1)	5.1
	Criminal Mischief	806.13	12.4
	Discharging firearm in public	790.15	10.6

Comments

*According to the Fourth District Court of Appeal, § 790.19, Fla. Stat., cannot be reclassified pursuant to § 775.087(1), Fla. Stat., because the use of a weapon or a firearm is an essential element of the crime. *Jefferson v. State*, 927 So. 2d 1037 (Fla. 4th DCA 2006). However, in *Robertson v. State*, 807 So. 2d 708 (Fla. 4th DCA 2002), the Fourth District also held it was proper to add 18 firearm points on the scoresheet because possession of a firearm is not an essential element of the crime. The First District Court of Appeal held in *Horn v. State*, 677 So. 2d 320 (Fla. 1st DCA 1996), that the use of a firearm was a necessary element of shooting at an occupied vehicle in violation of § 790.19, Fla. Stat. The Third District Court of Appeal has also held that the use of a firearm is a necessary element of shooting into an occupied vehicle. *Jones v. Singletary*, 621 So. 2d 760 (Fla. 3d DCA 1993). Trial judges should therefore consider whether to instruct on element #1c based on the charging document and the evidence.

This instruction was adopted in 1981 and amended in 2018 [253 So. 3d 1024] and 2019.

10.14 POSSESSION OF A [SHORT-BARRELED RIFLE] [SHORT-BARRELED SHOTGUN] [MACHINE GUN]

§ 790.221, Fla. Stat.

To prove the crime of Possession of a [Short-Barreled Rifle] [Short-Barreled Shotgun] [Machine Gun], the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) **knowingly owned or knowingly had in [his] [her] care, custody, possession, or control a [short-barreled rifle] [short-barreled shotgun] [machine gun].**

2. **The [short-barreled rifle] [short-barreled shotgun] [machine gun] was one that was, or could readily be made, operable.**

Definitions. Give as applicable.

"Care" and "custody" mean immediate charge and control exercised by a person over the named object. The terms care, custody, and control may be used interchangeably.

Possession.

To prove (defendant) **"possessed" a [short-barreled rifle] [short-barreled shotgun] [machine gun], the State must prove beyond a reasonable doubt that [he] [she] a) knew of the existence of the [short-barreled rifle] [short-barreled shotgun] [machine gun] and b) intentionally exercised control over it.**

Give if applicable.

Control can be exercised over a [short-barreled rifle] [short-barreled shotgun] [machine gun] whether it is carried on a person, near a person, or in a completely separate location. Mere proximity to a [short-barreled rifle] [short-barreled shotgun] [machine gun] 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 the [short-barreled rifle] [short-barreled shotgun] [machine gun] or the present ability to direct its control by another.**

Joint possession.

Possession of a [short-barreled rifle] [short-barreled shotgun] [machine gun] may be sole or joint, that is, two or more persons may possess it.

§ 790.001, Fla. Stat. Give as applicable.

A "machine gun" means any firearm which shoots, or is designed to shoot, automatically more than one shot, without manually reloading, by a single function of the trigger. A "firearm" means any weapon which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer.

A "short-barreled shotgun" means a shotgun having one or more barrels less than 18 inches in length and any weapon made from a shotgun (whether by alteration, modification, or otherwise) if such weapon as modified has an overall length of less than 26 inches.

A "short-barreled rifle" means a rifle having one or more barrels less than 16 inches in length and any weapon made from a rifle (whether by alteration, modification, or otherwise) if such weapon as modified has an overall length of less than 26 inches.

Antique Firearm Affirmative Defense. Give if applicable.

§ 790.221, Fla. Stat.; § 790.001, Fla. Stat.

The statute and case law are silent as to (1) which party bears the burden of persuasion of the defense and (2) the standard for the burden of persuasion. Under the common law, defendants had both the burden of production and the burden of persuasion on affirmative defenses by a preponderance of the evidence. The Florida Supreme Court has often decided, however, that once a defendant meets the burden of production on an affirmative defense, the burden of persuasion is on the State to disprove the affirmative defense beyond a reasonable doubt (e.g., self-defense and consent to enter in a burglary prosecution). In the absence of case law, trial judges must resolve the issue via a special instruction. See the opinion in Dixon v. United States, 548 U.S. 1 (2006), for further guidance.

It is a defense if the [short-barreled rifle] [short-barreled shotgun] [machine gun] is an antique firearm. An "antique firearm" means any firearm manufactured in or before 1918 (including any matchlock, flintlock, percussion cap, or similar early type of ignition system) or replica thereof, whether actually manufactured before or after the year 1918, and also any firearm using fixed ammunition manufactured in or before 1918, for which ammunition is no longer manufactured in the United States and is not readily available in the ordinary channels of commercial trade.

If burden of persuasion is on the defendant:

If you find that defendant proved *(insert appropriate burden of persuasion)* **that the [short-barreled rifle] [short-barreled shotgun] [machine gun] is an antique firearm, you should find [him] [her] not guilty.**

If burden of persuasion is on the State:

If you find that the State proved *(insert appropriate burden of persuasion)* **that the [short-barreled rifle] [short-barreled shotgun] [machine gun] is not an antique firearm, you should find [him] [her] guilty, if all the elements of the charge have been proven beyond a reasonable doubt.**

Lesser Included Offense

POSSESSION OF A [SHORT-BARRELED RIFLE] [SHORT-BARRELED SHOTGUN] [MACHINE GUN] — 790.221

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempt	777.04(1)	5.1

Comments

Pursuant to § 790.221(3), Fla. Stat., firearms that are lawfully owned and possessed under provisions of federal law are excepted from the statute. A special instruction will be required in cases where the defendant claims federal law allows the ownership and possession of those firearms.

This instruction was adopted in 1981 and was amended in 1989 [540 So. 2d 1205], 2018 [253 So. 3d 1024], and on February 21, 2025.

10.15 CONVICTED FELON CARRYING A CONCEALED WEAPON OR CONVICTED FELON POSSESSING [A FIREARM] [AMMUNITION] [AN ELECTRIC WEAPON OR DEVICE]

§ 790.23, Fla. Stat.

To prove the crime of (crime charged), **the State must prove the following two elements beyond a reasonable doubt:**

1. (Defendant) **had been convicted of a felony.**

Give 2a or 2b or both as applicable.

2. After the conviction, (defendant) **knowingly**

a. owned or had in [his] [her] care, custody, possession, or control [a firearm] [an electric weapon or device] [ammunition].

b. carried a concealed weapon.

Give if applicable. § 790.23(1)(a), (1)(c), or (1)(e), Fla. Stat.

The court instructs you that (name of felony) **was a felony under [Florida state] [federal] [**(insert the name of the state, territory, or country) **law and was punishable by imprisonment for a term exceeding 1 year] on** (insert relevant date)**.**

For purposes of § 790.23(1)(a), Fla. Stat., a withhold of adjudication does not qualify as a "conviction." State v. Menuto, 912 So. 2d 603 (Fla. 2d DCA 2005).

"Convicted" means that a judgment has been entered in a criminal proceeding by a court pronouncing the accused guilty.

Give as appropriate. § 790.001, Fla. Stat.

A "firearm" means any weapon [including a starter gun] which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; [the frame or receiver of any such weapon;] [any firearm muffler or firearm silencer;] [any destructive device;] [any machine gun]. [The term "firearm" does not include an antique firearm unless the antique firearm is used in the commission of another crime. An antique firearm is *(insert definition in § 790.001, Fla. Stat.*]**. [A destructive device is** *(insert definition in § 790.001, Fla. Stat.*]**.**

An "electric weapon or device" means any device which, through the application or use of electrical current, is designed, redesigned, used, or intended to be used for offensive or defensive purposes, the destruction of life, or the infliction of injury.

"Ammunition" means an object consisting of all of the following:

a. A fixed metallic or nonmetallic hull or casing containing a primer.

b. One or more projectiles, one or more bullets, or shot.

c. Gunpowder.

Give only if defendant is charged with Convicted Felon Carrying a Concealed Weapon. See § 790.001, Fla. Stat.

A "concealed weapon" means any dirk, metallic knuckles, billie, tear gas gun, chemical weapon or device, or other deadly weapon carried on or about a person in such manner as to conceal the weapon from the ordinary sight of another person.

Give the following paragraph only if applicable.

A "deadly weapon" is any object that will likely cause death or great bodily harm if used in the ordinary and usual manner contemplated by its design and construction.

Give the following paragraph only if applicable.

An object not designed to inflict bodily harm may nonetheless be a "deadly weapon" if it was intended [or threatened] to be used in a manner likely to cause death or great bodily harm.

Give the following paragraph only if applicable.

"Great bodily harm" means great as distinguished from slight, trivial, minor, or moderate harm, and as such does not include mere bruises.

The explanations of "on or about a person" and "ordinary sight of another person" apply only when convicted felon carried a concealed weapon is alleged.

The term "on or about a person" means physically on the person or readily accessible to [him] [her].

The term "ordinary sight of another person" means the casual and ordinary observation of another in the normal associations of life. A weapon need not be completely hidden for you to find that it was concealed. However, a weapon is not concealed if, although not fully exposed, its status as a weapon is detectable by ordinary observation.

Give only if element 2a alleged.

"Care" and "custody" mean immediate charge and control exercised by a person over the named object. The terms care, custody, and control may be used interchangeably.

Possession. Give only if element 2a alleged.

To prove (defendant) **"possessed" [a firearm] [an electric weapon or device] [ammunition], the State must prove beyond a reasonable doubt that [he] [she] a) knew of the existence of the [firearm] [electric weapon or device] [ammunition] and b) intentionally exercised control over it.**

Give if applicable and only if element 2a alleged.

Control can be exercised over [a firearm] [an electric weapon or device] [ammunition] whether it is carried on a person, near a person, or in a completely separate location. Mere proximity to [a firearm] [an electric weapon or device] [ammunition] 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 the [firearm] [electric weapon or device] [ammunition] or the present ability to direct its control by another.

Joint possession. Give if applicable and only if element 2a alleged.

Possession of [a firearm] [an electric weapon or device] [ammunition] may be sole or joint, that is, two or more persons may possess it.

Optional Definitions. Shaw v. State, 510 So. 2d 349 (Fla. 2d DCA 1987).

"Knowingly" means with actual knowledge and understanding of the facts or the truth.

"Knowingly" means an act done voluntarily and intentionally and not because of mistake or accident or other innocent reason.

Lesser Included Offenses

CONVICTED FELON CARRYING A CONCEALED WEAPON OR CONVICTED FELON POSSESSING [A FIREARM] [AMMUNITION] [AN ELECTRIC WEAPON OR DEVICE]—790.23

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Carrying a Concealed Weapon if Carrying a Concealed Weapon by a Convicted Felon is charged		790.01(1)	10.1
	Attempt	777.04(1)	5.1
	Carrying concealed firearm	790.01(2)	10.1

Comments

A special instruction will be necessary in cases where the concealed weapon was an animal or a substance or something that is not commonly referred to as an "object."

The term "possession" in what is commonly referred to as the "10-20-life" statute is defined in § 775.087(4), Fla. Stat. Because the definition of "actual possession" for purposes of § 775.087(2), Fla. Stat., differs from the definition of "actual possession" in the opinions that explain the difference between actual and constructive possession, judges should consider using instruction 3.3(d) for "10-20-life" cases.

This instruction was adopted in 1981 and amended in 1989 [543 So. 2d 1205], 1992 [603 So. 2d 1175], 2007 [953 So. 2d 495], 2013 [131 So. 3d 720], 2018 [253 So. 3d 1024], on April 3, 2020, on July 9, 2021, and April 1, 2022.

10.15(a) [POSSESSION OF [A FIREARM] [AN ELECTRIC WEAPON OR DEVICE] [AMMUNITION]] [OR] [CARRYING A CONCEALED WEAPON] BY A PERSON UNDER THE AGE OF 24 WHO HAS BEEN FOUND DELINQUENT OF AN OFFENSE THAT WOULD BE A FELONY IF COMMITTED BY AN ADULT

§ 790.23(1)(b) or (1)(d), Fla. Stat.

To prove the crime of (crime charged), **the State must prove the following three elements beyond a reasonable doubt:**

1. (Defendant) **had been found by [a court of this state] [a court of another [state] [territory] [country]] to have committed a delinquent act that would be a felony if committed by an adult [and which was punishable by imprisonment for a term exceeding 1 year].**

Give 2a or 2b or both as applicable.

2. After being found to have committed that delinquent act, (defendant) **knowingly**

a. owned or had in [his] [her] care, custody, possession, or control [a firearm] [an electric weapon or device] [ammunition].

b. carried a concealed weapon.

3. (Defendant) **was under 24 years of age at the time [he] [she] [owned or had in [his] [her] care, custody, possession, or control, [the firearm] [the electric weapon or device] [the ammunition]] [or] [carried the concealed weapon].**

"Found" refers to a finding of fact by a court of competent jurisdiction and does not require an adjudication of guilt. State v. Menuto, 912 So. 2d 603 (Fla. 2d DCA 2005).

Give if applicable. § 790.23(1)(b) or (1)(d), Fla. Stat.

The court instructs you that (name of felony) **was a felony under [Florida state law] [**(insert the name of the state, territory, or country where the delinquent act occurred) **law and was punishable by imprisonment for a term exceeding 1 year] on** (insert relevant date)**.**

§ 985.03(9), Fla. Stat.

"Delinquent act" is a violation of law found by a court to have been committed by any married or unmarried child under 18 years of age.

Give as appropriate. § 790.001, Fla. Stat.

A "firearm" means any weapon (including a starter gun) which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of such weapon; any firearm muffler or firearm silencer; any destructive device; or any machine gun. [The term "firearm" does not include an antique firearm unless the antique firearm is used in the commission of another crime. An antique firearm is *(insert definition in § 790.001, Fla. Stat.)***]. [A destructive device is** (*insert definition in § 790.001, Fla. Stat.)***].**

"Ammunition" means an object consisting of all of the following:

a. A fixed metallic or nonmetal hull or casing containing a primer.

b. One or more projectiles, one or more bullets, or shot.

c. Gunpowder.

An "electric weapon or device" means any device which, through the application or use of electrical current, is designed, redesigned, used, or intended to be used for offensive or defensive purposes, the destruction of life, or the infliction of injury.

Give only if element 2b alleged.

A "concealed weapon" means any dirk, metallic knuckles, billie, tear gas gun, chemical weapon or device, or other deadly weapon carried on or about a person in such a manner as to conceal the weapon from the ordinary sight of another person.

Give the following paragraph only if applicable.

A "deadly weapon" is any object that will likely cause death or great bodily harm if used in the ordinary and usual manner contemplated by its design and construction.

Give the following paragraph only if applicable.

An object not designed to inflict bodily harm may nonetheless be a "deadly weapon" if it was intended [or threatened] to be used in a manner likely to cause death or great bodily harm. "Great bodily harm" means great as distinguished from slight, trivial, minor, or moderate harm, and as such does not include mere bruises.

The term "on or about a person" means physically on the person or readily accessible to [him] [her].

The term "ordinary sight of another person" means the casual and ordinary observation of another in the normal associations of life. Absolute invisibility is not a necessary element to a finding of concealment.

Give only if element 2a alleged.

"Care" and "custody" mean immediate charge and control exercised by a person over the named object. The terms care, custody, and control may be used interchangeably.

Possession. Give only if element 2a alleged.

To prove (defendant) **"possessed" [a firearm] [an electric weapon or device] [ammunition], the State must prove beyond a reasonable doubt that [he] [she] a) knew of the existence of the [firearm] [electric weapon or device] [ammunition] and b) intentionally exercised control over it.**

Give if applicable and only if element 2a alleged.

Control can be exercised over [a firearm] [an electric weapon or device] [ammunition] whether it is carried on a person, near a person, or in a completely separate location. Mere proximity to [a firearm] [an electric weapon or device] [ammunition] 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 the [firearm] [electric weapon or device] [ammunition] or the present ability to direct its control by another.**

Joint possession. Give if applicable and only if element 2a alleged.

Possession of [a firearm] [an electric weapon or device] [ammunition] may be sole or joint, that is, two or more persons may possess it.

Optional Definitions. Shaw v. State, 510 So. 2d 349 (Fla. 2d DCA 1987).

"Knowingly" means with actual knowledge and understanding of the facts or the truth.

"Knowingly" means an act done voluntarily and intentionally and not because of mistake or accident or other innocent reason.

Lesser Included Offenses

CARRYING A CONCEALED WEAPON OR POSSESSING FIREARM/AMMUNITION/ELECTRIC WEAPON OR DEVICE BY A PERSON UNDER THE AGE OF 24 WHO HAS BEEN FOUND DELINQUENT OF AN OFFENSE THAT WOULD BE A FELONY IF COMMITTED BY AN ADULT– 790.23(1)(b) OR (d)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Carrying a Concealed Weapon if Carrying a Concealed Weapon is charged		790.01(1)	10.1
	Attempt	777.04(1)	5.1
	Carrying concealed firearm	790.01(2)	10.1

Comments

The 3-year minimum mandatory sentence for actual possession of a firearm does not apply because this crime is not listed in § 775.087(2), Fla. Stat. *Potter v. State*, 997 So. 2d 1215 (Fla. 1st DCA 2008).

A special instruction will be necessary in cases where the weapon was an animal or a substance or something that is not commonly referred to as an "object."

This instruction was adopted in 2012 [95 So. 3d 868] and amended in 2018 [253 So. 3d 1024], on April 3, 2020, and on April 1, 2022.

10.15(b) [POSSESSION OF [A FIREARM] [AMMUNITION] [AN ELECTRIC WEAPON OR DEVICE]] [OR] [CARRYING A CONCEALED WEAPON] BY A PERSON WHO MET THE CRITERIA IN § 775.084(1)(d) AND § 790.235(2) FLA. STATS.

§ 790.235, Fla. Stat.

To prove the crime of (crime charged), **the State must prove the following two elements beyond a reasonable doubt:**

Give 1a or 1b or both as applicable.

1. (Defendant) **knowingly**

a. owned or had in [his] [her] care, custody, possession, or control [a firearm] [an electric weapon or device] [ammunition].

b. carried a concealed weapon.

2. Before that time, [he] [she] met the criteria in § 775.084(1)(d) and § 790.235(2), Florida Statutes.

In some cases, there is a stipulation that the defendant qualified as a violent career criminal. In those cases, trial judges should read instruction #2.3 instead of the following paragraphs.

There are six elements the State must prove beyond a reasonable doubt for you to find the defendant met the criteria in § 775.084(1)(d) and § 790.235(2), Florida Statutes. They are as follows:

Give only the crimes for which evidence was presented.

1. The defendant was convicted as an adult [or was adjudicated delinquent] three or more times for a crime in this state [or other qualified offense], specifically:

a. *(List forcible felony from s. 776.08);*

b. Aggravated stalking, as described in s. 784.048(3) and (4);

c. Aggravated child abuse, as described in s. 827.03(2)(a);

d. Aggravated abuse of [an elderly person] [disabled adult], as described in s. 825.102(2);

e. [Lewd or lascivious battery] [Lewd or lascivious molestation] [Lewd or lascivious conduct, [Lewd or

lascivious exhibition] as described in s. 800.04 or s. 847.0135(5);

f. Escape, as described in s. 944.40; or

g. *(List felony violation of chapter 790 involving the use or possession of a firearm).*

2. The defendant has been incarcerated in a state prison or a federal prison.

3. The crime [in Count x] for which you are now rendering a verdict was committed on or after October 1, 1995, and:

a. while the defendant was serving a prison sentence or other sentence, or court-ordered or lawfully imposed supervision that was imposed as a result of a prior conviction [or adjudication of delinquency] for a crime found in #1 above;

or

b. within 5 years after the conviction of the last crime found in #1 above, or within 5 years after the defendant's release from a prison sentence, probation, community control, control release, conditional release, parole, or court-ordered or lawfully imposed supervision or other sentence that was imposed as a result of a prior conviction for a crime found in #1 above, whichever was later.

4. The defendant has not received a pardon for any crime found in #1.*

5. None of the defendant's convictions [or adjudications of delinquency] for the crimes found in #1 have been set aside in any postconviction proceeding.*

6. The crimes [or adjudications of delinquency] found in #1 were all sentenced in separate proceedings.

Give if applicable. § 775.084, Fla. Stat.

"Qualified offense" means any offense, substantially similar in elements and penalties to an offense in this state, which is in violation of a law of any other jurisdiction, whether that of another state, the District of Columbia, the United States or any possession or territory thereof, or any foreign jurisdiction, that was punishable under the law of such

jurisdiction at the time of its commission by the defendant by death or imprisonment exceeding 1 year.

§ 775.084, Fla. Stat.

A withhold of adjudication for a person placed on probation or community control qualifies as a prior conviction.

Give as appropriate. § 790.001, Fla. Stat.

A "firearm" means any weapon [including a starter gun] which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; [the frame or receiver of any such weapon;] [any firearm muffler or firearm silencer;] [any destructive device;] [any machine gun]. [The term "firearm" does not include an antique firearm unless the antique firearm is used in the commission of another crime. An antique firearm is *(insert definition in § 790.001, Fla. Stat.*]. **[A destructive device is** *(insert definition in § 790.001, Fla. Stat.*]**.**

An "electric weapon or device" means any device which, through the application or use of electrical current, is designed, redesigned, used, or intended to be used for offensive or defensive purposes, the destruction of life, or the infliction of injury.

"Ammunition" means an object consisting of all of the following:

a. A fixed metallic or nonmetallic hull or casing containing a primer.

b. One or more projectiles, one or more bullets, or shot.

c. Gunpowder.

Give only if defendant is charged with the alternative of carrying a concealed weapon. See § 790.001, Fla. Stat.

A "concealed weapon" means any dirk, metallic knuckles, billie, tear gas gun, chemical weapon or device, or other deadly weapon carried on or about a person in such manner as to conceal the weapon from the ordinary sight of another person.

Give the following paragraph only if applicable.

A "deadly weapon" is any object that will likely cause death or great bodily harm if used in the ordinary and usual manner contemplated by its design and construction.

Give the following paragraph only if applicable.

An object not designed to inflict bodily harm may nonetheless be a "deadly weapon" if it was intended [or threatened] to be used in a manner likely to cause death or great bodily harm. "Great bodily harm" means great as distinguished from slight, trivial, minor, or moderate harm, and as such does not include mere bruises.

The explanations of "on or about a person" and "ordinary sight of another person" apply only in cases involving an allegation that the defendant carried a concealed weapon.

The term "on or about a person" means physically on the person or readily accessible to [him] [her].

The term "ordinary sight of another person" means the casual and ordinary observation of another in the normal associations of life. A weapon need not be completely hidden for you to find that it was concealed. However, a weapon is not concealed if, although not fully exposed, its status as a weapon is detectable by ordinary observation.

Give only if element 2a alleged.

"Care" and "custody" mean immediate charge and control exercised by a person over the named object. The terms care, custody, and control may be used interchangeably.

Possession. Give only if element 2a alleged.

To prove (defendant) **"possessed" [a firearm] [an electric weapon or device] [ammunition], the State must prove beyond a reasonable doubt that [he] [she] a) knew of the existence of the [firearm] [electric weapon or device] [ammunition] and b) intentionally exercised control over it.**

Give if applicable and only if element 2a alleged.

Control can be exercised over [a firearm] [an electric weapon or device] [ammunition] whether it is carried on a person, near a person, or in a completely separate location. Mere proximity to [a firearm] [an electric weapon or device] [ammunition] 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 the [firearm] [electric weapon or device] [ammunition] or the present ability to direct its control by another.

Joint possession. Give if applicable and only if element 2a alleged.

Possession of [a firearm] [an electric weapon or device] [ammunition] may be sole or joint, that is, two or more persons may possess it.

Optional Definitions. Shaw v. State, 510 So. 2d 349 (Fla. 2d DCA 1987).

"Knowingly" means with actual knowledge and understanding of the facts or the truth.

"Knowingly" means an act done voluntarily and intentionally and not because of mistake or accident or other innocent reason.

Affirmative defense. § 790.235(3), Fla. Stat. The defendant has the burden of producing evidence that his or her civil rights and firearm authority had been restored. As of February 2026, the statute and case law are silent as to (1) which party bears the burden of persuasion of the affirmative defense and (2) the level of proof for that burden of persuasion. Trial judges will need to decide whether the defendant must prove his or her civil rights and firearm authority had been restored, or the State must prove the defendant's civil rights and firearm authority had not been restored. No matter which party has the burden of persuasion, judges will also need to decide the level of proof for that burden. Under the common law, defendants had the burden of proving an affirmative defense by a preponderance of the evidence. However, the Florida Supreme Court has often allocated the burden to the State to disprove an affirmative defense under the beyond a reasonable doubt standard (e.g., self-defense).

It is a defense to the crime of (crime charged) **if the defendant's civil rights and firearm authority had been restored.** *(Instruct on appropriate burden.)*

Lesser Included Offenses

POSSESSION OF [A FIREARM] [AMMUNITION] [AN ELECTRIC WEAPON OR DEVICE] [OR] [CARRYING A CONCEALED WEAPON] BY A PERSON WHO MET THE CRITERIA IN § 775.084(1)(d) AND §790.235(2), FLA. STATS. — 790.235

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Carrying a Concealed Weapon or Possessing a Firearm, Ammunition, or Electric Weapon or Device by a Convicted Felon		790.23	10.15
Carrying a Concealed Weapon if Carrying a Concealed Weapon by a Convicted Felon is charged		790.01(1)	10.1
	Attempt	777.04(1)	5.1
	Carrying concealed firearm	790.01(2)	10.1

Comments

A special instruction will be necessary in cases where the concealed weapon was an animal or a substance or something that is not commonly referred to as an "object."

Trial judges do not depart from the essential requirements of law by prohibiting the State, at jury trial, from using the term "violent career criminal." *State v. Emmund,* 698 So. 2d 1318 (Fla. 3d DCA 1997).

*For sentencing as a violent career criminal, it is an affirmative defense that the defendant was pardoned for a prior felony or other qualified offense or that a prior conviction had been set aside in a postconviction proceeding. *See State v. Rucker*, 613 So. 2d 460 (Fla. 1993). Because, as of February 2026, there is no appellate court that has addressed whether a pardon or set aside is also an affirmative defense for purposes of § 790.235, Fla. Stat., the Committee on Standard Jury Instructions in Criminal Cases, in an abundance of caution, included pardons and set asides as elements #4 and #5.

This instruction was adopted on May 5, 2023, and amended on September 5, 2025, and on March 20, 2026.

10.16 USING A FIREARM WHILE UNDER THE INFLUENCE

§ 790.151, Fla. Stat.

To prove the crime of Using a Firearm While Under the Influence, the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) **used a firearm.**

2. (Defendant) **was under the influence of [an alcoholic beverage] [any chemical substance] [any controlled substance] when affected to the extent that [his] [her] normal faculties were impaired, when using the firearm.**

§ 790.001, Fla. Stat.

"Firearm" means any weapon (including a starter gun) which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; any destructive device; or any machine gun. The term "firearm" does not include an antique firearm unless the antique firearm is used in the commission of a crime.

"Use a firearm" means to discharge a firearm or to have a firearm readily accessible for immediate discharge.

"Readily accessible for immediate discharge" means loaded and in a person's hand.

Give if applicable.

"Alcoholic beverages" are considered to be substances of any kind and description which contain alcohol.

§ 877.111, Fla. Stat.

(Chemical substance) **is a chemical substance under Florida law.**

Ch. 893, Fla. Stat.

(Controlled substance) **is a controlled substance under Florida law.**

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comment

This instruction was adopted in 2007.

10.17 USE OF A BB GUN BY A PERSON UNDER 16 [§ 790.22 RESERVED]

10.18 [ALTERING OR REMOVING FIREARM SERIAL NUMBER WITH INTENT TO DISGUISE TRUE IDENTITY] [POSSESSION OR SALE OR DELIVERY OF FIREARM WITH SERIAL NUMBER ALTERED OR REMOVED]

§ 790.27, Fla. Stat.

To prove the crime of (name of crime)**, the State must prove the following [two] [three] elements beyond a reasonable doubt:**

Give only if § 790.27(1)(a), Fla. Stat. is charged.

1. (Defendant) **knowingly [altered] [removed] the [manufacturer's] [importer's] serial number from a firearm.**

2. (Defendant) **did so with the intent to disguise the true identity of the firearm.**

Give only if § 790.27(2)(a), Fla. Stat. is charged.

1. (Defendant) **knowingly [sold] [delivered] [possessed] a firearm.**

2. The [manufacturer's] [importer's] serial number had been unlawfully [altered] [removed].

3. (Defendant) **knew the serial number had been [altered] [removed].**

§ 790.001, Fla. Stat.

A "firearm" means any weapon (including a starter gun) which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive[; the frame or receiver of any such weapon;] [any firearm muffler or firearm silencer;] [any destructive device;] [or] [any machine gun].

Give if possession charged.

To prove (defendant) **"possessed a firearm," the State must prove beyond a reasonable doubt that [he] [she]: a) knew of the existence of the firearm; and b) intentionally exercised control over the firearm.**

Give if applicable.

Control can be exercised over a firearm whether the firearm is carried on a person, near a person, or in a completely separate location. Mere proximity to a firearm does not establish that the person

intentionally exercised control over the firearm in the absence of additional evidence. Control can be established by proof that (defendant) **had direct personal power to control the firearm or the present ability to direct its control by another.**

Joint possession. Give if applicable.

Possession of a firearm may be sole or joint, that is, two or more persons may possess a firearm.

Lesser Included Offense

[ALTERING OR REMOVING FIREARM SERIAL NUMBER WITH INTENT TO DISGUISE TRUE IDENTITY] [POSSESSION OR SALE OR DELIVERY OF FIREARM WITH SERIAL NUMBER ALTERED OR REMOVED]—790.27

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempt	777.04(1)	5.1

Comment

This instruction was adopted in 2009 [6 So. 3d 574] and amended in 2019.

10.19 USE OF A SELF-DEFENSE WEAPON

§ 790.054, Fla. Stat.

To prove the crime of Using a Self-Defense Weapon against a law enforcement officer, the State must prove the following four elements beyond a reasonable doubt:

1. (Defendant) **intentionally used a [self-defense chemical spray] [nonlethal stun gun] [nonlethal electric weapon] [dart firing stun gun] against** (victim)**.**

2. (Victim) **was at the time a law enforcement officer.**

3. (Defendant) **knew** (victim) **was a law enforcement officer.**

4. At the time of the incident, (victim) **was engaged in the lawful performance of [his] [her] duties.**

The court now instructs you that (name of official position of victim designated in charge) **is a law enforcement officer.** *Do not read the name of the victim in this part of the instruction.*

Lesser Included Offenses

USE OF A SELF-DEFENSE WEAPON — § 790.054

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Battery	784.03(1)(a)	8.3

Comment

This instruction is based on section 790.054, Florida Statutes (1997). In giving this instruction, do not refer to the victim by name in the last sentence of the instruction. That sentence must state the class of officers to which the victim belongs, e.g., probation officer, correctional officer. *See Wright v. State*, 586 So. 2d 1025 (Fla. 1991).

This instruction was adopted in 2000 [765 So. 2d 692] and amended in 2008.

10.20 [CARE] [CUSTODY] [POSSESSION] [CONTROL] OF [A FIREARM] [AMMUNITION] WHILE A FINAL INJUNCTION FOR [DOMESTIC VIOLENCE] [STALKING] [CYBERSTALKING] IS IN EFFECT

§ 790.233(1), Fla. Stat.

To prove the crime of (crime charged)**, the State must prove the following three elements beyond a reasonable doubt**:

1. **A judge issued a final injunction for protection against [domestic violence] [stalking] [cyberstalking] against** (defendant)**.**

2. **The final injunction had been served upon** (defendant) **or** (defendant) **had acknowledged receipt.**

3. **While the final injunction was in force and effect,** (defendant) **had [ammunition] [a firearm] in [his] [her] care, custody, possession, or control.**

Give as applicable. § 790.001, Fla. Stat.

"Firearm" means any weapon (including a starter gun) which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon, any firearm muffler or firearm silencer; any destructive device; any machine gun. [The term "firearm" does not include an antique firearm unless the antique firearm is used in the commission of another crime.] *See § 790.001, Fla. Stat. for the definition of antique firearm.*

"Destructive device" means any bomb, grenade, mine, rocket, missile, pipebomb, or similar device containing an explosive, incendiary, or poison gas and includes any frangible container filled with an explosive, incendiary, explosive gas, or expanding gas, which is designed or so constructed as to explode by such filler and is capable of causing bodily harm or property damage; any combination of parts either designed or intended for use in converting any device into a destructive device and from which a destructive device may be readily assembled; any device declared a destructive device by the Bureau of Alcohol, Tobacco, and Firearms; any type of weapon which will, is designed to, or may readily be converted to expel a projectile by the action of any explosive and which has a barrel with a bore of one-half inch or more in diameter; and ammunition for such destructive devices, but not including shotgun shells or any other ammunition designed for use in a firearm other than a destructive device.

"Destructive device" does not include:

a. A device which is not designed, redesigned, used, or intended for use as a weapon;

b. Any device, although originally designed as a weapon, which is redesigned so that it may be used solely as a signaling, line-throwing, safety, or similar device;

c. Any shotgun other than a short-barreled shotgun; or

d. Any nonautomatic rifle (other than a short-barreled rifle) generally recognized or particularly suitable for use for the hunting of big game.

"Ammunition" means an object consisting of all of the following:

a. A fixed metallic or nonmetallic hull or casing containing a primer;

b. One or more projectiles, one or more bullets, or shot;

c. Gunpowder.

"Care" and "custody" mean immediate charge and control exercised by a person over the named item. The terms care, custody, and control may be used interchangeably.

Possession.

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

Give if applicable.

Control can be exercised over [a firearm] [ammunition] whether it is carried on a person, near a person, or in a completely separate location. Mere proximity to [a firearm] [ammunition] 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 the [firearm] [ammunition] or the present ability to direct its control by another.**

Joint possession.

Possession of [a firearm] [ammunition] may be sole or joint, that is, two or more persons may possess it.

Lesser Included Offense

[CARE] [CUSTODY] [POSSESSION] [CONTROL] OF [A FIREARM] [AMMUNITION] WHILE A FINAL INJUNCTION FOR [DOMESTIC VIOLENCE] [STALKING] [CYBERSTALKING] IS IN EFFECT — 790.233(1)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempt	777.04(1)	5.1

Comments

This crime does not apply to a state or local officer as defined in § 943.10(14), Fla. Stat., holding an active certification, who received or possessed a firearm or ammunition for use in performing official duties on behalf of the officer's employing agency, unless otherwise prohibited by the employing agency.

This instruction was adopted in 2014 [148 So. 3d 1204] and amended in 2018.

10.21 IMPROPER EXHIBITION OF A [WEAPON] [FIREARM] [AT A SCHOOL-SPONSORED EVENT] [ON SCHOOL PROPERTY] [ON A SCHOOL BUS] [AT A SCHOOL BUS STOP] [WITHIN 1,000 FEET OF A SCHOOL]

§ 790.115(1), Fla. Stat.

To prove the crime of Improper Exhibition of a [Weapon] [Firearm] [Sword] [Sword Cane] [Electric Weapon or Device] [Destructive Device] [at] [on] [within] [(insert prohibited place in Fla. Stat. 790.115(1))**], the State must prove the following four elements beyond a reasonable doubt.**

1. (Defendant) **had or carried a[n] [weapon] [firearm] [sword] [sword cane] [electric weapon or device] [destructive device].**

2. (Defendant) **exhibited the [weapon] [firearm] [sword] [sword cane] [electric weapon or device] [destructive device] in a rude, careless, angry, or threatening manner.**

3. (Defendant) **did so in the presence of one or more persons.**

4. **At the time,** (defendant) **was [at a school-sponsored event] [on the grounds [or facilities] of a [school] [school bus] [school bus stop]] [within 1,000 feet of the real property that compromises a [public or private elementary school] [middle school] [secondary school] during school hours [or during the time of a sanctioned school activity]].**

Definitions. Give as applicable.

§ 790.001 and § 790.115, Fla. Stats.

"Weapon" means any dirk, knife, metallic knuckles, slungshot, billie, tear gas gun, chemical weapon or device, razor blade, box cutter, common pocketknife, box cutter, or a deadly weapon, except a plastic knife or blunt-bladed table knife.

A "deadly weapon" is any object other than a firearm that will likely cause death or great bodily harm if used in the ordinary and usual manner contemplated by its design and construction.

An object not designed to inflict bodily harm may nonetheless be a "deadly weapon" if it was [used] [or] [threatened to be used] [or] [intended to be used] in a manner likely to cause death or great bodily harm. "Great bodily harm" means great as distinguished from slight, trivial, minor, or moderate harm, and as such does not include mere bruises.

"Firearm" means any weapon (including a starter gun) which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon, any firearm muffler or firearm silencer; any destructive device; any machine gun. [The term "firearm" does not include an antique firearm unless the antique firearm is used in the commission of another crime.] *The definition of "antique firearm is in Fla. Stat. § 790.001, Fla. Stat.*

"Electric weapon or device" means any device which, through the application or use of electrical current, is designed, redesigned, used, or intended to be used for offensive or defensive purposes, the destruction of life, or the infliction of injury.

See § 790.001, Fla. Stat. for the definition of "destructive device."

Lesser Included Offenses

IMPROPER EXHIBITION OF A [WEAPON] [FIREARM] AT SCHOOL – 790.115(1)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Improper Exhibition of a Weapon or Firearm (except if the weapon is a closed common pocketknife)		790.10	10.5
	Attempt	777.04(1)	5.1
	Assault	784.011	8.1

Comments

The statute has an exception if the exhibition of the weapon or firearm was authorized and in support of school-sanctioned activities. *See* § 790.115, Fla. Stat.

This crime does not apply if the exhibition of the weapon or firearm was on private real property, within 1,000 feet of a school, by the owner of the property or by a person who had been authorized, licensed, or invited by the owner to be on the property. *See* § 790.115, Fla. Stat.

This crime does not apply if the defendant was a law enforcement officer as defined in § 943.10(1), (2), (3), (4), (6), (7), (8), (9), or (14), Fla. Stat. *See* § 790.115(3), Fla. Stat.

A special instruction will be necessary in cases where the deadly weapon was an animal or a substance or something that is not commonly referred to as an "object."

Read instruction 3.6(f) or 3.6(g) as applicable, if the defendant is claiming self-defense, defense of others, or defense of property.

This instruction was adopted in 2014 [148 So. 3d 1204] and amended on April 3, 2020.

10.22 [POSSESSION] [OPERATION] OF AN ARMED UNMANNED AIRCRAFT [SYSTEM]

§ 330.411(2), Fla. Stat.

To prove the crime of [Possession] [Operation] of an Armed Unmanned Aircraft [Systems], the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) [**knowingly] [or] [willfully] [possessed] [or] [operated] an unmanned aircraft [system].**

2. **At that time, the unmanned aircraft [system] had [a weapon] [a firearm] [an explosive] [a destructive device] [ammunition] attached to it.**

3. **At that time,** (defendant) **knew the unmanned aircraft [system] had [a weapon] [a firearm] [an explosive] [a destructive device] [ammunition] attached to it.**

["Willfully" means intentionally and purposely.]

"Unmanned aircraft" means the same thing as a drone and is a powered, aerial vehicle that:

1. **Does not carry a human operator;**

2. **Uses aerodynamic forces to provide vehicle lift;**

3. **Can fly autonomously or be piloted remotely;**

4. **Can be expendable or recoverable; and**

5. **Can carry a lethal or nonlethal payload.**

Give definitions below as applicable.

"Unmanned aircraft system" means a drone and its associated elements, including communication links and the components used to control the drone that are required for the pilot in command to operate the drone safely and efficiently.

To prove (defendant) **"possessed an unmanned aircraft [system]" the State must prove beyond a reasonable doubt that [he] [she] a) knew of the existence of the unmanned aircraft [system] and b) intentionally exercised control over it.**

Control can be exercised over an unmanned aircraft [system] whether it is carried on a person, near a person, or in a completely separate location. Mere proximity to an unmanned aircraft [system] 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 the unmanned aircraft [system] or the present ability to direct its control by another.**

Possession of an unmanned aircraft [system] may be sole or joint, that is, two or more persons may possess it.

"Tear gas gun" and "chemical weapon' are defined in § 790.001, Fla. Stat.

"Weapon" means any dirk, knife, metallic knuckles, slungshot, billie, tear gas gun, chemical weapon or device, or other deadly weapon except a firearm or a common pocketknife, plastic knife, or blunt-bladed table knife.

A "deadly weapon" is any object that will likely cause death or great bodily harm if used in the ordinary and usual manner contemplated by its design and construction.

An object not designed to inflict bodily harm may nonetheless be a "deadly weapon" if it was intended to be used [or threatened to be used] in a manner likely to cause death or great bodily harm.

"Great bodily harm" means harm that is more than slight, trivial, minor, or moderate.

A "firearm" means any weapon [including a starter gun] which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; [the frame or receiver of any such weapon;] [any firearm muffler or firearm silencer;] [any machine gun].

"Ammunition" means an object consisting of all of the following:

a. A fixed metallic or nonmetallic hull or casing containing a primer.

b. One or more projectiles, one or more bullets, or shot.

c. Gunpowder.

Additional definitions from Chapter 552 will be needed.

"Explosive" means any chemical compound or mixture that has the property of yielding readily to combustion or oxidation upon application of heat, flame, or shock, including but not limited to dynamite, nitroglycerin, trinitrotoluene, or ammonium nitrate when combined with other ingredients to form an explosive mixture, blasting caps, and detonators; but not including:

a. Shotgun shells, cartridges, or ammunition for firearms;

b. Fireworks;

c. Smokeless propellant powder or small arms ammunition primers, if possessed, purchased, sold, transported, or used in compliance with s. 552.241;

d. Black powder in quantities not to exceed that authorized by chapter 552, or by any rules adopted thereunder by the Department of Financial Services, when used for, or intended to be used for, the manufacture of target and sporting ammunition or for use in muzzle-loading flint or percussion weapons.

"Destructive device" means any bomb, grenade, mine, rocket, missile, pipebomb, or similar device containing an explosive, incendiary, or poison gas and includes any frangible container filled with an explosive, incendiary, explosive gas, or expanding gas, which is designed or so constructed as to explode by such filler and is capable of causing bodily harm or property damage; any combination of parts either designed or intended for use in converting any device into a destructive device and from which a destructive device may be readily assembled; any device declared a destructive device by the Bureau of Alcohol, Tobacco, and Firearms; any type of weapon which will, is designed to, or may readily be converted to expel a projectile by the action of any explosive and which has a barrel with a bore of one-half inch or more in diameter; and ammunition for such destructive devices, but not including shotgun shells or any other ammunition designed for use in a firearm other than a destructive device.

"Destructive device" does not include:

a. A device which is not designed, redesigned, used, or intended for use as a weapon;

b. Any device, although originally designed as a weapon, which is redesigned so that it may be used solely as a signaling, line-throwing, safety, or similar device;

c. Any shotgun other than a short-barreled shotgun; or

d. Any nonautomatic rifle (other than a short-barreled rifle) generally recognized or particularly suitable for use for the hunting of big game.

Lesser Included Offense

[POSSESSION] [OR] [OPERATION] OF AN ARMED UNMANNED AIRCRAFT [SYSTEM]— 330.41(2)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempt	777.04	5.1

Comment

This instruction was adopted on March 20, 2026.

CHAPTER 11 — SEX OFFENSES

11.1 SEXUAL BATTERY — VICTIM LESS THAN 12 YEARS OF AGE

§§ 794.011(2)(a) and (2)(b), Fla. Stat.**

To prove the crime of Sexual Battery upon a Person Less Than 12 Years of Age, the State must prove the following three elements beyond a reasonable doubt:

Give as applicable.

1. **a**. (Defendant) **committed an act [upon] [with]** (victim) **in which the sexual organ of the [**(defendant)**] [**(victim)**] penetrated or had union with the [anus] [female genitals**] [mouth] of the [**(victim)**] [**(defendant)**].**

b. (Defendant) **committed an act [upon] [with]** (victim) **in which the [anus] [female genitals**] of [**(victim)**] [**(defendant)**]** [**was] [were] penetrated by an object.**

c. (Defendant) **injured the sexual organ of** (victim) **in an attempt to commit an act [upon] [with]** (victim) **in which the sexual organ of the [**(defendant)**] [**(victim)**] would have penetrated or would have had union with the [anus] [female genitals**] [mouth] of the [**(victim)**] [**(defendant)**].**

d. (Defendant) **injured the sexual organ of** (victim) **in an attempt to commit an act upon** (victim) **in which the [anus] [female genitals**] of** (victim) **would be penetrated by an object.**

2. **At the time,** (victim) **was less than 12 years of age.**

Give 3a or 3b as applicable.

3. **a.** **At the time,** (defendant) **was 18 years of age or older.**

b. **At the time,** (defendant) **was less than 18 years of age.**

Give if applicable. § 794.011(1), Fla. Stat.

However, any act done for bona fide medical purposes is not a Sexual Battery.

§ 794.021, Fla. Stat.

Ignorance of (victim's) **age,** (victim's) **misrepresentation of his or her age, or the defendant's bona fide belief of** (victim's) **age is not a defense to the crime charged.**

Give if applicable.

"Bona fide" means genuine.

Give if applicable. Lakey v. State, 113 So. 3d 90 (Fla. 5th DCA 2013).

"An object" includes a finger.

Phillips v. State, 238 So. 3d 308 (Fla. 4th DCA 2018).

"Union" means contact.

Give if applicable. § 794.011(1), Fla. Stat.

"Female genitals" includes the labia minora, labia majora, clitoris, vulva, hymen, and vagina.**

Give if requested. Khianthalat v. State, 974 So. 2d 359 (Fla. 2008).

Consent of (victim) **is not a defense to the crime charged.**

Give if requested. § 794.022, Fla. Stat.

(Victim's) **lack of chastity is not a defense to the crime charged.**

Lesser-Included Offenses

CAPITAL SEXUAL BATTERY — VICTIM UNDER 12, DEFENDANT 18 OR OVER — 794.011(2)(a)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Battery		784.03(1)(a)1.	8.3
	Sexual battery (Defendant less than 18, victim less than 12)	794.011(2)(b)	11.1
	Sexual battery (Defendant 18 or older, victim 12 or older but less than 18)	794.011(5)(a)	11.4
	Sexual battery (Defendant 18 or older, victim 18 or older)	794.011(5)(b)	11.4

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
	Sexual battery (Defendant younger than 18, victim 12 or older)	794.011(5)(c)	11.4
	Lewd or lascivious battery (Victim 12 or older but less than 16)	800.04(4)(a)1.	11.10(a)
	Lewd or lascivious battery (Victim less than 16)*	800.04(4)(a)2.*	11.10(b)*
	Attempt	777.04(1)	5.1
	Aggravated Battery	784.045(1)(a)	8.4
	Felony Battery	784.041(1)	8.5
	Aggravated assault	784.021(1)(a)	8.2
	Battery	784.03(1)(a)2.	8.3
	Assault	784.011	8.1

Comments

*It is unclear whether the "encouraging, forcing, or enticing any person less than 16 years of age to engage in … any other act involving sexual activity" part of Lewd or Lascivious Battery in § 800.04(4)(a)2., Fla. Stat., is a necessary lesser-included offense of § 794.011(2)(a), Fla. Stat., or § 794.011(2)(b), Fla. Stat. If so, the judge should instruct only on "sexual activity" and not on "sadomasochistic abuse, sexual bestiality, or prostitution," unless those acts are included in the charging document.

**Effective October 1, 2022, the Legislature changed "vagina" to "female genitals" in sex crimes-related statutes. Judges should ensure the jury instructions contain correct statutory terms, which will depend on the date alleged in the charging document. *Flores v. State,* 391 So. 3d 481 (Fla. 4th DCA 2024) is an example of an appellate court finding fundamental error when the trial judge expanded the definition of "vaginal penetration" by instructing on "female genital penetration."

In § 794.011(8)(c), Fla. Stat., the legislature created a crime that mirrors this crime except 1) the phrase "engages in any act … which constitutes sexual battery" is used and 2) there is an additional element that the defendant was in a position of familial or custodial authority to the victim. *See* Instruction 11.6(a).

See Instruction 11.16 or 11.16(a) if the State charged that the defendant qualified as a Dangerous Sexual Felony Offender, pursuant to § 794.0115, Fla. Stat.

As of November 2022, it was unclear whether acts done for bona fide medical purposes should be treated as an affirmative defense or as elements that the State must disprove. If treated as an affirmative defense, the judge must then determine who has the burden of persuasion and what that burden is (preponderance, clear and convincing, or beyond a reasonable doubt).

This instruction was adopted in 1981 and was amended in 1987 [508 So.2d 1221], 1995 [657 So. 2d 1152], 2007 [863 So. 2d 236], 2015 [156 So. 3d 1037], 2016 [190 So. 3d 1055], on November 20, 2020, on December 15, 2021, and on December 21, 2022.

11.2 SEXUAL BATTERY — VICTIM 12 YEARS OF AGE OR OLDER — GREAT FORCE OR DEADLY WEAPON

§ 794.011(3), Fla. Stat.**

To prove the crime of Sexual Battery upon a Person 12 Years of Age or Older with the Use of [a Deadly Weapon] [or] [Actual Physical Force Likely to Cause Serious Personal Injury], the State must prove the following four elements beyond a reasonable doubt:

Give 1a or 1b or both as applicable.

1. a. (Defendant) **committed an act [upon] [with]** (victim) **in which the sexual organ of the [**(defendant)**] [**(victim)**] penetrated or had union with the [anus] [female genitals**] [mouth] of the [**(victim)**] [**(defendant)**].**

b. (Defendant) **committed an act [upon] [with]** (victim) **in which the [anus] [female genitals**] of [**(victim)**] [**(defendant)**] [**was] [were] penetrated by an object.**

Give 2a or 2b or both as applicable.

2. (Defendant)**, in the process,**

a. used or threatened to use a deadly weapon.

b. used actual physical force likely to cause serious personal injury.

3. The act was done without the consent of (victim)**.**

4. At the time, (victim) **was 12 years of age or older.**

Give if applicable. § 794.011(1), Fla. Stat.

However, any act done for bona fide medical purposes is not a Sexual Battery.

§ 794.021, Fla. Stat.

Ignorance of (victim's) **age,** (victim's) **misrepresentation of his or her age, or the defendant's bona fide belief of** (victim's) **age is not a defense to the crime charged.**

Give if applicable.

"Bona fide" means genuine.

Give in all cases. § 794.011(1), Fla. Stat.

"Consent" means intelligent, knowing, and voluntary consent and does not include coerced submission. Consent does not mean the failure by the alleged victim to offer physical resistance to the offender.

Give if applicable. § 794.022(4), Fla. Stat.

Evidence of (victim's) **mental incapacity or defect, if any, may be considered in determining whether there was an intelligent, knowing, and voluntary consent.**

§ 794.011(1), Fla. Stat.

"Mentally incapacitated" means that a person is rendered temporarily incapable of appraising or controlling his or her conduct due to the influence of a narcotic, anesthetic, or intoxicating substance administered to that person without his or her consent, or due to any other act committed upon that person without his or her consent.

§ 794.011(1), Fla. Stat.

"Mentally defective" means that a person suffers from a mental disease or defect that renders that person temporarily or permanently incapable of appraising the nature of his or her conduct.

Lakey v. State, 113 So. 3d 90 (Fla. 5th DCA 2013).

"An object" includes a finger.

Phillips v. State, 238 So. 3d 308 (Fla. 4th DCA 2018).

"Union" means contact.

Give if applicable. § 794.011(1), Fla. Stat.

"Female genitals" includes the labia minora, labia majora, clitoris, vulva, hymen, and vagina.**

Give if 2a alleged.

A "deadly weapon" is any object that will likely cause death or great bodily harm if used or threatened to be used in the ordinary and usual manner contemplated by its design and construction.

Give if applicable.

An object not designed to inflict bodily harm may nonetheless be a "deadly weapon" if it was used or threatened to be used in a manner likely to cause death or great bodily harm.

Give if 2b alleged. § 794.011(1), Fla. Stat.

"Serious personal injury" means great bodily harm or pain, permanent disability, or permanent disfigurement.

"Great bodily harm" means great as distinguished from slight, trivial, minor, or moderate harm, and as such does not include mere bruises.

Give if requested. § 794.022, Fla. Stat.

(Victim's) **lack of chastity is not a defense to the crime charged.**

Lesser-Included Offenses

SEXUAL BATTERY — VICTIM 12 YEARS OF AGE OR OLDER — GREAT FORCE OR DEADLY WEAPON — 794.011(3)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Battery		784.03(1)(a)1.	8.3
	Sexual battery (Defendant 18 or older, victim 12 or older but less than 18)	794.011(5)(a)	11.4
	Sexual battery (Defendant 18 or older, victim 18 or older)	794.011(5)(b)	11.4
	Sexual battery (Defendant younger than 18, victim 12 or older)	794.011(5)(c)	11.4
	Lewd or lascivious battery (Victim 12 or older but less than 16)	800.04(4)(a)1.	11.10(a)
	Lewd or lascivious battery (Victim less than 16)*	800.04(4)(a)2.*	11.10(b)*
	Attempt	777.04(1)	5.1
	Aggravated battery	784.045(1)(a)	8.4
	Felony battery	784.041(1)	8.5
	Aggravated assault	784.021(1)(a)	8.2
	Battery	784.03(1)(a)2.	8.3
	Assault	784.011	8.1

Comments

*It is unclear whether the "encouraging, forcing, or enticing any person less than 16 years of age to engage in … any other act involving sexual activity" part of Lewd or Lascivious Battery in § 800.04(4)(a)2., Fla. Stat., is a necessary lesser-included offense of § 794.011(3), Fla. Stat. If so, the judge should instruct only on "sexual activity" and not on "sadomasochistic abuse, sexual bestiality, or prostitution," unless those acts are included in the charging document.

**Effective October 1, 2022, the Legislature changed "vagina" to "female genitals" in sex crimes-related statutes. Judges should ensure the jury instructions contain correct statutory terms, which will depend on the date alleged in the charging document. *Flores v. State,* 391 So. 3d 481 (Fla. 4th DCA 2024) is an example of an appellate court finding fundamental error when the trial judge expanded the definition of "vaginal penetration" by instructing on "female genital penetration."

See Instruction 11.16 or 11.16(a) if the State charged that the defendant qualified as a Dangerous Sexual Felony Offender, pursuant to § 794.0115, Fla. Stat.

The 2014 legislature added a sentencing multiplier to § 921.0024(1)(b), Fla. Stat., for sexual battery crimes involving a defendant 18 years of age or older and a victim younger than 18 years of age. If the State has charged and intends to use this sentencing multiplier, a special instruction will be necessary for the jury to make additional findings regarding ages.

A special instruction will be necessary in cases where the deadly weapon was an animal or a substance or something that is not commonly referred to as an "object."

As of November 2022, it was unclear whether acts done for bona fide medical purposes should be treated as an affirmative defense or as an element that the State must disprove. If treated as an affirmative defense, the judge must then determine who has the burden of persuasion and what that burden is (preponderance, clear and convincing, or beyond a reasonable doubt).

This instruction was adopted in 1981 and amended in 1987 [508 So.2d 1221], 1995 [657 So. 2d 1152], 2003 [850 So. 2d 1272], 2008 [995 So. 2d 476], 2015 [156 So. 3d 1037], 2016 [190 So. 3d 1055], on April 3, 2020, on November 20, 2020, on December 15, 2021, and on December 21, 2022.

11.3 SEXUAL BATTERY — UNDER SPECIFIED CIRCUMSTANCES

§§ 794.011(4)(a), (4)(b), and (4)(c), Fla. Stat.**

To prove the crime of Sexual Battery Under Specified Circumstances, the State must prove the following five elements beyond a reasonable doubt:

Give 1a or 1b or both as applicable.

1. a. (Defendant) **committed an act [upon] [with]** (victim) **in which the sexual organ of the [**(defendant)**] [**(victim)**] penetrated or had union with the [anus] [female genitals**] [mouth] of the [**(victim)**] [**(defendant)**].**

b. (Defendant) **committed an act [upon] [with]** (victim) **in which the [anus] [female genitals**] of [**(victim)**] [**(defendant)**]** [**was] [were] penetrated by an object.**

Give 2a – 2g as applicable.

2. a. (Victim) **was physically helpless to resist.**

b. (Defendant) coerced (victim) **to submit by threatening to use force or violence likely to cause serious personal injury on** (victim) **and** (victim) **reasonably believed** (defendant) **had the present ability to execute the threat.**

c. (Defendant) **coerced** (victim) **to submit by threat of retaliation against** (victim) **or any other person and** (victim) **reasonably believed that** (defendant) **had the ability to execute the threat in the future.**

d. (Defendant)**, without prior knowledge or consent of** (victim)**, administered or had knowledge of someone else administering to** (victim) **a narcotic, anesthetic, or other intoxicating substance that mentally or physically incapacitated** (victim)**.**

e. (Victim) **was mentally defective and** (defendant) **had reason to believe this or had actual knowledge of that fact.**

f. (Victim) **was physically incapacitated.**

g. (Defendant) **was at the time a[n]** (insert official title or position) **and was a[n] [certified [law enforcement officer]**

[correctional officer] [correctional probation officer]] [elected official exempt from certification] [person in a position of control or authority in a probation, community control, controlled release, detention, custodial, or similar setting] and the [officer] [official] [person] was acting in such a manner as to lead (victim) **to reasonably believe that** (defendant) **was in a position of control or authority as an agent or employee of government.**

3. (Defendant's) **act was committed without the consent of** (victim)**.**

Give 4a or 4b as applicable.

4. a. At the time, (victim) **was 12 years of age or older [but younger than 18 years of age].**

b. At the time, (victim) **was 18 years of age or older.**

Give 5a or 5b as applicable.

5. a. At the time, (defendant) **was 18 years of age or older.**

b. At the time, (defendant) **was younger than 18 years of age.**

Give if applicable. § 794.011(1), Fla. Stat.

However, any act done for bona fide medical purposes is not a Sexual Battery.

Give if applicable. § 794.021, Fla. Stat.

Ignorance of (victim's) **age,** (victim's) **misrepresentation of his or her age, or the defendant's bona fide belief of** (victim's) **age is not a defense to the crime charged.**

Give if applicable.

"Bona fide" means genuine.

Give in all cases. § 794.011(1), Fla. Stat.

"Consent" means intelligent, knowing, and voluntary consent and does not include coerced submission. Consent does not mean the failure by the alleged victim to offer physical resistance to the offender.

Give if applicable. § 794.011(9), Fla. Stat.

Acquiescence to a person reasonably believed by (victim) **to be in a position of authority or control does not constitute consent and it is not a defense that** (defendant) **was not actually in a position of control or authority if the circumstances were such as to lead** (victim) **to reasonably believe that [he] [she] was in such a position.**

§ 794.022(4), Fla. Stat.

Evidence of (victim's) **mental incapacity or defect, if any, may be considered in determining whether there was an intelligent, knowing, and voluntary consent.**

§ 794.011(1), Fla. Stat.

"Mentally incapacitated" means that a person is rendered temporarily incapable of appraising or controlling his or her conduct due to the influence of a narcotic, anesthetic, or intoxicating substance administered to that person without his or her consent, or due to any other act committed upon that person without his or her consent.

§ 794.011(1), Fla. Stat.

"Mentally defective" means that a person suffers from a mental disease or defect that renders that person temporarily or permanently incapable of appraising the nature of his or her conduct.

Lakey v. State, 113 So. 3d 90 (Fla. 5th DCA 2013).

"An object" includes a finger.

Phillips v. State, 238 So. 3d 308 (Fla. 4th DCA 2018).

"Union" means contact.

Give if applicable. § 794.011(1), Fla. Stat.

"Female genitals" includes the labia minora, labia majora, clitoris, vulva, hymen, and vagina.**

Give if 2a alleged. § 794.011(1), Fla. Stat.

"Physically helpless" means that a person is unconscious, asleep, or for any other reason physically unable to communicate unwillingness to act.

Give if 2b alleged. § 794.011(1), Fla. Stat.

"Serious personal injury" means great bodily harm or pain, permanent disability, or permanent disfigurement.

Give if 2f alleged. § 794.011(1), Fla. Stat.

"Physically incapacitated" means that a person is bodily impaired or handicapped and substantially limited in his or her ability to resist or flee an act.

Give if requested. § 794.022, Fla. Stat.

(Victim's) **lack of chastity is not a defense to the crime charged.**

§ 775.0862, Fla. Stat.

Enhancement for sexual battery against student by school authority figure.

Applicable only to §§ 794.011(4)(b), (4)(c), and (4)(d), Fla. Stat.

If you find that (defendant) **committed the crime of Sexual Battery Under Specified Circumstances, you must also determine whether the State has proved beyond a reasonable doubt that** (defendant) **was an authority figure at a school and** (victim) **was a student at the same school.**

"Authority figure" means a person 18 years of age or older who is employed by, volunteering at, or under contract with a school.

"School" means an organization of students for instructional purposes on an elementary, middle or junior high school, secondary or high school, [or other public school level authorized under the rules of the State Board of Education]. The term "school" does not include facilities dedicated exclusively to the education of adults. *If needed, insert appropriate definitions from § 775.0862(1)(b), Fla. Stat. for "private school" or "voluntary prekindergarten education program" or "early learning program" or "public school as described in § 402.3025(1)" or "the Florida School for the Deaf and the Blind" or the "Florida Virtual School" or the "K-8 Virtual School."*

"Student" means a person younger than 18 years of age who is enrolled at a school.

Lesser-Included Offenses

SEXUAL BATTERY — DEFENDANT 18 OR OLDER; VICTIM 12 TO LESS THAN 18— UNDER SPECIFIED CIRCUMSTANCES — 794.011(4)(a)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Sexual Battery		794.011(5)(a)	11.4
Battery		784.03(1)(a)1.	8.3
	Sexual battery under specified circumstances (Defendant 18 or older, victim 18 or older)	794.011(4)(b)	11.3
	Sexual battery under specified circumstances (Defendant younger than 18, victim 12 or older)	794.011(4)(c)	11.3
	Sexual battery (Defendant and victim 18 or older)	794.011(5)(b)	11.4
	Sexual battery (Defendant younger than 18, victim 12 or older)	794.011(5)(c)	11.4
	Lewd or lascivious battery (Victim 12 or older but less than 16)	800.04(4)(a)1.	11.10(a)
	Lewd or lascivious battery (Victim less than 16)*	800.04(4)(a)2.*	11.10(b)*
	Attempt	777.04(1)	5.1
	Aggravated battery	784.045(1)	8.4
	Felony battery	784.041(1)	8.5
	Aggravated assault	784.021(1)(a)	8.2
	Battery	784.03(1)(a)2.	8.3
	Assault	784.011	8.1

SEXUAL BATTERY — DEFENDANT AND VICTIM 18 OR OLDER —UNDER SPECIFIED CIRCUMSTANCES — 794.011(4)(b)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Sexual Battery		794.011(5)(b)	11.4
Battery		784.03(1)(a)1.	8.3
	Sexual battery under specified circumstances (Defendant younger than 18, victim 12 or older)	794.011(4)(c)	11.3
	Sexual battery (Defendant 18 or older, victim 12 or older but younger than 18)	794.011(5)(a)	11.4
	Sexual battery (Defendant younger than 18, victim 12 or older)	794.011(5)(c)	11.4
	Lewd or lascivious battery (Victim 12 or older but less than 16)	800.04(4)(a)1.	11.10(a)
	Lewd or lascivious battery (Victim less than 16)*	800.04(4)(a)2.*	11.10(b)*
	Attempt	777.04(1)	5.1
	Aggravated battery	784.045(1)	8.4
	Felony battery	784.041(1)	8.5
	Aggravated assault	784.021(1)(a)	8.2
	Battery	784.03(1)(a)2.	8.3
	Assault	784.011	8.1

SEXUAL BATTERY — DEFENDANT LESS THAN 18; VICTIM 12 OR OLDER — UNDER SPECIFIED CIRCUMSTANCES — 794.011(4)(c)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Sexual Battery		794.011(5)(c)	11.4
Battery		784.03(1)(a)1.	8.3
	Sexual battery under specified circumstances (Defendant 18 or older, victim 18 or older)	794.011(4)(b)	11.3
	Sexual battery (Defendant 18 or older, victim 12 or older but younger than 18)	794.011(5)(a)	11.4
	Sexual battery (Defendant 18 or older, victim 18 or older)	794.011(5)(b)	11.4

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
	Lewd or lascivious battery (Victim 12 or older but less than 16)	800.04(4)(a)1.	11.10(a)
	Lewd or lascivious battery (Victim less than 16)*	800.04(4)(a)2.*	11.10(b)*
	Attempt	777.04(1)	5.1
	Aggravated battery	784.045(1)	8.4
	Felony battery	784.041(1)	8.5
	Aggravated assault	784.021(1)(a)	8.2
	Battery	784.03(1)(a)2.	8.3
	Assault	784.011	8.1

Comments

*It is unclear whether the "encouraging, forcing, or enticing any person less than 16 years of age to engage in … any other act involving sexual activity" part of Lewd or Lascivious Battery in § 800.04(4)(a)2., Fla. Stat., is a necessary lesser-included offense of § 794.011(4), Fla. Stat. If so, the judge should instruct only on "sexual activity" and not on "sadomasochistic abuse, sexual bestiality, or prostitution," unless those acts are included in the charging document.

**Effective October 1, 2022, the Legislature changed "vagina" to "female genitals" in sex crimes-related statutes. Judges should ensure the jury instructions contain correct statutory terms, which will depend on the date alleged in the charging document. *Flores v. State,* 391 So. 3d 481 (Fla. 4th DCA 2024) is an example of an appellate court finding fundamental error when the trial judge expanded the definition of "vaginal penetration" by instructing on "female genital penetration."

Element 3g: *See* §§ 943.10(1), (2), (3), (6), (7), (8), (9), Fla. Stat., for the definition of a law enforcement officer, correctional officer, or correctional probation officer who must be either certified pursuant to § 943.1395, Fla. Stat., or an elected officer exempt from certification pursuant to § 943.253, Fla. Stat.

If § 794.011(4)(d), Fla. Stat., is charged, this instruction can be used as a template with some amendments. Under that statute, the victim must be 12 years of age or older, the age of the defendant is irrelevant, and most of the alternatives regarding the prior conviction can probably be proven to the judge at a sentencing hearing. However, for an enhancement involving a prior

conviction for a Kidnapping or False Imprisonment involving a minor, wherein the defendant committed a sexual battery or some enumerated lewd act upon the minor during the course of the kidnapping or false imprisonment, then *Apprendi v. New Jersey*, 530 U.S. 466 (2000) is likely to require the jury to make certain findings regarding additional circumstances of the prior conviction.

See Instruction 11.16 or 11.16(a) if the State charged that the defendant qualified as a Dangerous Sexual Felony Offender, pursuant to § 794.0115, Fla. Stat.

In the event multiple perpetrators is charged and proven, a special instruction is necessary. *See* § 794.023, Fla. Stat.

As of November 2022, it was unclear whether acts done for bona fide medical purposes should be treated as an affirmative defense or as an element that the State must disprove. If treated as an affirmative defense, the judge must then determine who has the burden of persuasion and what that burden is (preponderance, clear and convincing, or beyond a reasonable doubt).

This instruction was adopted in 1981 and amended in 1987 [508 So.2d 1221], 1992 [603 So.2d 1175], 1995 [657 So.2d 1152], 2003 [850 So.2d 1272], 2008 [995 So. 2d 476], 2015 [156 So. 3d 1037], 2016 [190 So. 3d 1055], on November 20, 2020, on March 5, 2021, on December 15, 2021, and on December 22, 2022.

11.4 SEXUAL BATTERY

§§ 794.011(5)(a), (5)(b), (5)(c), and (5)(d), Fla. Stat.**

To prove the crime of Sexual Battery, the State must prove the following four elements beyond a reasonable doubt:

Give 1a or 1b or both as applicable.

1. a. (Defendant) **committed an act [upon] [with] (victim) in which the sexual organ of the [**(defendant)**] [**(victim)**] penetrated or had union with the [anus] [female genitals**] [mouth] of the [**(victim)**] [**(defendant)**].**

b. (Defendant) **committed an act [upon] [with]** (victim) **in which the [anus] [female genitals**] of [**(victim)**] [**(defendant)**] [was] [were] penetrated by an object.**

2. (Defendant's) **act was committed without the consent of** (victim)**.**

Give 3a or 3b as applicable.

3. a. At the time, (victim) **was 12 years of age or older [but younger than 18 years of age].**

b. At the time, (victim) **was 18 years of age or older.**

Give 4a or 4b as applicable.

4. a. At the time, (defendant) **was 18 years of age or older.**

b. At the time, (defendant) **was younger than 18 years of age.**

Give if applicable. § 794.011(1), Fla. Stat.

However, any act done for bona fide medical purposes is not a Sexual Battery.

§ 794.021, Fla. Stat.

Ignorance of (victim's) **age,** (victim's) **misrepresentation of his or her age, or the defendant's bona fide belief of** (victim's) **age is not a defense to the crime charged.**

Give if applicable.

"Bona fide" means genuine.

Give in all cases. § 794.011(1), Fla. Stat.

"Consent" means intelligent, knowing, and voluntary consent and does not include coerced submission. Consent does not mean the failure by the alleged victim to offer physical resistance to the offender.

Give if applicable. § 794.022(4), Fla. Stat.

Evidence of (victim's) **mental incapacity or defect, if any, may be considered in determining whether there was an intelligent, knowing, and voluntary consent.**

§ 794.011(1), Fla. Stat.

"Mentally incapacitated" means that a person is rendered temporarily incapable of appraising or controlling his or her conduct due to the influence of a narcotic, anesthetic, or intoxicating substance administered to that person without his or her consent, or due to any other act committed upon that person without his or her consent.

§ 794.011(1), Fla. Stat.

"Mentally defective" means that a person suffers from a mental disease or defect that renders that person temporarily or permanently incapable of appraising the nature of his or her conduct.

Lakey v. State, 113 So. 3d 90 (Fla. 5th DCA 2013).

"An object" includes a finger.

Phillips v. State, 238 So. 3d 308 (Fla. 4th DCA 2018).

"Union" means contact.

Give if applicable. § 794.011(1), Fla. Stat.

"Female genitals" includes the labia minora, labia majora, clitoris, vulva, hymen, and vagina.**

Give if requested. § 794.022, Fla. Stat.

(Victim's) **lack of chastity is not a defense to the crime charged.**

§ 775.0862, Fla. Stat.

Enhancement for sexual battery against student by school authority figure.

If you find that (defendant) **committed the crime of Sexual Battery, you must also determine whether the State has proved beyond a reasonable doubt that** (defendant) **was an authority figure at a school and** (victim) **was a student at the same school.**

"Authority figure" means a person 18 years of age or older who is employed by, volunteering at, or under contract with a school.

"School" means an organization of students for instructional purposes on an elementary, middle or junior high school, secondary or high school, [or other public school level authorized under the rules of the State Board of Education]. The term "school" does not include facilities dedicated exclusively to the education of adults. *If needed, insert appropriate definitions from § 775.0862(1)(b), Fla. Stat. for "private school" or "voluntary prekindergarten education program" or "early learning program" or "public school as described in § 402.3025(1)" or "the Florida School for the Deaf and the Blind" or the "Florida Virtual School" or the "K-8 Virtual School."*

"Student" means a person younger than 18 years of age who is enrolled at a school.

Lesser-Included Offenses

SEXUAL BATTERY — DEFENDANT 18 OR OVER; VICTIM 12–LESS THAN 18 — WITHOUT FORCE — 794.011(5)(a)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Battery		784.03(1)(a)1.	8.3
	Sexual battery (Defendant 18 or older, victim 18 or older)	794.011(5)(b)	11.4
	Sexual battery (Defendant younger than 18, victim 12 or older)	794.011(5)(c)	11.4
	Lewd or lascivious battery (Victim 12 or older but less than 16)	800.04(4)(a)1.	11.10(a)
	Lewd or lascivious battery (Victim less than 16)*	800.04(4)(a)2.*	11.10(b)*
	Attempt	777.04(1)	5.1
	Aggravated battery	784.045(1)	8.4
	Felony battery	784.041(1)	8.5
	Aggravated Assault	784.021(1)(a)	8.2
	Battery	784.03(1)(a)2.	8.3
	Assault	784.011	8.1

Comments

*It is unclear whether the "encouraging, forcing, or enticing any person less than 16 years of age to engage in … any other act involving sexual activity" part of Lewd or Lascivious Battery in § 800.04(4)(a)2., Fla. Stat., is a necessary lesser-included offense of § 794.011(5), Fla. Stat. If so, the judge should instruct only on "sexual activity" and not on "sadomasochistic abuse, sexual bestiality, or prostitution," unless those acts are included in the charging document.

**Effective October 1, 2022, the Legislature changed "vagina" to "female genitals" in sex crimes-related statutes. Judges should ensure the jury instructions contain correct statutory terms, which will depend on the date alleged in the charging document. *Flores v. State,* 391 So. 3d 481 (Fla. 4th DCA 2024) is an example of an appellate court finding fundamental error when the trial judge expanded the definition of "vaginal penetration" by instructing on "female genital penetration."

If § 794.011(5)(d), Fla. Stat., is charged, this instruction can be used as a template with some amendments. Under that statute, the victim must be 12 years of age or older, the age of the defendant is irrelevant, and most of the alternatives regarding the prior conviction can probably be proven to the judge at a sentencing hearing. However, for an enhancement involving a prior conviction for a Kidnapping or False Imprisonment involving a minor, wherein the defendant committed a sexual battery or some enumerated lewd act upon the minor during the course of the kidnapping or false imprisonment, then *Apprendi v. New Jersey*, 530 U.S. 466 (2000) is likely to require the jury to make certain findings regarding additional circumstances of the prior conviction.

See Instruction 11.16 or 11.16(a) if the State charged that the defendant qualified as a Dangerous Sexual Felony Offender, pursuant to § 794.0115, Fla. Stat.

In the event multiple perpetrators is charged and proven, a special instruction is necessary. *See* § 794.023, Fla. Stat.

As of November 2022, it was unclear whether acts done for bona fide medical purposes should be treated as an affirmative defense or as an element that the State must disprove. If treated as an affirmative defense, the judge must then determine who has the burden of persuasion and what that burden is (preponderance, clear and convincing, or beyond a reasonable doubt).

This instruction was adopted in 1981 and was amended in 1987 [508 So. 2d 1221], 1995 [657 So. 2d 1152], 2003 [850 So. 2d 1272], 2015 [156 So. 3d

1037], 2016 [190 So. 3d 1055], on November 20, 2020, on December 15, 2021, and on December 21, 2022.

11.5 SOLICITATION OF A CHILD TO ENGAGE IN AN ACT THAT CONSTITUTES SEXUAL BATTERY BY A PERSON IN FAMILIAL OR CUSTODIAL AUTHORITY**

§ 794.011(8)(a), Fla. Stat.

To prove the crime of Solicitation of a Child to Engage in an Act that Constitutes Sexual Battery by a Person in Familial or Custodial Authority, the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant**) solicited** (victim) **to engage in a Sexual Battery.**

2. **At the time,** (victim) **was less than 18 years of age.**

3. **At the time,** (defendant) **was in a position of familial or custodial authority to** (victim)**.**

"Sexual Battery" means:

a. **the sexual organ of the [**(defendant)**] [**(victim)**] penetrated or had union with the [anus] [female genitals**] [mouth] of the [**(victim**)] [**(defendant)**];**

   or

b. **the [anus] [female genitals**] of [**(victim)**] [**(defendant)**] [was] [were] penetrated by an object.**

Give if applicable. § 794.011(1), Fla. Stat.

However, any act done for bona fide medical purposes is not a Sexual Battery.

§ 794.021, Fla. Stat.

Ignorance of (victim's) **age,** (victim's) **misrepresentation of his or her age, or the defendant's bona fide belief of** (victim's) **age is not a defense to the crime charged.**

Give if applicable.

"Bona fide" means genuine.

It is not necessary that a Sexual Battery actually take place for the crime of Solicitation to be completed.

§ 794.011(8), Fla. Stat.

It is not a defense that (victim) **was willing or consented to engage in an act that constitutes Sexual Battery.**

Give if requested. § 794.022, Fla. Stat.

(Victim's) **lack of chastity is not a defense to the crime charged.**

§ 777.04(2), Fla. Stat.

To "solicit" means to command, encourage, hire, or request another person to engage in specific conduct.

Lakey v. State, 113 So. 3d 90 (Fla. 5th DCA 2013).

"An object" includes a finger.

Phillips v. State, 238 So. 3d 308 (Fla. 4th DCA 2018).

"Union" means contact.

Give if applicable. § 794.011(1)(b), Fla. Stat.

"Female genitals" includes the labia minora, labia majora, clitoris, vulva, hymen, and vagina.**

§ 775.0862, Fla. Stat.

Enhancement for sexual offense against student by school authority figure.

If you find that (defendant) **committed the crime of Solicitation of a Child to Engage in an Act that Constitutes Sexual Battery by a Person in Familial or Custodial Authority, you must also determine whether the State has proved beyond a reasonable doubt that** (defendant) **was an authority figure at a school and** (victim) **was a student at the same school.**

"Authority figure" means a person 18 years of age or older who is employed by, volunteering at, or under contract with a school.

"School" means an organization of students for instructional purposes on an elementary, middle or junior high school, secondary or high school, [or other public school level authorized under the rules of the State Board of Education]. The term "school" does not include facilities dedicated exclusively to the education of adults. *If needed, insert appropriate definitions from § 775.0862(1)(b), Fla. Stat., for "private school" or "voluntary prekindergarten education program" or "early learning program" or "public school as described in § 402.3025(1)" or "the Florida School for the Deaf and the Blind" or the "Florida Virtual School" or the "K-8 Virtual School."*

"Student" means a person younger than 18 years of age who is enrolled at a school.

Lesser Included Offense

SOLICITATION OF A CHILD TO ENGAGE IN AN ACT THAT CONSTITUTES SEXUAL BATTERY BY PERSON IN FAMILIAL OR CUSTODIAL AUTHORITY — 794.011(8)(a)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Lewd or lascivious battery*		800.04(4)(a)2.*	11.10(b)*
	Written Solicitation of Certain Minors to Commit a Lewd or Lascivious Act	794.053	11.7(b)

Comments

*When instructing on the lesser-included offense of Lewd or Lascivious Battery, the judge should not instruct on the option of forcing a person to engage in any sexual act nor should the judge instruct about the acts of sadomasochistic abuse, sexual bestiality, or prostitution unless charged. More specifically, if the state's charging document tracks § 794.011(8)(a), Fla. Stat., the only part of Lewd or Lascivious Battery that is a necessary lesser-included offense is "encouraging or enticing a person less than 16 years old to engage in sexual activity."

**Effective October 1, 2022, the Legislature changed "vagina" to "female genitals" in sex crimes-related statutes. Judges should ensure the jury instructions contain correct statutory terms, which will depend on the date alleged in the charging document. *Flores v. State,* 391 So. 3d 481 (Fla. 4th DCA 2024) is an example of an appellate court finding fundamental error when the trial judge expanded the definition of "vaginal penetration" by instructing on "female genital penetration."

See Instruction 11.16 or 11.16(a) if the State charged that the defendant qualified as a Dangerous Sexual Felony Offender, pursuant to § 794.0115, Fla. Stat.

The 2014 legislature added a sentencing multiplier to § 921.0024(1)(b), Fla. Stat., for sexual battery crimes involving a defendant 18 years of age or older and a victim younger than 18 years of age. If the State charges and intends to use this sentencing multiplier, a special instruction will be

necessary for the jury to make an additional finding regarding the defendant's age.

As of February 2024, it was unclear whether acts done for bona fide medical purposes should be treated as an affirmative defense or as an element that the State must disprove. If treated as an affirmative defense, the judge must then determine who has the burden of persuasion and what that burden is (preponderance, clear and convincing, or beyond a reasonable doubt).

This instruction was adopted in 1987 [508 So. 2d 1221] and was amended in 1995 [657 So. 2d 1152], 1997 [697 So. 2d 84], 2015 [156 So. 3d 1037], 2016 [190 So. 3d 1055], on December 21, 2022, and on March 8, 2024.

11.6 ENGAGING IN AN ACT THAT CONSTITUTES SEXUAL BATTERY UPON OR WITH A CHILD 12 YEARS OF AGE OR OLDER BUT YOUNGER THAN 18 YEARS OF AGE BY PERSON IN FAMILIAL OR CUSTODIAL AUTHORITY

§ 794.011(8)(b), Fla. Stat.**

To prove the crime of Engaging in an Act That Constitutes Sexual Battery Upon or With a Child 12 Years of Age or Older but Younger than 18 Years of Age by a Person in a Familial or Custodial Authority, the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **engaged in any act that constituted Sexual Battery.**

2. **At the time,** (victim) **was 12 years of age or older but younger than 18 years of age.**

3. **At the time,** (defendant) **was in a position of familial or custodial authority to** (victim)**.**

"Sexual Battery" means:

a. **the sexual organ of the [**(defendant)**] [**(victim)**] penetrated or had union with the [anus] [female genitals**] [mouth] of the [**(victim)**] [**(defendant)**]:**

   or

b. **the [anus] [female genitals**] of [**(victim)**] [**(defendant)**] [was] [were] penetrated by an object.**

Give if applicable. § 794.011(1), Fla. Stat.

However, any act done for bona fide medical purposes is not a Sexual Battery.

§ 794.021, Fla. Stat.

Ignorance of (victim's) **age,** (victim's) **misrepresentation of his or her age, or the defendant's bona fide belief of** (victim's) **age is not a defense to the crime charged.**

Give if applicable.

"Bona fide" means genuine.

§ 794.011(8), Fla. Stat.

It is not a defense that (victim) **was willing or consented to engage in an act that constitutes Sexual Battery.**

Give if requested. § 794.022, Fla. Stat.

(Victim's) **lack of chastity is not a defense to the crime charged.**

Give if applicable. Lakey v. State, 113 So. 3d 90 (Fla. 5th DCA 2013).

"An object" includes a finger.

Phillips v. State, 238 So. 3d 308 (Fla. 4th DCA 2018).

"Union" means contact.

Give if applicable. § 794.011(1), Fla. Stat.

"Female genitals" includes the labia minora, labia majora, clitoris, vulva, hymen, and vagina.**

§ 775.0862, Fla. Stat.

Enhancement for sexual offense against student by school authority figure.

If you find that (defendant) **committed the crime of Engaging in an Act That Constitutes Sexual Battery Upon or With a Child 12 Years of Age or Older but Younger than 18 Years of Age by a Person in a Familial or Custodial Authority, you must also determine whether the State has proved beyond a reasonable doubt that** (defendant) **was an authority figure at a school and** (victim) **was a student at the same school.**

"Authority figure" means a person 18 years of age or older who is employed by, volunteering at, or under contract with a school.

"School" means an organization of students for instructional purposes on an elementary, middle or junior high school, secondary or high school, [or other public school level authorized under the rules of the State Board of Education]. The term "school" does not include facilities dedicated exclusively to the education of adults. *If needed, insert appropriate definitions from § 775.0862(1)(b), Fla. Stat., for "private school" or "voluntary prekindergarten education program" or "early learning program" or "public school as described in § 402.3025(1)" or "the Florida School for the Deaf and the Blind" or the "Florida Virtual School" or the "K-8 Virtual School."*

"Student" means a person younger than 18 years of age who is enrolled at a school.

Lesser-Included Offenses

ENGAGING IN AN ACT THAT CONSTITUTES SEXUAL BATTERY UPON OR WITH A CHILD 12 YEARS OF AGE OR OLDER BUT YOUNGER THAN 18 YEARS OF AGE BY PERSON IN FAMILIAL OR CUSTODIAL AUTHORITY — 794.011(8)(b)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Sexual battery (Defendant 18 or older, victim 12 or older but younger than 18)	794.011(5)(a)	11.4
	Sexual battery (Defendant 18 or older, victim 18 or older)	794.011(5)(b)	11.4
	Sexual battery (Defendant younger than 18, victim 12 or older)	794.011(5)(c)	11.4
	Lewd or lascivious battery (Victim 12 or older but younger than 16)	800.04(4)(a)1.	11.10(a)
	Lewd or lascivious battery (Victim younger than 16)*	800.04(4)(a)2.*	11.10(b)*
	Attempt	777.04(1)	5.1
	Aggravated battery	784.045(1)(a)	8.4
	Felony battery	784.041(1)	8.5
	Aggravated assault	784.021(1)(a)	8.2
	Battery	784.03	8.3
	Assault	784.011	8.1

Comments

*It is unclear whether the "encouraging, forcing, or enticing any person less than 16 years of age to engage in … any other act involving sexual activity" part of Lewd or Lascivious Battery in § 800.04(4)(a)2., Fla. Stat., is a necessary lesser-included offense of § 794.011(8)(b), Fla. Stat. If so, the judge should instruct only on "sexual activity" and not on "sadomasochistic abuse, sexual bestiality, or prostitution," unless those acts are included in the charging document.

**Effective October 1, 2022, the Legislature changed "vagina" to "female genitals" in sex crimes-related statutes. Judges should ensure the jury instructions contain correct statutory terms, which will depend on the date alleged in the charging document. *Flores v. State,* -- So. 3d -- (Fla. 4th DCA

2024) is an example of an appellate court finding fundamental error when the trial judge expanded the definition of "vaginal penetration" by instructing on "female genital penetration."

See Instruction 11.16 or 11.16(a) if the State charged that the defendant qualified as a Dangerous Sexual Felony Offender, pursuant to § 794.0115, Fla. Stat.

In the event multiple perpetrators is charged and proven, a special instruction is necessary. *See* § 794.023, Fla. Stat.

The 2014 legislature added a sentencing multiplier to § 921.0024(1)(b), Fla. Stat., for sexual battery crimes involving a defendant 18 years of age or older and a victim younger than 18 years of age. If the State charges and intends to use this sentencing multiplier, a special instruction will be necessary for the jury to make an additional finding regarding the defendant's age.

A special instruction may be necessary in cases involving "familial authority" because that term is not synonymous with familial relationship. A special instruction may be necessary in cases involving "custodial authority" to help define the scope of "custody." Cases such as *Crocker v. State*, 752 So. 2d 615 (Fla. 2d DCA 1999), *Oliver v. State*, 977 So. 2d 673 (Fla. 5th DCA 2008), and *Hallberg v. State,* 649 So. 2d 1355 (Fla. 1994) may provide guidance for the special instructions.

As of November 2022, it was unclear whether acts done for bona fide medical purposes should be treated as affirmative defenses or as an element that the State must disprove. If treated as an affirmative defense, the judge must then determine who has the burden of persuasion and what that burden is (preponderance, clear and convincing, or beyond a reasonable doubt).

This instruction was adopted 1987 [508 So.2d 1221] and amended in 1995 [657 So.2d 1152], 1997 [697 So.2d 84], 2008 [995 So. 2d 476], 2015 [156 So. 3d 1037], 2016 [190 So. 3d 355], on November 20, 2020, on April 5, 2021, on December 15, 2021, and on December 21, 2022.

11.6(a) ENGAGING IN AN ACT THAT [CONSTITUTED SEXUAL BATTERY] [INJURED THE SEXUAL ORGAN OF ANOTHER IN AN ATTEMPT TO COMMIT SEXUAL BATTERY] BY A PERSON IN FAMILIAL OR CUSTODIAL AUTHORITY UPON A PERSON LESS THAN 12 YEARS OF AGE

§ 794.011(8)(c), Fla. Stat.**

To prove the crime of Engaging in an Act That [Constituted Sexual Battery] [Injured the Sexual Organ of Another in an Attempt to Commit Sexual Battery] by a Person in Familial or Custodial Authority upon a Person Less Than 12 Years of Age, the State must prove the following three elements beyond a reasonable doubt:

Give as applicable.

1. a. (Defendant) **engaged in an act [upon] [with]** (victim**) in which the sexual organ of the [**(defendant)] [(victim)**] penetrated or had union with the [anus] [female genitals**] [mouth] of the [**(victim)**] [**(defendant)**].**

b. (Defendant) **engaged in an act [upon] [with]** (victim) **in which the [anus] [female genitals**] of [**(victim)**] [**(defendant)**] [**was] [were] penetrated by an object.**

c. (Defendant) **engaged in an act that injured the sexual organ of** (victim) **in an attempt to commit an act [upon] [with]** (victim) **in which the sexual organ of the [**(defendant)**] [**(victim)**] would have penetrated or would have had union with the [anus] [female genitals**] [mouth] of the [**(victim)**] [**(defendant)**].**

d. (Defendant) **engaged in an act that injured the sexual organ of** (victim) **in an attempt to commit an act upon** (victim) **in which the [anus] [female genitals**] of** (victim) **would be penetrated by an object.**

2. At the time, (defendant) **was in a position of familial or custodial authority to** (victim)**.**

3. At the time, (victim) **was less than 12 years of age.**

Give if applicable. § 794.011(1), Fla. Stat.

However, any act done for bona fide medical purposes is not a Sexual Battery.

§ 794.021, Fla. Stat.

Ignorance of (victim's) **age,** (victim's) **misrepresentation of his or her age, or a defendant's bona fide belief of** (victim's) **age is not a defense to the crime charged.**

Give if applicable.

"Bona fide" means genuine.

§ 794.011(8), Fla. Stat.

Consent of (victim) **is not a defense to the crime charged.**

§ 794.022, Fla. Stat.

(Victim's) **lack of chastity is not a defense to the crime charged.**

Give if applicable. § 794.011(1), Fla. Stat.

"Female genitals" includes the labia minora, labia majora, clitoris, vulva, hymen, and vagina.**

Lakey v. State, 113 So. 3d 90 (Fla. 5th DCA 2013).

"An object" includes a finger.

Phillips v. State, 238 So. 3d 308 (Fla. 4th DCA 2018).

"Union" means contact.

Lesser-Included Offenses

ENGAGING IN AN ACT THAT [CONSTITUTED SEXUAL BATTERY] [INJURED THE SEXUAL ORGAN OF ANOTHER] BY A PERSON IN FAMILIAL OR CUSTODIAL AUTHORITY UPON A PERSON LESS THAN 12 YEARS OF AGE — 794.011(8)(c)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Sexual battery (Defendant 18 or older, victim younger than 12)	794.011(2)(a)	11.1
	Sexual battery (Defendant younger than 18, victim younger than 12)	794.011(2)(b)	11.1

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
	Engaging in an act which constituted sexual battery (Victim younger than 12, defendant younger than 18)	794.011(8)(c)	11.6(a)
	Sexual battery (Defendant 18 or older, victim 12 or older but younger than 18)	794.011(5)(a)	11.4
	Sexual battery (Defendant 18 or older, victim 18 or older)	794.011(5)(b)	11.4
	Sexual battery (Defendant younger than 18, victim 12 or older)	794.011(5)(c)	11.4
	Lewd or lascivious battery (Victim 12 or older but less than 16)	800.04(4)(a)1.	11.10(a)
	Lewd or lascivious battery (Victim less than 16)*	800.04(4)(a)2.*	11.10(b)*
	Attempt	777.04(1)	5.1
	Aggravated battery	784.045(1)(a)	8.4
	Felony battery	784.041(1)	8.5
	Aggravated assault	784.021(1)(a)	8.2
	Battery	784.03	8.3
	Assault	784.011	8.1

Comments

*It is unclear whether the "encouraging, forcing, or enticing any person less than 16 years of age to engage in … any other act involving sexual activity" part of Lewd or Lascivious Battery in § 800.04(4)(a)2., Fla. Stat., is a necessary lesser-included offense of § 794.011(8)(c), Fla. Stat. If so, the judge should instruct only on "sexual activity" and not on "sadomasochistic abuse, sexual bestiality, or prostitution," unless those acts are included in the charging document.

**Effective October 1, 2022, the Legislature changed "vagina" to "female genitals" in sex crimes-related statutes. Judges should ensure the jury instructions contain correct statutory terms, which will depend on the date alleged in the charging document. *Flores v. State,* 391 So. 3d 481 (Fla. 4th DCA 2024) is an example of an appellate court finding fundamental error when the trial judge expanded the definition of "vaginal penetration" by instructing on "female genital penetration."

See Instruction 11.16 or 11.16(a) if the State charged that the defendant qualified as a Dangerous Sexual Felony Offender, pursuant to § 794.0115, Fla. Stat.

A special instruction may be necessary in cases involving "familial authority" because that term is not synonymous with familial relationship. A special instruction may be necessary in cases involving "custodial authority" to help define the scope of "custody." Cases such as *Crocker v. State*, 752 So. 2d 615 (Fla. 2d DCA 1999), *Oliver v. State*, 977 So. 2d 673 (Fla. 5th DCA 2008), and *Hallberg v. State,* 649 So. 2d 1355 (Fla. 1994) may provide guidance for the special instructions.

As of August 2023, it was unclear whether acts done for bona fide medical purposes should be treated as an affirmative defense or as an element that the State must disprove. If treated as an affirmative defense, the judge must then determine who has the burden of persuasion and what that burden is (preponderance, clear and convincing, or beyond a reasonable doubt).

This instruction was adopted in 2016 [190 So. 3d 1055] and amended on November 20, 2020, on April 5, 2021, on December 15, 2021, on December 21, 2022, and on September 8, 2023.

11.7 UNLAWFUL SEXUAL ACTIVITY WITH CERTAIN MINORS
§ 794.05, Fla. Stat.**

To prove the crime of Unlawful Sexual Activity with Certain Minors, the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **engaged in sexual activity with** (victim)**.**

2. At the time, (defendant) **was 24 years of age or older.**

3. At the time, (victim) **was 16 or 17 years of age.**

Give if applicable. § 794.05, Fla. Stat.

Sexual activity does not include an act done for a bona fide medical purpose.

Give if requested. Feliciano v. State, 937 So. 2d 818 (Fla. 1st DCA 2006); § 794.021, Fla. Stat.

The defendant's ignorance of (victim's) **age,** (victim's) **misrepresentation of his or her age, or the defendant's bona fide belief of** (victim's) **age is not a defense to the crime charged.**

Give if applicable.

"Bona fide" means genuine.

§ 794.05(2), Fla. Stat.

"Sexual activity" means oral, anal, or female genital penetration by, or union with, the sexual organ of another or the anal or female genital penetration of another by any other object.**

"Female genitals" includes the labia minora, labia majora, clitoris, vulva, hymen, and vagina.**

Phillips v. State, 238 So. 3d 308 (Fla. 4th DCA 2018).

"Union" means contact.

Give if applicable.

Lakey v. State, 113 So. 3d 90 (Fla. 5th DCA 2013).

The definition of "an object" includes a finger.

Give if requested. § 794.05, Fla. Stat.

(Victim's) **sexual conduct is not relevant to the crime charged.**

§ 775.0862, Fla. Stat.

Reclassification for sexual offense against student by school authority figure.

If you find that (defendant) **committed the crime of Unlawful Sexual Activity With Certain Minors, you must also determine whether the State has proved beyond a reasonable doubt that** (defendant) **was an authority figure at a school and** (victim) **was a student at the same school.**

"Authority figure" means a person 18 years of age or older who is employed by, volunteering at, or under contract with a school.

"School" means an organization of students for instructional purposes on an elementary, middle or junior high school, secondary or high school, [or other public school level authorized under the rules of the State Board of Education]. The term "school" does not include facilities dedicated exclusively to the education of adults. *If needed, insert appropriate definitions from § 775.0862(1)(b), Fla. Stat. for "private school" or "voluntary prekindergarten education program" or "early learning program" or "public school as described in s. 402.3025(1)" or "the Florida School for the Deaf and the Blind" or the "Florida Virtual School" or the "K-8 Virtual School."*

"Student" means a person younger than 18 years of age who is enrolled at a school.

Lesser Included Offenses

UNLAWFUL SEXUAL ACTIVITY WITH CERTAIN MINORS — 794.05			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
None			
	Unnatural and Lascivious Act*	800.02*	11.8*
	Attempt	777.04(1)	5.1

Comments

*The courts do not require the State to allege the defendant's act was "unnatural" or "against the laws of nature" for § 800.02, Fla. Stat., to be given as a lesser-included offense. If the sexual activity involved penile-vaginal sexual intercourse (or contact), § 800.02, Fla. Stat. should *not* be given as a lesser-

included offense. However, if the sexual activity involved something other than penile-vaginal sexual intercourse (or contact), § 800.02, Fla. Stat. should be given as a lesser-included offense. *See State v. Knighton*, 235 So. 3d 312 (Fla. 2018).

** Effective October 1, 2022, the Legislature changed "vagina" to "female genitals" in sex crimes-related statutes. Judges should ensure the jury instructions contain correct statutory terms, which will depend on the date alleged in the charging document. *Flores v. State,* 391 So. 3d 481 (Fla. 4th DCA 2024) is an example of an appellate court finding fundamental error when the trial judge expanded the definition of "vaginal penetration" by instructing on "female genital penetration."

This statute does not apply to a person 16 or 17 years of age who has had the disabilities of nonage removed under chapter 743. *See* § 794.05(3), Fla. Stat.

As of November 2022, it was unclear whether acts done for bona fide medical purposes or a mother's breastfeeding of her baby should be treated as affirmative defenses or as elements that the State must disprove. If treated as an affirmative defense, the judge must then determine who has the burden of persuasion and what that burden is (preponderance, clear and convincing, or beyond a reasonable doubt).

This instruction was adopted in 1998 [723 So. 2d 123] and amended in 2015 [163 So. 3d 478], 2018 [257 So. 3d 370], and on December 21, 2022.

11.7(a) INDECENT, LEWD, OR LASCIVIOUS TOUCHING OF CERTAIN MINORS

§ 794.051, Fla. Stat.

To prove the crime of Indecent, Lewd, or Lascivious Touching of Certain Minors, the State must prove the following three elements beyond a reasonable doubt:

Give 1a or 1b or both as applicable.

1. (Defendant)

a. intentionally touched the [breast] [genitals] [genital area] [buttocks] [clothing covering the [breast] [genitals] [genital area] [buttocks]] of (victim) **in a lewd or lascivious manner.**

b. [forced] [or] [enticed] (victim) **to touch [his] [her] [breast] [genitals] [genital area] [buttocks] [clothing covering [his] [her] [breast] [genitals] [genital area] [buttocks]] in a lewd or lascivious manner.**

2. At the time, (defendant) **was 24 years of age or older.**

3. At the time, (victim) **was 16 or 17 years of age.**

The words "lewd" and "lascivious" mean the same thing: a wicked, lustful, unchaste, licentious, or sensual intent on the part of the person doing an act.

Give if requested. § 794.022, Fla. Stat.

(Victim's) **lack of chastity is not a defense to the crime charged.**

Give if requested. § 794.021, Fla. Stat; Feliciano v. State, 937 So. 2d 818 (Fla. 1st DCA 2006).

The defendant's ignorance of (victim's) **age,** (victim's) **misrepresentation of his or her age, or the defendant's bona fide belief of** (victim's) **age is not a defense to the crime charged.**

"Bona fide" means genuine.

Lesser Included Offenses

INDECENT, LEWD, OR LASCIVIOUS TOUCHING OF CERTAIN MINORS — 794.051

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Written Solicitation of Certain Minors to Commit a Lewd or Lascivious Act	794.053	11.7(b)
	Attempt	777.04(1)	5.1
	Battery	784.03	8.3
	Assault	784.011	8.1
	Unnatural and lascivious act*	800.02*	11.8*

Comments

*The courts do not require the State to allege the defendant's act was "unnatural" or "against the laws of nature" for § 800.02, Fla. Stat., to be given as a lesser-included offense. If the sexual activity involved penile-vaginal sexual intercourse (or contact), § 800.02, Fla. Stat. should *not* be given as a lesser-included offense. However, if the sexual activity involved something other than penile-vaginal sexual intercourse (or contact), § 800.02, Fla. Stat. should be given as a lesser-included offense. *See State v. Knighton*, 235 So. 3d 312 (Fla. 2018).

This crime does not apply to a person 16 or 17 years of age who has had the disability of nonage removed under chapter 743. *See* 794.051(2), Fla. Stat.

This instruction was adopted on December 21, 2022, and amended on March 8, 2024.

11.7(b) WRITTEN SOLICITATION OF CERTAIN MINORS TO COMMIT A LEWD OR LASCIVIOUS ACT

§ 794.053, Fla. Stat.

To prove the crime of Written Solicitation of Certain Minors to Commit a Lewd or Lascivious Act, the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant)**, in writing, solicited** (victim) **to commit a lewd or lascivious act.**

2. **At the time,** (defendant) **was 24 years of age or older.**

3. **At the time,** (victim) **was 16 or 17 years of age.**

The words "lewd" and "lascivious" mean the same thing: a wicked, lustful, unchaste, licentious, or sensual intent on the part of the person doing an act.

Give if requested. § 794.021, Fla. Stat; Feliciano v. State, 937 So. 2d 818 (Fla. 1st DCA 2006).

The defendant's ignorance of (victim's) **age,** (victim's) **misrepresentation of his or her age, or the defendant's bona fide belief of** (victim's) **age is not a defense to the crime charged.**

"Bona fide" means genuine.

It is not necessary that a lewd or lascivious act actually take place for the crime of Solicitation to be completed.

§ 777.04(2), Fla. Stat.

To "solicit" means to command, encourage, hire, or request another person to engage in specific conduct.

Lesser Included Offense

WRITTEN SOLICITATION OF CERTAIN MINORS TO COMMIT A LEWD OR LASCIVIOUS ACT — 794.053

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempt	777.04(1)	5.1

Comment

This instruction was adopted on March 8, 2024.

11.8 COMMITTING UNNATURAL AND LASCIVIOUS ACT

§ 800.02, Fla. Stat.

To prove the crime of Committing an Unnatural and Lascivious Act, the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) (copy from charge) **with** (person named in charge)**.**

2. The act was unnatural and lascivious.

Definitions.

"Unnatural" means not in accordance with nature or with normal feelings or behavior.

"Lascivious" means a wicked, lustful or unchaste, licentious, or sensual intent on the part of the person doing an act.

Lesser Included Offenses

UNNATURAL AND LASCIVIOUS ACT — 800.02

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempt	777.04(1)	5.1

Comment

This instruction was adopted in 1981 and revised in 2010.

11.9 UNLAWFUL EXPOSURE OF SEXUAL ORGANS

§ 800.03, Fla. Stat.

To prove the crime of Unlawful Exposure of Sexual Organs, the State must prove the following [four] [five] elements beyond a reasonable doubt:

Give if defendant is charged under § 800.03(1)(a), Fla. Stat.

1. (Defendant) **exposed or exhibited [his] [her] sexual organs.**

2. (Defendant) **did so [in public] [on the private premises of another] [so near the private premises of another as to be seen from those private premises].**

3. (Defendant) **intended the exposure or exhibition of [his] [her] sexual organs to be in a vulgar, indecent, lewd, or lascivious manner.**

4. The exposure or exhibition of the sexual organs was in a vulgar, indecent, lewd, or lascivious manner.

If defendant is charged only with exposure of sexual organs in public, the State need not prove that someone was offended. However, for cases involving exposure of sexual organs on private premises or so near to be seen from the premises, the jury must be instructed on element #5. State v. Kees, 919 So. 2d 504 (Fla. 5th DCA 2005). If the trial involves exposure of sexual organs in public and exposure of sexual organs on or near private premises, trial judges will need to draft a special instruction.

5. The exposure or exhibition of sexual organs caused offense to one or more persons viewing it.

Give if defendant is charged under § 800.03(1)(b), Fla. Stat.

1. (Defendant) **was naked.**

2. When (defendant) **was naked, [he] [she] was in public.**

3. (Defendant) **intended [his] [her] nakedness to be in a vulgar, indecent, lewd, or lascivious manner.**

4. The nakedness was in a vulgar, indecent, lewd, or lascivious manner.

Give in all cases.

Proof of mere nudity or exposure of a sexual organ is not sufficient for you to find the defendant guilty.

As used in regard to this offense, the words "vulgar," "indecent," "lewd," and "lascivious" mean the same thing: a wicked, lustful, unchaste, licentious, or sensual intent on the part of the person doing an act.

Optional Definition.

"In public" means in any place intended or designed to be frequented or resorted to by the public.

Lesser Included Offense

EXPOSURE OF SEXUAL ORGANS — 800.03			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
None			
	Unnatural and lascivious act	800.02	11.8

Comments

A first violation of this statute is a first-degree misdemeanor. A second or subsequent violation becomes a third-degree felony. As of November 2021, it is unclear whether the fact of a prior violation will be viewed as an element of the felony or as a recidivist factor for the judge to determine at sentencing.

If treated as an element, it is error to inform the jury of a prior violation. Therefore, if the information or indictment contains an allegation of one or more prior Unlawful Exposure of Sexual Organs violations, do not read that allegation and do not send the information or indictment into the jury room. If the defendant is found guilty, the historical fact of a prior Unlawful Exposure of Sexual Organs violation shall be determined beyond a reasonable doubt in a bifurcated proceeding. *See State v. Harbaugh*, 754 So. 2d 691 (Fla. 2000).

A mother's breast feeding of her baby or an individual being naked at any place provided or set apart for that purpose is not a violation of this statute. *See* § 800.03(3), Fla. Stat.

As of November 2021, the term "in public" has not been defined for purposes of this statute by the Florida Supreme Court or a District Court of Appeal. Similarly, neither the Florida Supreme Court nor any District Court of Appeal have determined whether cells or common areas inside of a jail or a prison are "in public." The term "public place" has been interpreted to include the inside of a vehicle that is located in a public parking lot and the inside of a

stall in a public restroom if freely visible from a public area. *See State v. Folks,* 723 So. 2d 369 (Fla. 4th DCA 1998) and *Ward v. State,* 636 So. 2d 68 (Fla. 5th DCA 1994). When crafting a special instruction for unique circumstances, trial judges may also want to consider § 876.11, Fla. Stat., which provides a definition of "public place" that includes common areas of grounds and buildings owned, leased by, operated, or maintained by public authority.

This instruction was adopted in 1981 and amended in 1997 [697 So. 2d 84], 2010 [48 So. 3d 41], on November 20, 2020, and on December 15, 2021.

11.10 LEWD, LASCIVIOUS, INDECENT ASSAULT OR ACT UPON OR IN THE PRESENCE OF CHILD; SEXUAL BATTERY

§ 800.04, Fla. Stat.

§ 800.04, Fla. Stat., was substantially amended in 1999. This instruction should be given only for those offenses committed before October 1, 1999.

To prove the crime of (crime charged)**, the State must prove the following two elements beyond a reasonable doubt:**

Give as applicable.

1. (Defendant)

a. **[made an assault upon** (victim) **in a lewd, lascivious, or indecent manner].**

[handled or fondled (victim) **in a lewd, lascivious, or indecent manner].**

b. **committed upon** (victim) **or forced or enticed** (victim) **to commit**

[actual or simulated sexual intercourse].

[deviate sexual intercourse].

[sexual bestiality].

[masturbation].

[sadomasochistic abuse].

[actual lewd exhibition of the genitals].

[any act or conduct which simulated that sexual battery was being or would be committed on (victim)**].**

c. **[committed an act [upon] [with]** (victim) **in which the sexual organ of the [**(defendant)**] [**(victim)**] penetrated or had union with the [anus] [vagina] [mouth] of [**(victim)**] [**(defendant)**]].**

[committed an act upon (victim) **in which the [anus] [vagina] of** (victim) **was penetrated by an object].**

d. knowingly committed a lewd or lascivious act in the presence of (victim)**.**

2. At the time, (victim) **was under the age of 16 years.**

Definitions.

Give in all cases.

Neither (victim's) **lack of chastity nor** (victim's) **consent is a defense to the crime charged.**

Give when pre-October 1, 1999 § 800.04(1), Fla. Stat., is charged.

As used in regard to this offense, the words "lewd," "lascivious," and "indecent" mean the same thing: a wicked, lustful, unchaste, licentious, or sensual intent on the part of the person doing an act.

Give when assault is charged under pre-October 1, 1999 § 800.04(1), Fla. Stat.

An "assault" is an intentional, unlawful threat by word or act to do violence to the person of another, coupled with an apparent ability to do so, and doing some act which creates a well-founded fear in such other person that such violence is imminent.

Give when pre-October 1, 1999 § 800.04(4), Fla. Stat., is charged.

As used in regard to this offense the words "lewd" and "lascivious" mean the same thing: a wicked, lustful, unchaste, licentious, or sensual intent on the part of the person doing an act.

State v. Werner, 609 So. 2d 585 (Fla. 1992).

"In the presence of" means that (victim) **saw, heard, or otherwise sensed that the act was taking place.**

Give if applicable.

"Union" means contact.

Give applicable definitions from § 847.001, Fla. Stat., when pre-October 1, 1999 § 800.04(2), Fla. Stat., is charged.

There is no need to make reference to the words "without committing the crime of sexual battery" because this refers to forcible sexual relations. Lanier v. State, 443 So.2d 178 (Fla. 3d DCA 1983); Chapters 84–86, Laws of Florida.

Lesser Included Offenses

LEWD, LASCIVIOUS, OR INDECENT ASSAULT OR ACT UPON OR IN PRESENCE OF CHILD — PRE-OCTOBER 1, 1999 800.04

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempt	777.04(1)	5.1
	Assault	784.011	8.1
	Battery	784.03	8.3
	Unnatural and lascivious act*	800.02*	11.8*

Comments

*The courts do not require the State to allege the defendant's act was "unnatural" or "against the laws of nature" in order for § 800.02, Fla. Stat., to be given as a lesser-included offense. If the sexual activity involved penile-vaginal sexual intercourse (or contact), § 800.02, Fla. Stat. should *not* be given as a lesser-included offense. However, if the sexual activity involved something other than penile-vaginal sexual intercourse (or contact), § 800.02, Fla. Stat. should be given as a lesser-included offense. *See State v. Knighton*, 235 So. 3d 312 (Fla. 2018).

*Because the crime of Unnatural and Lascivious Act (§ 800.02, Fla. Stat.) requires the defendant's act be "with another person," it should not be given as a lesser-included offense if the only evidence is that the defendant committed a lewd or lascivious act in the presence of the victim (element #1d).

This instruction was adopted in 1981 and was amended in 1985 [477 So. 2d 985], 1987 [508 So. 2d 1221], 1992 [603 So. 2d 1175], 1995 [657 So. 2d 1152], 2008 [976 So. 2d 1081], 2010 [48 So. 3d 41], and 2018.

11.10(a) LEWD OR LASCIVIOUS BATTERY (ENGAGING IN SEXUAL ACTIVITY)

§ 800.04(4)(a)1, Fla. Stat**.

To prove the crime of Lewd or Lascivious Battery, the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) **engaged in sexual activity with** (victim)**.**

2. At the time, (victim) **was 12 years of age or older, but less than 16 years of age.**

Give if applicable. § 800.04(1), Fla. Stat.

However, any act done for bona fide medical purposes is not a Lewd or Lascivious Battery.

Give if applicable. § 800.04(8), Fla. Stat.

A mother's breastfeeding of her baby does not under any circumstance constitute a Lewd or Lascivious Battery.

§ 800.04(3), Fla. Stat.

The defendant's ignorance of (victim's) **age,** (victim's) **misrepresentation of [his] [her] age, or the defendant's bona fide belief of** (victim's) **age is not a defense to the crime charged.**

Give if applicable.

"Bona fide" means genuine.

§ 800.04(2), Fla. Stat.

Neither (victim's) **lack of chastity nor** (victim's) **consent is a defense to the crime charged.**

§ 800.04(1), Fla. Stat.

"Consent" means intelligent, knowing, and voluntary consent, and does not include submission by coercion.

§ 800.04(1), Fla. Stat.

"Coercion" means the use of exploitation, bribes, threats of force, or intimidation to gain cooperation or compliance.

§ 800.04(1), Fla. Stat.

"Sexual activity" means the oral, anal, or female genital penetration by, or union with, the sexual organ of another or the anal or female genital penetration of another by any other object.**

§ 800.04(1), Fla. Stat.

"Female genitals" includes the labia minora, labia majora, clitoris, vulva, hymen, and vagina.**

Give if applicable. Lakey v. State, 113 So. 3d 90 (Fla. 5th DCA 2013).

"An object" includes a finger.

Phillips v. State, 238 So. 3d 308 (Fla. 4th DCA 2018).

"Union" means contact.

§ 775.0862, Fla. Stat.

Reclassification for sexual offense against student by school authority figure.

If you find that (defendant) **committed the crime of Lewd or Lascivious Battery, you must also determine whether the State has proved beyond a reasonable doubt that** (defendant) **was an authority figure at a school and** (victim) **was a student at the same school.**

"Authority figure" means a person 18 years of age or older who is employed by, volunteering at, or under contract with a school.

"School" means an organization of students for instructional purposes on an elementary, middle or junior high school, secondary or high school, [or other public school level authorized under the rules of the State Board of Education]. The term "school" does not include facilities dedicated exclusively to the education of adults. *If needed, insert appropriate definitions from § 775.0862(1)(b), Fla. Stat. for "private school" or "voluntary prekindergarten education program" or "early learning program" or "public school as described in s. 402.3025(1)" or "the Florida School for the Deaf and the Blind" or the "Florida Virtual School" or the "K-8 Virtual School."*

"Student" means a person younger than 18 years of age who is enrolled at a school.

Lesser Included Offenses

LEWD OR LASCIVIOUS BATTERY (ENGAGING IN SEXUAL ACTIVITY) — 800.04(4)(a)1			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
None			
	Aggravated battery	784.045(1)	8.4
	Attempt	777.04(1)	5.1
	Felony battery	784.041(1)	8.5
	Aggravated assault	784.021(1)(a)	8.2
	Battery	784.03	8.3
	Assault	784.011	8.1
	Unnatural and lascivious act*	800.02*	11.8*

Comments

*The courts do not require the State to allege the defendant's act was "unnatural" or "against the laws of nature" for § 800.02, Fla. Stat., to be given as a lesser-included offense. If the sexual activity involved penile-vaginal sexual intercourse (or contact), § 800.02, Fla. Stat. should *not* be given as a lesser-included offense. However, if the sexual activity involved something other than penile-vaginal sexual intercourse (or contact), § 800.02, Fla. Stat. should be given as a lesser-included offense. *See State v. Knighton*, 235 So. 3d 312 (Fla. 2018).

**Effective October 1, 2022, the Legislature changed "vagina" to "female genitals" in sex crimes-related statutes. Judges should ensure the jury instructions contain correct statutory terms, which will depend on the date alleged in the charging document. *Flores v. State,* 391 So. 3d 481 (Fla. 4th DCA 2024) is an example of an appellate court finding fundamental error when the trial judge expanded the definition of "vaginal penetration" by instructing on "female genital penetration."

In 2014, the legislature created a Lewd and Lascivious Battery classified as a first-degree felony if the defendant was 18 years of age or older at the time of the crime and had a prior conviction for an enumerated crime. *See* § 800.04(4), Fla. Stat. If this higher degree is charged, a special instruction will be required because *Apprendi v. New Jersey,* 530 U.S. 466 (2000) requires the jury to make an additional finding regarding the defendant's age. As of November 2022, it was unclear whether the existence of a prior conviction is an element or a recidivist factor to be proven to the trial judge under a preponderance of the evidence standard at sentencing. Generally, it would be improper to allow the jury to hear about a prior conviction. Therefore, if the

information or indictment contains an allegation of one or more prior convictions, do not read that allegation and do not send the information or indictment into the jury room. If the defendant is found guilty and if the prior conviction is treated as an element, the historical fact of a prior conviction should be determined by the jury beyond a reasonable doubt in a bifurcated proceeding. *State v. Harbaugh*, 754 So. 2d 691 (Fla. 2000).

As of November 2022, it was unclear whether acts done for bona fide medical purposes or a mother's breastfeeding of her baby should be treated as affirmative defenses or as elements that the State must disprove. If treated as an affirmative defense, the judge must then determine who has the burden of persuasion and what that burden is (preponderance, clear and convincing, or beyond a reasonable doubt).

This instruction was adopted in 2007 [969 So. 2d 245] and amended in 2015 [163 So. 3d 478], 2018 [257 So. 3d 370], and on December 21, 2022.

11.10(b) LEWD OR LASCIVIOUS BATTERY (ENCOURAGING, FORCING OR ENTICING)

§ 800.04(4)(a)2, Fla. Stat.**

To prove the crime of Lewd or Lascivious Battery, the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) **[encouraged] [forced] [or] [enticed]** (victim) **to engage in [any act involving sexual activity] [sadomasochistic abuse] [sexual bestiality] [prostitution].**

2. At the time, (victim) **was less than 16 years of age.**

Give if applicable. § 800.04(8), Fla. Stat.

A mother's breastfeeding of her baby does not under any circumstance constitute a Lewd or Lascivious Battery.

Give if applicable. § 800.04(1), Fla. Stat.

An act involving sexual activity does not include an act done for a bona fide medical purpose.

§ 800.04(3), Fla. Stat.

The defendant's ignorance of (victim's) **age,** (victim's) **misrepresentation of [his] [her] age, or the defendant's bona fide belief of** (victim's) **age is not a defense to the crime charged.**

Give if applicable.

"Bona fide" means genuine.

§ 800.04(2), Fla. Stat.

Neither (victim's) **lack of chastity nor** (victim's) **consent is a defense to the crime charged.**

§ 800.04(1), Fla. Stat.

"Consent" means intelligent, knowing, and voluntary consent, and does not include submission by coercion.

§ 800.04(1), Fla. Stat.

"Coercion" means the use of exploitation, bribes, threats of force, or intimidation to gain cooperation or compliance.

Give if applicable. § 800.04(1), Fla. Stat.

"Sexual activity" means the oral, anal, or female genital penetration by, or union with, the sexual organ of another or the anal or female genital penetration of another by any other object.**

§ 800.04(1), Fla. Stat.

"Female genitals" includes the labia minora, labia majora, clitoris, vulva, hymen, and vagina.**

Lakey v. State, 113 So. 3d 90 (Fla. 5th DCA 2013).

"An object" includes a finger.

Phillips v. State, 238 So. 3d 308 (Fla. 4th DCA 2018).

"Union" means contact.

§ 827.071, Fla. Stat.

"Sadomasochistic abuse" means flagellation or torture by or upon a person, or the condition of being fettered, bound, or otherwise physically restrained, for the purpose of deriving sexual satisfaction from inflicting harm on another or receiving such harm oneself.

§ 827.071, Fla. Stat.

"Sexual bestiality" means any sexual act between a person and an animal involving the sex organ of the one and the mouth, anus, or female genitals of the other.**

§ 796.07(1), Fla. Stat.

"Prostitution" is the giving or receiving of the body for sexual activity for hire but excludes sexual activity between spouses. "Sexual activity" means oral, anal, or female genital penetration by, or union with, the sexual organ of another; anal or female genital penetration of another by any other object; or the handling or fondling of the sexual organ of another for the purpose of masturbation.

§ 775.0862, Fla. Stat.

Reclassification for sexual offense against student by school authority figure.

If you find that (defendant) **committed the crime of Lewd or Lascivious Battery, you must also determine whether the State has proved beyond a reasonable doubt that** (defendant) **was an authority figure at a school and** (victim) **was a student at the same school.**

"Authority figure" means a person 18 years of age or older who is employed by, volunteering at, or under contract with a school.

"School" means an organization of students for instructional purposes on an elementary, middle or junior high school, secondary or high school, [or other public school level authorized under the rules of the State Board of Education]. The term "school" does not include facilities dedicated exclusively to the education of adults. *If needed, insert appropriate definitions from § 775.0862(1)(b), Fla. Stat. for "private school" or "voluntary prekindergarten education program" or "early learning program" or "public school as described in s. 402.3025(1)" or "the Florida School for the Deaf and the Blind" or the "Florida Virtual School" or the "K-8 Virtual School."*

"Student" means a person younger than 18 years of age who is enrolled at a school.

Lesser Included Offenses

LEWD OR LASCIVIOUS BATTERY (ENCOURAGING, FORCING OR ENTICING) — 800.04(4)(a)2

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Soliciting for prostitution (only if prostitution is charged)		796.07(2)(f)	23.6
	Aggravated battery	784.045(1)	8.4
	Attempt	777.04(1)	5.1
	Felony battery	784.041(1)	8.5
	Aggravated assault	784.021(1)(a)	8.2
	Battery	784.03	8.3
	Assault	784.011	8.1
	Unnatural and lascivious act*	800.02*	11.8*

Comments

*The courts do not require the State to allege the defendant's act was "unnatural" or "against the laws of nature" for § 800.02, Fla. Stat., to be given as a lesser-included offense. If the sexual activity involved penile-vaginal sexual intercourse (or contact), § 800.02, Fla. Stat. should *not* be given as a lesser-included offense. However, if the sexual activity involved something other than penile-vaginal sexual intercourse (or contact), § 800.02, Fla. Stat. should be given as a lesser-included offense. *See State v. Knighton*, 235 So. 3d 312 (Fla. 2018).

**Effective October 1, 2022, the Legislature changed "vagina" to "female genitals" in sex crimes-related statutes. Judges should ensure the jury instructions contain correct statutory terms, which will depend on the date alleged in the charging document. *Flores v. State,* 391 So. 3d 481 (Fla. 4th DCA 2024) is an example of an appellate court finding fundamental error when the trial judge expanded the definition of "vaginal penetration" by instructing on "female genital penetration."

In 2014, the legislature created a Lewd and Lascivious Battery classified as a first-degree felony if the defendant was 18 years of age or older at the time of the crime and had a prior conviction for an enumerated crime. See § 800.04(4)(c), Fla. Stat. If this enhancement is charged, a special instruction will be required because *Apprendi v. New Jersey,* 530 U.S. 466 (2000) requires the jury to make an additional finding regarding the defendant's age. As of November 2022, it was unclear whether the existence of a prior conviction is an element or a recidivist factor to be proven to the trial judge under a preponderance of the evidence standard at sentencing. Generally, it would be improper to allow the jury to hear about a prior conviction. Therefore, if the information or indictment contains an allegation of one or more prior convictions, do not read that allegation and do not send the information or indictment into the jury room. If the defendant is found guilty and if the prior conviction is treated as an element, the historical fact of a prior conviction should be determined by the jury beyond a reasonable doubt in a bifurcated proceeding. *State v. Harbaugh*, 754 So. 2d 691 (Fla. 2000).

As of November 2022, it was unclear whether acts done for bona fide medical purposes or a mother's breastfeeding of her baby should be treated as affirmative defenses or as elements that the State must disprove. If treated as an affirmative defense, the judge must then determine who has the burden of persuasion and what that burden is (preponderance, clear and convincing, or beyond a reasonable doubt).

There are statutory definitions of "sadomasochistic abuse" and "sexual bestiality" in § 847.001, Fla. Stat., that differ from the statutory definitions in § 827.071, Fla. Stat. As of November 2022, there is no case law that decides which definition applies for a violation of § 800.04(4)(a)2, Fla. Stat.

This instruction was adopted in 2007 [969 So. 2d 245] and amended in 2015 [163 So. 3d 478], and 2018 [257 So. 3d 370], and on December 21, 2022.

11.10(c) LEWD OR LASCIVIOUS MOLESTATION

§ 800.04(5), Fla. Stat.

To prove the crime of Lewd or Lascivious Molestation, the State must prove the following three elements beyond a reasonable doubt:

Give 1a or 1b or both as applicable.

1. (Defendant)**,**

a. in a lewd or lascivious manner, intentionally touched the [breasts] [genitals] [genital area] [buttocks] [clothing covering the breasts] [clothing covering the genitals] [clothing covering the genital area] [clothing covering the buttocks] of (victim)**.**

b. in a lewd or lascivious manner, intentionally [forced] [enticed] (victim) **to touch the [breasts] [genitals] [genital area] [buttocks] [clothing covering the breasts] [clothing covering the genitals] [clothing covering the genital area] [clothing covering the buttocks] of** (defendant)**.**

Give 2a or 2b as applicable.

2. At the time, (victim)

a. was 12 years of age or older but less than 16 years of age.

b. was less than 12 years of age.

Give 3a or 3b as applicable.

3. At the time, (defendant)

a. was 18 years of age or older.

b. was less than 18 years of age.

Give if applicable. § 800.04(8), Fla. Stat.

A mother's breastfeeding of her baby does not under any circumstance constitute a Lewd or Lascivious Molestation.

The words "lewd" and "lascivious" mean the same thing: a wicked, lustful, unchaste, licentious, or sensual intent on the part of the person doing an act.

§ 800.04(3), Fla. Stat.

The defendant's ignorance of (victim's) **age,** (victim's) **misrepresentation of [his] [her] age, or the defendant's bona fide belief of** (victim's) **age is not a defense to the crime charged.**

Give if applicable.

"Bona fide" means genuine.

Give if applicable. § 800.04(2), Fla. Stat.

Neither (victim's) **lack of chastity nor** (victim's) **consent is a defense to the crime charged.**

§ 800.04(1), Fla. Stat.

"Consent" means intelligent, knowing, and voluntary consent, and does not include submission by coercion.

§ 800.04(1), Fla. Stat.

"Coercion" means the use of exploitation, bribes, threats of force, or intimidation to gain cooperation or compliance.

Give if applicable. § 775.0862, Fla. Stat.

Reclassification for sexual offense against student by school authority figure.

If you find that (defendant) **committed the crime of Lewd or Lascivious Molestation, you must also determine whether the State has proved beyond a reasonable doubt that** (defendant) **was an authority figure at a school and** (victim) **was a student at the same school.**

"Authority figure" means a person 18 years of age or older who is employed by, volunteering at, or under contract with a school.

"School" means an organization of students for instructional purposes on an elementary, middle or junior high school, secondary or high school, [or other public school level authorized under the rules of the State Board of Education]. The term "school" does not include facilities dedicated exclusively to the education of adults. *If needed, insert appropriate definitions from § 775.0862(1)(b), Fla. Stat. for "private school" or "voluntary prekindergarten education program" or "early learning program" or*

"public school as described in s. 402.3025(1)" or "the Florida School for the Deaf and the Blind" or the "Florida Virtual School" or the "K-8 Virtual School."

"Student" means a person younger than 18 years of age who is enrolled at a school.

Lesser Included Offenses

LEWD OR LASCIVIOUS MOLESTATION; DEFENDANT 18 OR OVER; VICTIM LESS THAN 12 — 800.04(5)(b)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Lewd or Lascivious Molestation; Defendant 18 or over; Victim 12 or over but less than 16	800.04(5)(c)2	11.10(c)
	Lewd or Lascivious Molestation; Defendant less than 18; Victim less than 12	800.04(5)(c)1	11.10(c)
	Lewd or Lascivious Molestation; Defendant less than 18; Victim 12 or over but less than 16	800.04(5)(d)	11.10(c)
	Attempt	777.04(1)	5.1
	Aggravated battery	784.045(1)	8.4
	Felony battery	784.041(1)	8.5
	Aggravated assault	784.021(1)(a)	8.2
	Battery	784.03	8.3
	Assault	784.011	8.1
	Unnatural and lascivious act*	800.02*	11.8*

Comments

*The courts do not require the State to allege the defendant's act was "unnatural" or "against the laws of nature" for § 800.02, Fla. Stat., to be given as a lesser-included offense. If the sexual activity involved penile-vaginal sexual intercourse (or contact), § 800.02, Fla. Stat. should *not* be given as a lesser-included offense. However, if the sexual activity involved something other than penile-vaginal sexual intercourse (or contact), § 800.02, Fla. Stat. should be given as a lesser-included offense. *See State v. Knighton*, 235 So. 3d 312 (Fla. 2018).

In 2014, the legislature created a Lewd and Lascivious Molestation classified as a first-degree felony depending on the ages of the defendant and victim and whether the defendant had a prior conviction for an enumerated crime. If this enhancement is charged, *Apprendi v. New Jersey*, 530 U.S. 466 (2000) likely requires the jury to make additional findings. *See* § 800.04(5)(e), Fla. Stat. As of November 2022, it was unclear whether the existence of a prior conviction is an element or a recidivist factor to be proven to the trial judge under a preponderance of the evidence standard at sentencing. Generally, it would be improper to allow the jury to hear about a prior conviction. Therefore, if the information or indictment contains an allegation of one or more prior convictions, do not read that allegation and do not send the information or indictment into the jury room. If the defendant is found guilty and if the prior conviction is treated as an element, the historical fact of a prior conviction should be determined by the jury beyond a reasonable doubt in a bifurcated proceeding. *State v. Harbaugh*, 754 So. 2d 691 (Fla. 2000).

As of November 2022, it was unclear whether a mother's breastfeeding of her baby should be treated as an affirmative defense or as an element that the State must disprove. If treated as an affirmative defense, the judge must then determine who has the burden of persuasion and what that burden is (preponderance, clear and convincing, or beyond a reasonable doubt).

This instruction was adopted in 2008 [998 So. 2d 1138] and amended in 2013 [109 So. 3d 721], 2015 [163 So. 3d 4], 2018 [257 So. 3d 370], on November 20, 2020, on December 15, 2021, and on December 21, 2022.

11.10(d) LEWD OR LASCIVIOUS CONDUCT

§ 800.04(6), Fla. Stat.

To prove the crime of Lewd or Lascivious Conduct, the State must prove the following three elements beyond a reasonable doubt:

Give 1a or 1b or both as applicable.

1. (Defendant)

a. intentionally touched (victim) **in a lewd or lascivious manner.**

b. solicited (victim) **to commit a lewd or lascivious act.**

2. At the time, (victim) **was under the age of 16 years.**

Give 3a or 3b as applicable.

3. a. At the time, (defendant) **was 18 years of age or older.**

b. At the time, (defendant) **was less than 18 years of age.**

Give if applicable. § 800.04(8), Fla. Stat.

A mother's breastfeeding of her baby does not under any circumstance constitute a Lewd or Lascivious Conduct.

§ 800.04(3), Fla. Stat.

The defendant's ignorance of (victim's) **age,** (victim's) **misrepresentation of [his] [her] age, or the defendant's bona fide belief of** (victim's) **age is not a defense to the crime charged.**

Give if applicable.

"Bona fide" means genuine.

§ 800.04(2), Fla. Stat.

Neither (victim's) **lack of chastity nor** (victim's) **consent is a defense to the crime charged.**

§ 800.04(1), Fla. Stat.

"Consent" means intelligent, knowing, and voluntary consent, and does not include submission by coercion.

§ 800.04(1), Fla. Stat.

"Coercion" means the use of exploitation, bribes, threats of force, or intimidation to gain cooperation or compliance.

The words "lewd" and "lascivious" mean the same thing: a wicked, lustful, unchaste, licentious, or sensual intent on the part of the person doing an act.

Give if applicable. § 777.04(2), Fla. Stat.

To "solicit" means to command, encourage, hire, or request another person to engage in specific conduct.

§ 775.0862, Fla. Stat.

Reclassification for sexual offense against student by school authority figure.

If you find that (defendant) **committed the crime of Lewd or Lascivious Conduct, you must also determine whether the State has proved beyond a reasonable doubt that** (defendant) **was an authority figure at a school and** (victim) **was a student at the same school.**

"Authority figure" means a person 18 years of age or older who is employed by, volunteering at, or under contract with a school.

"School" means an organization of students for instructional purposes on an elementary, middle or junior high school, secondary or high school, [or other public school level authorized under the rules of the State Board of Education]. The term "school" does not include facilities dedicated exclusively to the education of adults. *If needed, insert appropriate definitions from § 775.0862(1)(b), Fla. Stat. for "private school" or "voluntary prekindergarten education program" or "early learning program" or "public school as described in s. 402.3025(1)" or "the Florida School for the Deaf and the Blind" or the "Florida Virtual School" or the "K-8 Virtual School."*

"Student" means a person younger than 18 years of age who is enrolled at a school.

Lesser Included Offenses

LEWD OR LASCIVIOUS CONDUCT, DEFENDANT 18 OR OLDER – 800.04(6)(b)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Lewd or lascivious conduct; defendant less than 18	800.04(6)(c)	11.10(d)
	Attempt	777.04(1)	5.1
	Felony battery	784.041(1)	8.5
	Aggravated assault	784.021(1)(a)	8.2
	Battery	784.03	8.3
	Assault	784.011	8.1
	Unnatural and lascivious act (if element 1a is charged)*	800.02*	11.8*

Comments

*The courts do not require the State to allege the defendant's act was "unnatural" or "against the laws of nature" for § 800.02, Fla. Stat., to be given as a lesser-included offense. If the sexual activity involved penile-vaginal sexual intercourse (or contact), § 800.02, Fla. Stat. should *not* be given as a lesser-included offense. However, if the sexual activity involved something other than penile-vaginal sexual intercourse (or contact), § 800.02, Fla. Stat. should be given as a lesser-included offense. *See State v. Knighton*, 235 So. 3d 312 (Fla. 2018).

As of November 2022, it was unclear whether a mother's breastfeeding of her baby should be treated as an affirmative defense or as an element that the State must disprove. If treated as an affirmative defense, the judge must then determine who has the burden of persuasion and what that burden is (preponderance, clear and convincing, or beyond a reasonable doubt).

This instruction was adopted in 2008 [998 So. 2d 1138] and amended in 2015 [163 So. 3d 478], 2018 [257 So. 3d 370], on November 20, 2020, on December 15, 2021, and on December 21, 2022.

11.10(e) LEWD OR LASCIVIOUS EXHIBITION

§ 800.04(7), Fla. Stat.**

To prove the crime of Lewd or Lascivious Exhibition, the State must prove the following four elements beyond a reasonable doubt:

Give as applicable.

1. (Defendant)

a. intentionally masturbated.

b. intentionally exposed [his] [her] genitals in a lewd or lascivious manner.

c. committed [a sexual act] [sadomasochistic abuse] [sexual bestiality] [the simulation of any act involving sexual activity] that did not involve actual physical or sexual contact with (victim)**.**

2. The act was committed in the presence of (victim).

3. At the time, (victim) was under the age of 16 years.

Give 4a or 4b as applicable.

4. a. At the time, (defendant) **was 18 years of age or older.**

b. At the time, (defendant) **was less than 18 years of age.**

Give if applicable. § 800.04(8), Fla. Stat.

A mother's breastfeeding of her baby does not under any circumstance constitute a Lewd or Lascivious Exhibition.

§ 800.04(3), Fla. Stat.

The defendant's ignorance of (victim's) **age,** (victim's) **misrepresentation of his or her age, or the defendant's bona fide belief of** (victim's) **age is not a defense to the crime charged.**

Give if applicable.

"Bona fide" means genuine.

§ 800.04(2), Fla. Stat.

Neither (victim's) **lack of chastity nor** (victim's) **consent is a defense to the crime charged.**

§ 800.04(1), Fla. Stat.

"Consent" means intelligent, knowing, and voluntary consent, and does not include submission by coercion.

§ 800.04(1), Fla. Stat.

"Coercion" means the use of exploitation, bribes, threats of force, or intimidation to gain cooperation or compliance.

Give if applicable.

The words "lewd" and "lascivious" mean the same thing: a wicked, lustful, unchaste, licentious, or sensual intent on the part of the person doing an act.

§ 800.04(1), Fla. Stat.

"Sexual activity" means the oral, anal, or female genital penetration by, or union with, the sexual organ of another or the anal or female genital penetration of another by any other object[; however, sexual activity does not include an act done for a bona fide medical purpose].**

Lakey v. State, 113 So. 3d 90 (Fla. 5th DCA 2013).

"An object" includes a finger.

§ 827.071, Fla. Stat.

"Sadomasochistic abuse" means flagellation or torture by or upon a person, or the condition of being fettered, bound, or otherwise physically restrained, for the purpose of deriving sexual satisfaction from inflicting harm on another or receiving such harm oneself.

§ 827.071, Fla. Stat.

"Sexual bestiality" means any sexual act between a person and an animal involving the sex organ of the one and the mouth, anus, or female genitals of the other.

§ 800.04(1), Fla. Stat.

"Female genitals" includes the labia minora, labia majora, clitoris, vulva, hymen, and vagina.**

§ 800.04, Fla. Stat. See State v. Werner, 609 So. 2d 585 (Fla. 1992).

"In the presence of" means that (victim) **saw, heard, or otherwise sensed that the act was taking place.**

§ 775.0862, Fla. Stat.

Reclassification for sexual offense against student by school authority figure.

If you find that (defendant) **committed the crime of Lewd or Lascivious Exhibition, you must also determine whether the State has proved beyond a reasonable doubt that** (defendant) **was an authority figure at a school and** (victim) **was a student at the same school.**

"Authority figure" means a person 18 years of age or older who is employed by, volunteering at, or under contract with a school.

"School" means an organization of students for instructional purposes on an elementary, middle or junior high school, secondary or high school, [or other public school level authorized under the rules of the State Board of Education]. The term "school" does not include facilities dedicated exclusively to the education of adults. *If needed, insert appropriate definitions from § 775.0862(1)(b), Fla. Stat. for "private school" or "voluntary prekindergarten education program" or "early learning program" or "public school as described in s. 402.3025(1)" or "the Florida School for the Deaf and the Blind" or the "Florida Virtual School" or the "K-8 Virtual School."*

"Student" means a person younger than 18 years of age who is enrolled at a school.

Lesser Included Offenses

LEWD OR LASCIVIOUS EXHIBITION; DEFENDANT 18 OR OLDER — 800.04(7)(b)			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
None			
	Lewd or lascivious exhibition; defendant less than 18	800.04(7)(c)	11.10(e)
	Attempt	777.04(1)	5.1
	Exposure of Sexual Organs	800.03	11.9
	Unnatural and lascivious act*	800.02*	11.8*

Comments

*The courts do not require the State to allege the defendant's act was "unnatural" or "against the laws of nature" for § 800.02, Fla. Stat., to be given as a lesser-included offense.

**Effective October 1, 2022, the Legislature changed "vagina" to "female genitals" in sex crimes-related statutes. Judges should ensure the jury instructions contain correct statutory terms, which will depend on the date alleged in the charging document. *Flores v. State,* 391 So. 3d 481 (Fla. 4th DCA 2024) is an example of an appellate court finding fundamental error when the trial judge expanded the definition of "vaginal penetration" by instructing on "female genital penetration."

There are definitions of "sadomasochistic abuse" and "sexual bestiality" in
§ 847.001, Fla. Stat., that differ from the definitions in § 827.071, Fla. Stat. As of November 2022, there is no case law that decides which definition applies for a violation of § 800.04(7)(a), Fla. Stat.

As of November 2022, it was unclear whether acts done for bona fide medical purposes or a mother's breastfeeding of her baby should be treated as affirmative defenses or as elements that the State must disprove. If treated as an affirmative defense, the judge must then determine who has the burden of persuasion and what that burden is (preponderance, clear and convincing, or beyond a reasonable doubt).

This instruction was adopted in 2008 [998 So. 2d 1138] and amended in 2015 [163 So. 3d 478], 2018 [257 So. 3d 370], on November 20, 2020, on December 15, 2021, and on December 21, 2022.

11.10(f) LEWD OR LASCIVIOUS EXHIBITION OVER COMPUTER SERVICE

§ 847.0135(5), Fla. Stat.***

To prove the crime of Lewd or Lascivious Exhibition over a Computer Online Service, the State must prove the following four elements beyond a reasonable doubt:

Give as applicable.

1. a. (Defendant) **intentionally masturbated.**

b. (Defendant) **intentionally exposed [his] [her] genitals in a lewd or lascivious manner.**

c. (Defendant) **committed [a sexual act] [sadomasochistic abuse] [sexual bestiality] [simulation of any act involving sexual activity] that did not involve actual physical or sexual contact with** (victim)**.**

2. The act was committed live over a [computer on-line service] [internet service] [local bulletin board service].

3. At the time, (defendant) **knew or should have known or had reason to believe that the transmission was viewed on a computer or television monitor by a person who was under the age of 16 years.**

Give 4a or 4b as applicable.

4. a. At the time, (defendant) **was 18 years of age or older.**

b. At the time, (defendant) **was less than 18 years of age.**

§ 800.04(3), Fla. Stat.

The defendant's ignorance of the (victim's) **age,** (victim's) **misrepresentation of [his] [her] age, or the defendant's bona fide belief of** (victim's) **age is not a defense to the crime charged.**

Give if applicable.

"Bona fide" means genuine.

§ 800.04(2), Fla. Stat.

Neither (victim's) **lack of chastity nor** (victim's) **consent is a defense to the crime charged.**

§ 800.04(3), Fla. Stat.

The fact that an undercover operative or law enforcement officer was involved in the detection and investigation of an offense is not a defense to the crime charged.

Give as applicable.

The words "lewd" and "lascivious" mean the same thing: a wicked, lustful, unchaste, licentious, or sensual intent on the part of the person doing an act.

§ 800.04(1), Fla. Stat.

"Sexual activity" means the oral, anal, or female genital penetration by, or union with, the sexual organ of another or the anal or female genital penetration of another by any other object[; however, sexual activity does not include an act done for a bona fide medical purpose].**

Lakey v. State, 113 So. 3d 90 (Fla. 5th DCA 2013).

The definition of "an object" includes a finger.

Phillips v. State, 238 So. 3d 308 (Fla. 4th DCA 2018).

"Union" means contact.

§ 847.001(6), Fla. Stat.

"Female genitals*" includes the labia minora, labia majora, clitoris, vulva, hymen, and vagina.**

§ 847.001, Fla. Stat.

"Sadomasochistic abuse" means flagellation or torture by or upon a person or animal, or the condition of being fettered, bound, or otherwise physically restrained, for the purpose of deriving sexual satisfaction, or satisfaction brought about as a result of sadistic violence, from inflicting harm on another or receiving such harm oneself.

§ 847.001, Fla. Stat.

"Sexual bestiality" means any sexual act, actual or simulated, between a person and an animal involving the sex organ of the one and the mouth, anus, or female genitals of the other.

§ 847.001, Fla. Stat.

"Simulated" means the explicit depiction of sexual conduct which creates the appearance of such conduct and which exhibits any uncovered portion of the breasts, genitals, or buttocks.

§ 847.001, Fla. Stat.

"Sexual conduct" means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual or simulated lewd exhibition of the genitals; actual physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed. [A mother's breastfeeding of her baby does not under any circumstance constitute "sexual conduct."]

§ 847.001, Fla. Stat.

"Deviate sexual intercourse" means sexual conduct between persons not married to each other consisting of contact between the penis and the anus, the mouth and the penis, or the mouth and the vulva.

Lesser Included Offenses

LEWD OR LASCIVIOUS EXHIBITION OVER COMPUTER SERVICE, DEFENDANT 18 YEARS OF AGE OR OLDER — 847.0135(5)(b)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Lewd or Lascivious Exhibition over Computer Service, Defendant less than 18 years of age	847.0135(5)(c)	11.10(f)
	Unnatural and lascivious act**	800.02*	11.8*
	Attempt	777.04(1)	5.1

Comments

*As of November 2022, it was unclear whether the Chapter 800 definition of "sexual activity" could be used for this Chapter 847 crime.

**The courts do not require the State to allege the defendant's act was "unnatural" or "against the laws of nature" for § 800.02, Fla. Stat., to be given as a lesser-included offense.

***Effective October 1, 2022, the Legislature changed "vagina" to "female genitals" in sex crimes-related statutes. Judges should ensure the jury instructions contain correct statutory terms, which will depend on the date alleged in the charging document. *Flores v. State,* 391 So. 3d 481 (Fla. 4th DCA 2024) is an example of an appellate court finding fundamental error when the trial judge expanded the definition of "vaginal penetration" by instructing on "female genital penetration."

As of November 2022, it was unclear whether acts done for bona fide medical purposes or a mother's breastfeeding of her baby should be treated as affirmative defenses or as elements that the State must disprove. If treated as an affirmative defense, the judge must then determine who has the burden of persuasion and what that burden is (preponderance, clear and convincing, or beyond a reasonable doubt).

This instruction was adopted in 2008 [998 So. 2d 1138] and amended in 2015 [176 So. 3d 938], 2018 [257 So. 3d 370], on November 20, 2020, on December 15, 2021, and on December 21, 2022.

11.10(g) LEWD OR LASCIVIOUS EXHIBITION BY A DETAINEE IN THE PRESENCE OF AN EMPLOYEE OF A FACILITY

§ 800.09, Fla. Stat.*

To prove the crime of Lewd or Lascivious Exhibition by a Detainee in the Presence of an Employee of a Facility, the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **was detained in a [state correctional institution] [contractor-operated correctional facility] [county detention facility].**

2. While detained, (defendant) **intentionally**

Give as applicable.

a. masturbated.

b. exposed [his] [her] genitals in a lewd or lascivious manner.

c. committed [a sexual act] [sadomasochistic abuse] [sexual bestiality] [the simulation of any act involving sexual activity] that did not involve actual physical or sexual contact with a victim.

3. (Defendant's) **act was intentionally committed in the presence of a person [he] [she] knew or reasonably should have known was an employee of the [institution] [facility].**

Definitions. Give as applicable.

§ 944.02, Fla. Stat.

A "state correctional institution" is any prison, road camp, prison industry, prison forestry camp, or any prison camp or prison farm or other correctional facility, temporary or permanent, in which prisoners are housed, worked, or maintained, under the custody and jurisdiction of the Department of Corrections.

§ 944.710, Fla. Stat.

A "contractor-operated correctional facility" is any facility, which is not operated by the Department of Corrections, for the incarceration of adults or juveniles who have been sentenced by a court and committed to the custody of the Department of Corrections.

§ 951.23, Fla. Stat.

A "county detention facility" is a county jail, a county stockade, a county work camp, a county residential probation center, and any other place except a municipal detention facility used by a county or county officer for the detention of persons charged with or convicted of either a felony or a misdemeanor.

§ 800.09, Fla. Stat.

"Employee" means [any person employed by or performing contractual services for a public or private entity operating a state correctional institution or a private correctional facility] [any person employed by or performing contractual services for the corporation operating the prison industry enhancement programs [or the correctional work programs under part II of chapter 946]] [any person employed at or performing contractual services for a county detention facility] [any person who is a parole examiner with the Florida Commission on Offender Review].

The words "lewd" and "lascivious" mean the same thing: a wicked, lustful, unchaste, licentious, or sensual intent on the part of the person doing an act.

§ 800.04, Fla. Stat.

***"Sexual activity" means the oral, anal, or female genital* penetration by, or union with, the sexual organ of another or the anal or female genital penetration of another by any other object[; however, sexual activity does not include an act done for a bona fide medical purpose].**

Give if applicable.

"Bona fide" means genuine.

Phillips v. State, 238 So. 3d 308 (Fla. 4th DCA 2018).

"Union" means contact.

§ 847.001, Fla. Stat.

"Female genitals*" includes the labia minora, labia majora, clitoris, vulva, hymen, and vagina.

Lakey v. State, 113 So. 3d 90 (Fla. 5th DCA 2013).

The definition of "an object" includes a finger.

§ 847.001, Fla. Stat.

"Sadomasochistic abuse" means flagellation or torture by or upon a person or animal, or the condition of being fettered, bound, or otherwise physically restrained, for the purpose of deriving sexual satisfaction, or satisfaction brought about as a result of sadistic violence, from inflicting harm on another or receiving such harm oneself.

§ 847.001, Fla. Stat.

"Sexual bestiality" means any sexual act, actual or simulated, between a person and an animal involving the sex organ of the one and the mouth, anus, or female genitals* of the other.

§ 847.001, Fla. Stat.

"Simulated" means the explicit depiction of sexual conduct which creates the appearance of such conduct and which exhibits any uncovered portion of the breasts, genitals, or buttocks.

§ 847.001, Fla. Stat.

"Sexual conduct" means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual or simulated lewd exhibition of the genitals; actual physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed. [A mother's breastfeeding of her baby does not under any circumstance constitute "sexual conduct."]

§ 847.001, Fla. Stat.

"Deviate sexual intercourse" means sexual conduct between persons not married to each other consisting of contact between the penis and the anus, the mouth and the penis, or the mouth and the vulva.

See State v. Werner, 609 So. 2d 585 (Fla. 1992).

"In the presence of" means that a victim saw, heard, or otherwise sensed that the act was taking place.

Lesser Included Offenses

LEWD OR LASCIVIOUS EXHIBITION BY A DETAINEE IN THE PRESENCE OF AN EMPLOYEE OF A FACILITY — 800.09

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempt	777.04(1)	5.1
	Exposure of Sexual Organs	800.03	11.9
	Unnatural and lascivious act**	800.02**	11.8**

Comments

*Effective October 1, 2022, the Legislature changed "vagina" to "female genitals" in sex crimes-related statutes. Judges should ensure the jury instructions contain correct statutory terms, which will depend on the date alleged in the charging document. *Flores v. State,* -- So. 3d -- (Fla. 4th DCA 2024) is an example of an appellate court finding fundamental error when the trial judge expanded the definition of "vaginal penetration" by instructing on "female genital penetration."

**The courts do not require the State to allege the defendant's act was "unnatural" or "against the laws of nature" for § 800.02, Fla. Stat., to be given as a lesser-included offense.

As of August 2024, it was unclear whether acts done for bona fide medical purposes or a mother's breastfeeding of her baby should be treated as affirmative defenses or as elements that the State must disprove. If treated as an affirmative defense, the judge must then determine who has the burden of persuasion and what that burden is (preponderance, clear and convincing, or beyond a reasonable doubt).

There are definitions of "sadomasochistic abuse" and "sexual bestiality" in
§ 827.071, Fla. Stat., that differ from the definitions in § 847.001, Fla. Stat. As of August 2024, there is no case law that decides which definition applies for a violation of § 800.09, Fla. Stat.

This instruction was adopted in 2013 [131 So. 3d 720] and amended in 2015 [176 So. 3d 938], 2018 [257 So. 3d 370], 2020 [288 So. 3d 540], on December 21, 2022, and on September 20, 2024.

11.11 LEWD OR LASCIVIOUS [BATTERY] [MOLESTATION] [EXHIBITION] COMMITTED UPON OR IN THE PRESENCE OF AN ELDERLY PERSON OR DISABLED PERSON

§ 825.1025, Fla. Stat.**

To prove the crime of [Lewd or Lascivious Battery] [Lewd or Lascivious Molestation] [Lewd or Lascivious Exhibition] upon or in the Presence of an [Elderly Person] [Disabled Person], the State must prove the following three elements beyond a reasonable doubt:

Give 1a, 1b, or 1c as applicable.

1. a. (Defendant) **committed Lewd and Lascivious Battery by encouraging, forcing, or enticing** (victim) **to engage in [sadomasochistic abuse] [sexual bestiality] [prostitution] [any act involving sexual activity].**

b. (Defendant) **committed Lewd and Lascivious Molestation of** (victim) **by intentionally touching, in a lewd and lascivious manner, [his] [her] [breasts] [genitals] [genital area] [buttocks] [clothing covering [his] [her] [breasts] [genitals] [genital area] [buttocks]].**

c. (Defendant) **committed Lewd and Lascivious Exhibition to** (victim) **by intentionally [masturbating] [exposing [his] [her] genitals in a lewd or lascivious manner] [committing any other lewd or lascivious act not involving physical or sexual contact with** (victim) **including but not limited to [sadomasochistic abuse] [sexual bestiality] [the simulation of any act involving sexual activity]].**

2. At the time, (victim) **was [an elderly] [a disabled] person.**

The bracketed portion of element #3 pertains only to element 1c.

3. At the time, (defendant) **knew or reasonably should have known that** (victim) **lacked the capacity to consent or failed to give consent [to have the act committed in [his] [her] presence].**

Definitions. Give as applicable.

The words "lewd" and "lascivious" mean the same thing; a wicked, lustful, unchaste, licentious, or sensual intent on the part of the person doing an act.

§ 825.101, Fla. Stat.

"Disabled adult" means a person 18 years of age or older who suffers from a condition of physical or mental incapacitation due to a developmental disability, organic brain damage, or mental illness, or who has one or more physical or mental limitations that restrict the person's ability to perform the normal activities of daily living.

§ 825.101, Fla. Stat.

"Elderly person" means a person 60 years of age or older who is suffering from the infirmities of aging as manifested by advanced age or organic brain damage, or other physical, mental, or emotional dysfunctioning, to the extent that the ability of the person to provide adequately for the person's care or protection is impaired.

§ 825.101, Fla. Stat.

"Lacks capacity to consent" means an impairment by reason of mental illness, developmental disability, organic brain disorder, physical illness or disability, chronic use of drugs, chronic intoxication, short-term memory loss, or other cause, that causes an elderly person or disabled adult to lack sufficient understanding or capacity to make or communicate reasonable decisions concerning the elderly person's or disabled adult's person or property.

§ 847.001, Fla. Stat.

"Sadomasochistic abuse" means flagellation or torture by or upon a person or animal, or the condition of being fettered, bound, or otherwise physically restrained, for the purpose of deriving sexual satisfaction, or satisfaction brought about as a result of sadistic violence, from inflicting harm on another or receiving such harm oneself. "Sadism" means sexual gratification achieved through, or the association of sexual activity with, the infliction of physical pain, suffering, humiliation, torture, or death upon another person or an animal.

§ 847.001, Fla. Stat.

"Sexual bestiality" means any sexual act, actual or simulated, between a person and an animal involving the sex organ of the one and the mouth, anus, or female genitals of the other.

§ 796.07(1), Fla. Stat.

"Prostitution" is the giving or receiving of the body for sexual activity for hire but excludes sexual activity between spouses.

§ 825.1025, Fla. Stat.

"Sexual activity" means the oral, anal, or female genital penetration by, or union with, the sexual organ of another or the anal or female genital penetration of another by any other object[; however, sexual activity does not include an act done for a bona fide medical purpose. "Bona fide" means genuine].**

§ 825.1025(1), Fla. Stat.

"Female genitals" includes the labia minora, labia majora, clitoris, vulva, hymen, and vagina.**

Lakey v. State, 113 So. 3d 90 (Fla. 5th DCA 2013).

"An object" includes a finger.

Phillips v. State, 238 So. 3d 308 (Fla. 4th DCA 2018).

"Union" means contact.

Give if applicable. § 775.0862, Fla. Stat.

Reclassification for sexual offense against student by school authority figure.

If you find that (defendant) **committed the crime of [Lewd or Lascivious Battery] [Lewd or Lascivious Molestation] [Lewd or Lascivious Exhibition] upon or in the Presence of an [Elderly] [Disabled] Person, you must also determine whether the State has proved beyond a reasonable doubt that** (defendant) **was an authority figure at a school and** (victim) **was a student at the same school.**

"Authority figure" means a person 18 years of age or older who is employed by, volunteering at, or under contract with a school.

"School" means an organization of students for instructional purposes on an elementary, middle or junior high school, secondary or high school, [or other public school level authorized under the rules of the State Board of Education]. The term "school" does not include facilities dedicated exclusively to the education of adults. *If needed, insert appropriate definitions from § 775.0862(1)(b), Fla. Stat. for "private school" or "voluntary prekindergarten education program" or "early learning program" or "public school as described in s. 402.3025(1)" or "the Florida School for the Deaf and the Blind" or the "Florida Virtual School" or the "K-8 Virtual School."*

"Student" means a person younger than 18 years of age who is enrolled at a school.

Lesser Included Offenses

11.11 LEWD OR LASCIVIOUS OFFENSES COMMITTED UPON OR IN THE PRESENCE OF AN ELDERLY PERSON OR DISABLED PERSON – 825.1025

CATEGORY ONE	CATEGORY TWO	FLA._STAT.	INS. NO.
None			
	Attempt	777.04(1)	5.1
	Assault	784.011	8.1
	Battery	784.03	8.3
	Exposure of sexual organs	800.03	11.9
	Unnatural and lascivious act*	800.02*	11.8*

Comments

*The courts do not require the State to allege the defendant's act was "unnatural" or "against the laws of nature" for § 800.02, Fla. Stat., to be given as a lesser-included offense. If the sexual activity involved penile-vaginal sexual intercourse (or contact), § 800.02, Fla. Stat. should *not* be given as a lesser-included offense. However, if the sexual activity involved something other than penile-vaginal sexual intercourse (or contact), § 800.02, Fla. Stat. should be given as a lesser-included offense. *See State v. Knighton*, 235 So. 3d 312 (Fla. 2018).

**Effective October 1, 2022, the Legislature changed "vagina" to "female genitals" in sex crimes-related statutes. Judges should ensure the jury instructions contain correct statutory terms, which will depend on the date alleged in the charging document. *Flores v. State,* 391 So. 3d 481 (Fla. 4th DCA 2024) is an example of an appellate court finding fundamental error when the trial judge expanded the definition of "vaginal penetration" by instructing on "female genital penetration."

§ 825.1025, Fla. Stat., protects a "disabled person" (age unspecific) while § 825.101, Fla. Stat., defines a "disabled adult" (18 years of age or older). The discrepancy between the two terms has yet to be clarified.

There are definitions of "sadomasochistic abuse" and "sexual bestiality" in § 847.001, Fla. Stat., that differ from the definitions in § 827.071, Fla. Stat. As of November 2022, there is no case law that decides which definition applies for a violation of § 825.1025, Fla. Stat.

As of November 2022, it was unclear whether an act done for a bona fide medical purpose should be treated as an affirmative defense or as an element that the State must disprove. If treated as an affirmative defense, the judge must then determine who has the burden of persuasion and what that burden is (preponderance, clear and convincing, or beyond a reasonable doubt).

This instruction was adopted in 2007 [965 So. 2d 811] and amended in 2010 [48 So. 3d 41], 2015 [163 So. 3d 478], 2018 [257 So. 3d 370], and on December 21, 2022.

11.12 INCEST

§ 826.04, Fla. Stat.

To prove the crime of Incest, the State must prove the following three elements beyond a reasonable doubt:

1. (Victim) **was the** (relationship alleged) **of** (defendant)**.**

2. (Defendant) **[married] [had sexual intercourse with]** (victim)**.**

3. **At the time of the [marriage] [sexual intercourse],** (defendant) **knew** (victim) **was [his] [her]** (relationship alleged)**.**

Definition.

"Sexual intercourse" is the penetration of the female sex organ by the male sex organ. Emission of seed is not necessary.

Lesser Included Offenses

INCEST — 826.04

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempt	777.04(1)	5.1
	Unnatural and lascivious act*	800.02*	11.8*

Comments

*The courts do not require the State to allege the defendant's act was "unnatural" or "against the laws of nature" in order for § 800.02, Fla. Stat., to be given as a lesser-included offense. If the sexual activity involved penile-vaginal sexual intercourse (or contact), § 800.02, Fla. Stat. should *not* be given as a lesser-included offense. However, if the sexual activity involved something other than penile-vaginal sexual intercourse (or contact), § 800.02, Fla. Stat. should be given as a lesser-included offense. *See State v. Knighton*, 235 So. 3d 312 (Fla. 2018).

This instruction was adopted in 1981 and amended in 2018.

11.13 VOYEURISM

§ 810.14, Fla. Stat.

To prove the crime of Voyeurism, the State must prove the following [three] [four] elements beyond a reasonable doubt:

Give if § 810.14(1)(a), Fla. Stat. is charged.

1. (Defendant) **secretly observed** (victim)**.**

2. (Defendant's) **observation was done with a lewd, lascivious, or indecent intent.**

3. **When** (victim) **was observed,** (victim) **was in a [dwelling] [structure] [conveyance] in which [he] [she] had a reasonable expectation of privacy.**

Give if § 810.14(1)(b), Fla. Stat. is charged.

1. (Defendant) **secretly observed any portion of** (victim's) **body or undergarments that were covered by clothing and were intended to be protected from public view.**

2. (Defendant's) **observation was done with a lewd, lascivious, or indecent intent.**

3. **At the time,** (victim) **was located in a public or private [dwelling] [structure] [conveyance].**

4. (Victim**) had a reasonable expectation of privacy in the portion of [his] [her] body or undergarments observed by** (defendant)**.**

The words lewd, lascivious, and indecent mean the same thing: a wicked, lustful, unchaste, licentious, or sensual intent on the part of the person doing the act.

Definitions. Give as applicable. Jacobs v. State, 41 So. 3d 1004 (Fla. 1st DCA 2010).

"Dwelling" means a building [or conveyance] of any kind, including any attached porch [or attached garage], whether such building [or conveyance] is temporary or permanent, mobile or immobile, which has a roof over it and is designed to be occupied by people lodging therein at night, together with the enclosed space of ground and outbuildings immediately surrounding it. The enclosure need not be continuous and may have an opening for entering and exiting.

Jacobs v. State, 41 So. 3d 1004 (Fla. 1st DCA 2010).

"Structure" means any kind of building, either temporary or permanent, that has a roof over it, together with the enclosed space of ground and outbuildings immediately surrounding it. The enclosure need not be continuous and may have an opening for entering and exiting.

"Conveyance" means any motor vehicle, ship, vessel, railroad car, trailer, aircraft or sleeping car.

Lesser Included Offenses

VOYEURISM — 810.14

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempt	777.04(1)	5.1

Comments

It is error to inform the jury of a prior conviction before a determination of guilt of the charged offense. Therefore, do not read the allegation of prior conviction or send the information or indictment into the jury room. If the defendant is convicted of the current charge, the historical fact of a previous conviction shall be determined beyond a reasonable doubt by the jury in a bifurcated proceeding. *State v. Harbaugh*, 754 So. 2d 691 (Fla. 2000).

This instruction was adopted in 2000 [765 So. 2d 692] and amended in 2008 [982 So. 2d 1160], 2013 [122 So. 3d 263], and 2015.

11.13(a) DIGITAL VOYEURISM

§ 810.145(2)(a)(1) or (2)(a)2, Fla. Stat.

To prove the crime of Digital Voyeurism, the State must prove the following four elements beyond a reasonable doubt:

Give 1a or 1b or both as applicable.

1. (Defendant)

a. intentionally [used] [or] [installed] an imaging device to secretly [view] [broadcast] [or] [record] (victim) **for [his] [her] own [amusement] [entertainment] [sexual arousal] [gratification] [profit] [or] [for the purpose of degrading, exploiting, or abusing** (victim)**].**

a. intentionally permitted [the use] [or] [installation] of an imaging device to secretly [view] [broadcast] [or] [record] (victim) **for the [amusement] [entertainment] [sexual arousal] [gratification] [or] [profit] of another or on behalf of another.**

2. (Victim) **was thereby [viewed] [broadcast] [or] [recorded] at a time when** (victim) **was [dressing] [undressing] [or] [privately exposing [his] [her] body].**

3. At the place and time when (victim) **was [viewed] [broadcast] [or] [recorded], [he] [she] had a reasonable expectation of privacy.**

4. The [viewing] [broadcast] [or] [recording] of (victim) **was without the knowledge and consent of** (victim)**.**

"Broadcast" means electronically transmitting a visual image or visual recording with the intent that it be viewed by another person.

"Imaging device" means any mechanical, digital, or electronic viewing device; still camera; camcorder; motion picture camera; or any other instrument, equipment, or format capable of recording, storing, or transmitting visual images of another person.

"A reasonable expectation of privacy" means circumstances under which a reasonable person would believe that he or she could fully disrobe in privacy, without being concerned that their undressing was being viewed, recorded, or broadcasted by another, including, but not limited to, the interior of a residential dwelling, bathroom, changing room, fitting room, dressing room, or tanning booth.

"Privately exposing the body" means exposing a sexual organ.

Give if applicable § 810.145(2)(c) Fla. Stat. The finding regarding the defendant's age is also a part of § 810.145(7)(b), Fla. Stat.

If you find that (defendant) **committed the crime of Digital Voyeurism, you must also determine whether the State proved beyond a reasonable doubt that** (defendant) **was 19 years of age or older at the time the Digital Voyeurism occurred.**

Give if applicable. § 810.145(7)(b), Fla. Stat. See defendant's age finding above.

If you find that (defendant) **committed the crime of Digital Voyeurism, you must also determine whether the State proved beyond a reasonable doubt that** (defendant) **was a family or household member of** (victim) **or held a position of authority or trust with** (victim) **at the time of the Digital Voyeurism.**

Give if applicable. § 810.145(8)(a)1., Fla. Stat.

If you find that (defendant) **committed the crime of Digital Voyeurism, you must also determine whether the State proved beyond a reasonable doubt that at the time of the Digital Voyeurism:**

1. (Defendant) **was 18 years of age or older; and**

2. (Victim) **less than 16 years of age; and**

3. (Defendant) **was responsible for the welfare of (victim).**

It is not necessary for the State to prove the defendant knew or had reason to know the age of (victim)**.**

Give if applicable. § 810.145(8)(a)2., Fla. Stat.

If you find that (defendant) **committed the crime of Digital Voyeurism, you must also determine whether the State proved beyond a reasonable doubt that at the time of the Digital Voyeurism:**

1. (Defendant) **was 18 years of age or older; and**

2. (Defendant) **was employed at a [private school] [school] [voluntary prekindergarten education program]; and**

3. (Victim) **was a student at that [private school] [school] [voluntary prekindergarten education program].**

Give as applicable.

"Private school" is defined as (insert definition from § 1002.01, Fla. Stat)**.**

"School" is defined as (insert definition from § 1003.01, Fla. Stat.)**.**

"Voluntary prekindergarten education program" is defined as (insert definition from § 1002.53(3)(a), (b), or (c), Fla. Stat)**.**

Give if applicable. § 810.145(8)(a)3., Fla. Stat.

If you find that (defendant) **committed the crime of Digital Voyeurism, you must also determine whether the State proved beyond a reasonable doubt that at the time of the Digital Voyeurism:**

1. (Defendant) **was 24 years of age or older; and**

2. (Victim) l**ess than 16 years of age.**

It is not necessary for the State to prove the defendant knew or had reason to know the age of (victim)**.**

Lesser Included Offense

DIGITAL VOYEURISM — 810.145(2)(a)1. OR (2)(a)2.			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
None			
	Attempt	777.04(1)	5.1

Comments

§ 810.145, Fla. Stat. creates a second degree felony if the defendant had been convicted of or adjudicated delinquent for a violation of § 810.145, Fla. Stat., that was sentenced or entered separately before the current offense. As of June 2025, it was unclear whether the fact of a prior will be treated as a recidivism factor that the State may prove by a preponderance of the evidence to the sentencing judge or as an element of the crime that must be proven by the State beyond a reasonable doubt to the jury in a bifurcated proceeding. If treated as an element, it is error to inform the jury of a prior conviction before a determination of guilt of the charged offense. Therefore, do not read the allegation of prior conviction or send the information or indictment into the jury room.

This instruction was adopted in 2008 [982 So. 2d 1160], 2013 [122 So. 3d 263], and on June 27, 2025.

11.13(b) DIGITAL VOYEURISM

§ 810.145(2)(a)3., Fla. Stat.

To prove the crime of Digital Voyeurism, the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **intentionally used an imaging device to secretly [view] [broadcast] [or] [record] [under] [or] [through] the clothing worn by** (victim) **for the [amusement] [entertainment] [sexual arousal] [gratification] [or] [profit] of [himself] [herself] [or] [another].**

2. (Defendant's) **use of the imaging device was for the purpose of viewing [the body of] [or] [the undergarments worn by]** (victim)**.**

3. (Defendant's) **use of the imaging device was without the knowledge and consent of** (victim)**.**

"Broadcast" means electronically transmitting a visual image or visual recording with the intent that it be viewed by another person.

"Imaging device" means any mechanical, digital, or electronic viewing device; still camera; camcorder; motion picture camera; or any other instrument, equipment, or format capable of recording, storing, or transmitting visual images of another person.

Give if applicable § 810.145(2)(c) Fla. Stat. The finding regarding the defendant's age is also a part of § 810.145(7)(b), Fla. Stat.

If you find that (defendant) **committed the crime of Digital Voyeurism, you must also determine whether the State proved beyond a reasonable doubt that** (defendant) **was 19 years of age or older at the time the Digital Voyeurism occurred.**

Give if applicable. § 810.145(7)(b), Fla. Stat. See defendant's age finding above.

If you find that (defendant) **committed the crime of Digital Voyeurism, you must also determine whether the State proved beyond a reasonable doubt that** (defendant) **was a family or household member of** (victim) **or held a position of authority or trust with** (victim) **at the time of the Digital Voyeurism.**

Give if applicable. § 810.145(8)(a)1., Fla. Stat.

If you find that (defendant) **committed the crime of Digital Voyeurism, you must also determine whether the State proved beyond a reasonable doubt that at the time of the Digital Voyeurism:**

1. (Defendant) **was 18 years of age or older; and**

2. (Victim) **less than 16 years of age; and**

3. (Defendant) **was responsible for the welfare of (victim).**

It is not necessary for the State to prove the defendant knew or had reason to know the age of (victim)**.**

Give if applicable. § 810.145(8)(a)2., Fla. Stat.

I**f you find that** (defendant) **committed the crime of Digital Voyeurism, you must also determine whether the State proved beyond a reasonable doubt that at the time of the Digital Voyeurism:**

1. (Defendant) **was 18 years of age or older; and**

2. (Defendant) **was employed at a [private school] [school] [voluntary prekindergarten education program]; and**

3. (Victim) **was a student at that [private school] [school] [voluntary prekindergarten education program].**

Give as applicable.

"Private school" is defined as (insert definition from § 1002.01, Fla. Stat)**.**

"School" is defined as (insert definition from § 1003.01, Fla. Stat.)**.**

"Voluntary prekindergarten education program" is defined as (insert definition from § 1002.53(3)(a), (b), or (c), Fla. Stat)**.**

Give if applicable. § 810.145(8)(a)3., Fla. Stat.

If you find that (defendant) **committed the crime of Digital Voyeurism, you must also determine whether the State proved beyond a reasonable doubt that at the time of the Digital Voyeurism:**

1. (Defendant) **was 24 years of age or older; and**

2. (Victim) **less than 16 years of age.**

It is not necessary for the State to prove the defendant knew or had reason to know the age of (victim)**.**

Lesser Included Offense

DIGITAL VOYEURISM — 810.145(2)(a)3.			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
None			
	Attempt	777.04(1)	5.1

Comments

§ 810.145, Fla. Stat. creates a second degree felony if the defendant had been convicted of or adjudicated delinquent for a violation of § 810.145, Fla. Stat., that was sentenced or entered separately before the current offense. As of June 2025, it was unclear whether the fact of a prior conviction will be treated as a recidivism factor that the State may prove by a preponderance of the evidence to the sentencing judge or as an element of the crime that must be proven by the State beyond a reasonable doubt to the jury in a bifurcated proceeding. If treated as an element, it is error to inform the jury of a prior conviction before a determination of guilt of the charged offense. Therefore, do not read the allegation of prior conviction or send the information or indictment into the jury room.

This instruction was adopted in 2008 [982 So. 2d 1160] and amended in 2013 [122 So. 3d 263], and on June 27, 2025.

11.13(c) DIGITAL VOYEURISM DISSEMINATION IMAGE OR VIDEO CREATED IN VIOLATION OF SECTION 810.145(2)(a)1. OR (2)(a)2.

§ 810.145(3), Fla. Stat.

To prove the crime of Digital Voyeurism Dissemination, the State must prove the following six elements beyond a reasonable doubt:

Give 1a or 1b or both as applicable.

1. (Defendant) **[or some other person]**

(a) intentionally [used] [or] [installed] an imaging device to secretly [view] [broadcast] [or] [record] (victim) **for [his] [her] own [amusement] [entertainment] [sexual arousal] [gratification] [or] [profit] [or] [for the purpose of degrading, exploiting, or abusing** (victim)**].**

(b) intentionally permitted [the use] [or] [installation] of an imaging device to secretly [view] [broadcast] [or] [record] (victim) **for the [amusement] [entertainment] [sexual arousal] [gratification] [or] [profit] of another or on behalf of another.**

2. (Victim) **was thereby [viewed] [broadcast] [or] [recorded] at a time when** (victim) **was [dressing] [undressing] [or] [privately exposing [his] [her] body].**

3. At the place and time when (victim) **was [viewed] [broadcast] [or] [recorded], [he] [she] had a reasonable expectation of privacy.**

4. The [viewing] [broadcast] [or] [recording] of (victim) **was without the knowledge and consent of** (victim)**.**

5. (Defendant) **intentionally [disseminated] [distributed] [or] [transferred] an image or recording of** (victim) **created in this manner to another person for the purpose of [amusement] [entertainment] [sexual arousal] [gratification of any person] [or] [profit] [or for the purpose of degrading or abusing** (victim)**].**

6. At the time (defendant) **[disseminated] [distributed] [or] [transferred] the image or recording of** (victim)**,** (defendant) **knew or had reason to believe that the image or recording of** (victim) **had been created in this manner.**

"Broadcast" means electronically transmitting a visual image or visual recording with the intent that it be viewed by another person.

"Imaging device" means any mechanical, digital, or electronic viewing device; still camera; camcorder; motion picture camera; or any other instrument, equipment, or format capable of recording, storing, or transmitting visual images of another person.

"A reasonable expectation of privacy" means circumstances under which a reasonable person would believe that he or she could fully disrobe in privacy, without being concerned that their undressing was being viewed, recorded, or broadcasted by another, including, but not limited to, the interior of a residential dwelling, bathroom, changing room, fitting room, dressing room, or tanning booth.

"Privately exposing the body" means exposing a sexual organ.

Give if applicable § 810.145(2)(c), Fla. Stat. The finding regarding the defendant's age is also a part of § 810.145(7)(b), Fla. Stat.

If you find that (defendant) **committed the crime of Digital Voyeurism Dissemination, you must also determine whether the State proved beyond a reasonable doubt that** (defendant) **was 19 years of age or older at the time the Digital Voyeurism occurred.**

Give if applicable. § 810.145(7)(b), Fla. Stat. See defendant's age finding above.

If you find that (defendant) **committed the crime of Digital Voyeurism Dissemination, you must also determine whether the State proved beyond a reasonable doubt that** (defendant) **was a family or household member of** (victim) **or held a position of authority or trust with** (victim) **at the time of the Digital Voyeurism.**

Give if applicable. § 810.145(8)(a)1., Fla. Stat.

If you find that (defendant) **committed the crime of Digital Voyeurism Dissemination, you must also determine whether the State proved beyond a reasonable doubt that at the time of the Digital Voyeurism:**

1. (Defendant) **was 18 years of age or older; and**

2. (Victim) **less than 16 years of age; and**

3. (Defendant) **was responsible for the welfare of** (victim)**.**

It is not necessary for the State to prove the defendant knew or had reason to know the age of (victim)**.**

Give if applicable. § 810.145(8)(a)2., Fla. Stat.

If you find that (defendant) **committed the crime of Digital Voyeurism Dissemination, you must also determine whether the State proved beyond a reasonable doubt that at the time of the Digital Voyeurism:**

1. (Defendant) **was 18 years of age or older; and**

2. Defendant) **was employed at a [private school] [school] [voluntary prekindergarten education program]; and**

3. (Victim) **was a student at that [private school] [school] [voluntary prekindergarten education program].**

Give as applicable.

"Private school" is defined as (insert definition from § 1002.01, Fla. Stat)**.**

"School" is defined as (insert definition from § 1003.01, Fla. Stat.)**.**

"Voluntary prekindergarten education program" is defined as (insert definition from § 1002.53(3)(a), (b), or (c), Fla. Stat)**.**

Give if applicable. § 810.145(8)(a)3., Fla. Stat.

If you find that (defendant) **committed the crime of Digital Voyeurism Dissemination, you must also determine whether the State proved beyond a reasonable doubt that at the time of the Digital Voyeurism:**

1. (Defendant) **was 24 years of age or older; and**

2. (Victim) **less than 16 years of age.**

It is not necessary for the State to prove the defendant knew or had reason to know the age of (victim)**.**

Lesser Included Offense

DIGITAL VOYEURISM DISSEMINATION — 810.145(3)			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
None			
	Attempt	777.04(1)	5.1

Comments

§ 810.145, Fla. Stat. creates a second degree felony if the defendant had been convicted of or adjudicated delinquent for a violation of § 810.145, Fla. Stat., that was sentenced or entered separately before the current offense. As of June 2025, it was unclear whether the fact of a prior will be treated as a recidivism factor that the State may prove by a preponderance of the evidence to the sentencing judge or as an element of the crime that must be proven by the State beyond a reasonable doubt to the jury in a bifurcated proceeding. If treated as an element, it is error to inform the jury of a prior conviction before a determination of guilt of the charged offense. Therefore, do not read the allegation of prior conviction or send the information or indictment into the jury room.

This instruction was adopted in 2008 [982 So. 2d 1160] and amended in 2013 [122 So. 3d 263], and on June 27, 2025.

11.13(d) DIGITAL VOYEURISM DISSEMINATION IMAGE OR VIDEO CREATED IN VIOLATION OF SECTION 810.145(2)(a)3.

§ 810.145(3), Fla. Stat.

To prove the crime of Digital Voyeurism Dissemination, the State must prove the following five elements beyond a reasonable doubt:

1. (Defendant) [**or some other person] intentionally used an imaging device to secretly [view] [broadcast] [or] [record] [under] [or] [through] the clothing worn by** (victim) **for the [amusement] [entertainment] [sexual arousal] [gratification] [or] [profit] of [himself] [herself] [or] [another].**

2. (Defendant's) [**or some other person's] use of the imaging device was for the purpose of viewing [the body of] [or] [the undergarments worn by]** (victim)**.**

3. (Defendant's) [**or some other person's] use of the imaging device was without the knowledge and consent of** (victim)**.**

4. (Defendant) **intentionally [disseminated] [distributed] [or] [transferred] an image of** (victim) **created in this manner to another person for the purpose of [amusement] [entertainment] [sexual arousal] [gratification of any person] [or] [profit] [or for the purpose of degrading, exploiting, or abusing** (victim)**].**

5. **At the time** (defendant) **[disseminated] [distributed] [or] [transferred] the image of** (victim)**,** (defendant) **knew or had reason to believe that the image of** (victim) **had been created in this manner.**

"Broadcast" means electronically transmitting a visual image or visual recording with the intent that it be viewed by another person.

"Imaging device" means any mechanical, digital, or electronic viewing device; still camera; camcorder; motion picture camera; or any other instrument, equipment, or format capable of recording, storing, or transmitting visual images of another person.

Give if applicable § 810.145(2)(c), Fla. Stat. The finding regarding the defendant's age is also a part of § 810.145(7)(b), Fla. Stat.

If you find that (defendant) **committed the crime of Digital Voyeurism Dissemination, you must also determine whether the State proved beyond a reasonable doubt that** (defendant) **was 19 years of age or older at the time the Digital Voyeurism Dissemination occurred.**

Give if applicable. § 810.145(7)(b), Fla. Stat. See defendant's age finding above.

If you find that (defendant) **committed the crime of Digital Voyeurism Dissemination, you must also determine whether the State proved beyond a reasonable doubt that** (defendant) **was a family or household member of** (victim) **or held a position of authority or trust with** (victim) **at the time of the Digital Voyeurism Dissemination.**

Give if applicable. § 810.145(8)(a)1., Fla. Stat.

If you find that (defendant) **committed the crime of Digital Voyeurism Dissemination, you must also determine whether the State proved beyond a reasonable doubt that at the time of the Digital Voyeurism Dissemination:**

1. (Defendant) **was 18 years of age or older; and**

2. (Victim) **less than 16 years of age; and**

3. (Defendant) **was responsible for the welfare of (victim).**

It is not necessary for the State to prove the defendant knew or had reason to know the age of (victim)**.**

Give if applicable. § 810.145(8)(a)2., Fla. Stat.

If you find that (defendant) **committed the crime of Digital Voyeurism Dissemination, you must also determine whether the State proved beyond a reasonable doubt that at the time of the Digital Voyeurism:**

1. (Defendant) **was 18 years of age or older; and**

2. (Defendant) **was employed at a [private school] [school] [voluntary prekindergarten education program]; and**

3. (Victim) **was a student at that [private school] [school] [voluntary prekindergarten education program].**

Give as applicable.

"Private school" is defined as (insert definition from § 1002.01, Fla. Stat)**.**

"School" is defined as (insert definition from § 1003.01, Fla. Stat.)**.**

"Voluntary prekindergarten education program" is defined as (insert definition from § 1002.53(3)(a), (b), or (c), Fla. Stat)**.**

Give if applicable. § 810.145(8)(a)3., Fla. Stat.

If you find that (defendant) **committed the crime of Digital Voyeurism Dissemination, you must also determine whether the State proved beyond a reasonable doubt that at the time of the Digital Voyeurism:**

1. (Defendant) **was 24 years of age or older; and**

2. (Victim) **less than 16 years of age.**

It is not necessary for the State to prove the defendant knew or had reason to know the age of (victim)**.**

Lesser Included Offense

DIGITAL VOYEURISM DISSEMINATION — 810.145(3)			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
None			
	Attempt	777.04(1)	5.1

Comments

§ 810.145, Fla. Stat. creates a second degree felony if the defendant had been convicted of or adjudicated delinquent for a violation of § 810.145, Fla. Stat., that was sentenced or entered separately before the current offense. As of June 2025, it was unclear whether the fact of a prior will be treated as a recidivism factor that the State may prove by a preponderance of the evidence to the sentencing judge or as an element of the crime that must be proven by the State beyond a reasonable doubt to the jury in a bifurcated proceeding. If treated as an element, it is error to inform the jury of a prior conviction before a determination of guilt of the charged offense. Therefore, do not read the allegation of prior conviction or send the information or indictment into the jury room.

This instruction was adopted in 2008 [982 So. 2d 1160] and amended in 2013 [122 So. 3d 263], and on June 27, 2025.

11.13(e) COMMERCIAL DIGITAL VOYEURISM IMAGE OR RECORDING CREATED IN VIOLATION OF § 810.145(2)(a)1 OR (2)(a)2.

§ 810.145(4)(a), Fla. Stat.

To prove the crime of Commercial Digital Voyeurism, the State must prove the following six elements beyond a reasonable doubt:

Give 1a or1b or both as applicable.

1. (Defendant) [**or some other person]**

a. intentionally [used] [or] [installed] an imaging device to secretly [view] [broadcast] [or] [record] (victim) **for [his] [her] own [amusement] [entertainment] [sexual arousal] [gratification] [or] [profit] [or] [for the purpose of degrading, exploiting, or abusing** (victim)**].**

a. intentionally permitted [the use] [or] [installation] of an imaging device to secretly [view] [broadcast] [or] [record] (victim) **for the [amusement] [entertainment] [sexual arousal] [gratification] [or] [profit] of another or on behalf of another.**

2. (Victim) **was thereby [viewed] [broadcast] [or] [recorded] at a time when the** (victim) **was [dressing] [undressing] [or] [privately exposing [his] [her] body].**

3. A**t the place and time when** (victim) **was [viewed] [broadcast] [or] [recorded], [he] [she] had a reasonable expectation of privacy.**

4. The [viewing] [broadcast] [or] [recording] of (victim) **was without the knowledge and consent of** (victim)**.**

5. (Defendant) **sold an image or recording of** (victim) **created in this manner to another person for consideration.**

6. (Defendant) **knew or had reason to believe that the image or recording of** (victim) **sold had been created in this manner.**

"Broadcast" means electronically transmitting a visual image or visual recording with the intent that it be viewed by another person.

"Imaging device" means any mechanical, digital, or electronic viewing device; still camera; camcorder; motion picture camera; or any other instrument, equipment, or format capable of recording, storing, or transmitting visual images of another person.

"A reasonable expectation of privacy" means circumstances under which a reasonable person would believe that he or she could fully disrobe in privacy, without being concerned that their undressing was being viewed, recorded, or broadcasted by another, including, but not limited to, the interior of a residential dwelling, bathroom, changing room, fitting room, dressing room, or tanning booth.

"Privately exposing the body" means exposing a sexual organ.

Give if applicable § 810.145(2)(c), Fla. Stat. The finding regarding the defendant's age is also a part of § 810.145(7)(b), Fla. Stat.

If you find that (defendant) committed the crime of Commercial Digital Voyeurism, you must also determine whether the State proved beyond a reasonable doubt that (defendant) was 19 years of age or older at the time the Commercial Digital Voyeurism occurred. .

Give if applicable. § 810.145(7)(b), Fla. Stat. See defendant's age finding above.

If you find that (defendant) **committed the crime of Commercial Digital Voyeurism, you must also determine whether the State proved beyond a reasonable doubt that** (defendant) **was a family or household member of** (victim) **or held a position of authority or trust with** (victim) **at the time of the Commercial Digital Voyeurism.**

Give if applicable. § 810.145(8)(a)1., Fla. Stat.

If you find that (defendant) **committed the crime of Commercial Digital Voyeurism, you must also determine whether the State proved beyond a reasonable doubt that at the time of the Commercial Digital Voyeurism:**

1. (Defendant) **was 18 years of age or older; and**

2. (Victim) **less than 16 years of age; and**

3. (Defendant) **was responsible for the welfare of** (victim)**.**

It is not necessary for the State to prove the defendant knew or had reason to know the age of (victim)**.**

Give if applicable. § 810.145(8)(a)2., Fla. Stat.

If you find that (defendant) **committed the crime of Commercial Digital Voyeurism, you must also determine whether the State proved**

beyond a reasonable doubt that at the time of the Commercial Digital Voyeurism:

1. (Defendant) **was 18 years of age or older; and**

2. (Defendant) **was employed at a [private school] [school] [voluntary prekindergarten education program]; and**

3. (Victim) **was a student at that [private school] [school] [voluntary prekindergarten education program].**

Give as applicable.

"Private school" is defined as (insert definition from § 1002.01, Fla. Stat)**.**

"School" is defined as (insert definition from § 1003.01, Fla. Stat.)**.**

"Voluntary prekindergarten education program" is defined as (insert definition from § 1002.53(3)(a), (b), or (c), Fla. Stat)**.**

Give if applicable. § 810.145(8)(a)3., Fla. Stat.

If you find that (defendant) **committed the crime of Commercial Digital Voyeurism, you must also determine whether the State proved beyond a reasonable doubt that at the time of the Commercial Digital Voyeurism:**

1. (Defendant) **was 24 years of age or older; and**

2. (Victim) l**ess than 16 years of age.**

It is not necessary for the State to prove the defendant knew or had reason to know the age of (victim)**.**

Lesser Included Offense

COMMERCIAL DIGITAL VOYEURISM — 810.145(4)(a)			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
None			
	Attempt	777.04(1)	5.1

Comments

§ 810.145, Fla. Stat. creates a second degree felony if the defendant had been convicted of or adjudicated delinquent for a violation of § 810.145, Fla. Stat., that was sentenced or entered separately before the current offense. As of June 2025, it was unclear whether the fact of a prior will be treated as a recidivism factor that the State may prove by a preponderance of the evidence to the sentencing judge or as an element of the crime that must be proven by the State beyond a reasonable doubt to the jury in a bifurcated proceeding. If treated as an element, it is error to inform the jury of a prior conviction before a determination of guilt of the charged offense. Therefore, do not read the allegation of prior conviction or send the information or indictment into the jury room.

This instruction was adopted in 2008 [982 So. 2d 1160] and amended in 2013 [122 So. 3d 263], and on June 27, 2025.

11.13(f) COMMERCIAL DIGITAL VOYEURISM IMAGE OR RECORDING CREATED IN VIOLATION OF SECTION 810.145(2)(a)3.

§ 810.145(4)(a), Fla. Stat.

To prove the crime of Commercial Digital Voyeurism, the State must prove the following five elements beyond a reasonable doubt:

1. (Defendant) **[or some other person] intentionally used an imaging device to secretly [view] [broadcast] [or] [record] [under] [or] [through] the clothing worn by (victim) for the [amusement] [entertainment] [sexual arousal] [gratification] [or] [profit] of [himself] [herself] [or] [another].**

2. (Defendant's) **[or some other person's] use of the imaging device was for the purpose of viewing [the body of] [or] [the undergarments worn by]** (victim)**.**

3. (Defendant's) **[or some other person's] use of the imaging device was without the knowledge and consent of** (victim)**.**

4. (Defendant) **sold an image or recording of (victim) created in this manner to another person for consideration.**

5. (Defendant) **knew or had reason to believe that the image or recording of (victim) sold had been created in this manner.**

"Broadcast" means electronically transmitting a visual image or visual recording with the intent that it be viewed by another person.

"Imaging device" means any mechanical, digital, or electronic viewing device; still camera; camcorder; motion picture camera; or any other instrument, equipment, or format capable of recording, storing, or transmitting visual images of another person.

Give if applicable § 810.145(2)(c), Fla. Stat. The finding regarding the defendant's age is also a part of § 810.145(7)(b), Fla. Stat.

If you find that (defendant) **committed the crime of Commercial Digital Voyeurism, you must also determine whether the State proved beyond a reasonable doubt that** (defendant) **was 19 years of age or older at the time the Commercial Digital Voyeurism occurred.**

Give if applicable. § 810.145(7)(b), Fla. Stat. See defendant's age finding above.

If you find that (defendant) **committed the crime of Commercial Digital Voyeurism, you must also determine whether the State proved beyond a reasonable doubt that** (defendant) **was a family or household member of** (victim) **or held a position of authority or trust with** (victim) **at the time of the Commercial Digital Voyeurism.**

Give if applicable. § 810.145(8)(a)1., Fla. Stat.

If you find that (defendant) **committed the crime of Commercial Digital Voyeurism, you must also determine whether the State proved beyond a reasonable doubt that at the time of the Commercial Digital Voyeurism:**

1. (Defendant) **was 18 years of age or older; and**

2. (Victim) **less than 16 years of age; and**

3. (Defendant) **was responsible for the welfare of** (victim)**.**

It is not necessary for the State to prove the defendant knew or had reason to know the age of (victim)**.**

Give if applicable. § 810.145(8)(a)2., Fla. Stat.

If you find that (defendant) **committed the crime of Commercial Digital Voyeurism, you must also determine whether the State proved beyond a reasonable doubt that at the time of the Commercial Digital Voyeurism:**

1. (Defendant) **was 18 years of age or older; and**

2. (Defendant) **was employed at a [private school] [school] [voluntary prekindergarten education program]; and**

3. (Victim) **was a student at that [private school] [school] [voluntary prekindergarten education program].**

Give as applicable.

"Private school" is defined as (insert definition from § 1002.01, Fla. Stat)**.**

"School" is defined as (insert definition from § 1003.01, Fla. Stat.)**.**

"Voluntary prekindergarten education program" is defined as (insert definition from § 1002.53(3)(a), (b), or (c), Fla. Stat)**.**

Give if applicable. § 810.145(8)(a)3., Fla. Stat.

If you find that (defendant) **committed the crime of Commercial Digital Voyeurism, you must also determine whether the State proved beyond a reasonable doubt that at the time of the Commercial Digital Voyeurism:**

1. (Defendant) **was 24 years of age or older; and**

2. (Victim) **less than 16 years of age.**

It is not necessary for the State to prove the defendant knew or had reason to know the age of (victim)**.**

Lesser Included Offense

COMMERCIAL DIGITAL VOYEURISM — 810.145(4)(a)			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
None			
	Attempt	777.04(1)	5.1

Comments

§ 810.145, Fla. Stat. creates a second degree felony if the defendant had been convicted of or adjudicated delinquent for a violation of § 810.145, Fla. Stat., that was sentenced or entered separately before the current offense. As of June 2025, it was unclear whether the fact of a prior will be treated as a recidivism factor that the State may prove by a preponderance of the evidence to the sentencing judge or as an element of the crime that must be proven by the State beyond a reasonable doubt to the jury in a bifurcated proceeding. If treated as an element, it is error to inform the jury of a prior conviction before a determination of guilt of the charged offense. Therefore, do not read the allegation of prior conviction or send the information or indictment into the jury room.

This instruction was adopted in 2008 [982 So. 2d 1160] and amended in 2013 [122 So. 3d 263], and on June 27, 2025.

11.13(g) COMMERCIAL DIGITAL VOYEURISM IMAGE OR RECORDING CREATED IN VIOLATION OF § 810.145(2)(a)1 OR (2)(a)2.

§ 810.145(4)(b), Fla. Stat.

To prove the crime of Commercial Digital Voyeurism, the State must prove the following five elements beyond a reasonable doubt:

Give 1a or 1b or both as applicable.

1. (Defendant)

a. intentionally [used] [or] [installed] an imaging device to secretly [view] [broadcast] [or] [record] (victim) **for [his] [her] own [amusement] [entertainment] [sexual arousal] [gratification] [or] [profit] [or] [for the purpose of degrading, exploiting, or abusing** (victim)**].**

b. intentionally permitted [the use] [or] [installation] of an imaging device to secretly [view] [broadcast] [or] [record] (victim) **for the [amusement] [entertainment] [sexual arousal] [gratification] [or] [profit] of another on behalf of another.**

2. (Victim) **was thereby [viewed] [broadcast] [or] [recorded] at a time when** (victim) **was [dressing] [undressing] [or] [privately exposing [his] [her] body].**

3. At the place and time when (victim) was **[viewed] [broadcast] [or] [recorded], [he] [she] had a reasonable expectation of privacy.**

4. The [viewing] [broadcast] [or] [recording] of (victim) **was without the knowledge and consent of** (victim)**.**

5. (Defendant) **[disseminated] [distributed] [or] [transferred] an image or recording of** (victim) **created in this manner to another person for that person to sell to others.**

"Broadcast" means electronically transmitting a visual image or visual recording with the intent that it be viewed by another person.

"Imaging device" means any mechanical, digital, or electronic viewing device; still camera; camcorder; motion picture camera; or any other instrument, equipment, or format capable of recording, storing, or transmitting visual images of another person.

"A reasonable expectation of privacy" means circumstances under which a reasonable person would believe that he or she could fully disrobe in privacy, without being concerned that their undressing was being viewed, recorded, or broadcasted by another, including, but not limited to, the interior of a residential dwelling, bathroom, changing room, fitting room, dressing room, or tanning booth.

"Privately exposing the body" means exposing a sexual organ.

Give if applicable § 810.145(2)(c), Fla. Stat. The finding regarding the defendant's age is also a part of § 810.145(7)(b), Fla. Stat.

If you find that (defendant) **committed the crime of Commercial Digital Voyeurism, you must also determine whether the State proved beyond a reasonable doubt that** (defendant) **was 19 years of age or older at the time the Commercial Digital Voyeurism occurred.**

Give if applicable. § 810.145(7)(b), Fla. Stat. See defendant's age finding above.

If you find that (defendant) **committed the crime of Commercial Digital Voyeurism, you must also determine whether the State proved beyond a reasonable doubt that** (defendant) **was a family or household member of** (victim) **or held a position of authority or trust with** (victim) **at the time of the Commercial Digital Voyeurism.**

Give if applicable. § 810.145(8)(a)1., Fla. Stat.

If you find that (defendant) **committed the crime of Commercial Digital Voyeurism, you must also determine whether the State proved beyond a reasonable doubt that at the time of the Commercial Digital Voyeurism:**

1. (Defendant) **was 18 years of age or older; and**

2. (Victim) **less than 16 years of age; and**

3. (Defendant) **was responsible for the welfare of** (victim)**.**

It is not necessary for the State to prove the defendant knew or had reason to know the age of (victim)**.**

Give if applicable. § 810.145(8)(a)2., Fla. Stat.

If you find that (defendant) **committed the crime of Commercial Digital Voyeurism, you must also determine whether the State proved**

beyond a reasonable doubt that at the time of the Commercial Digital Voyeurism:

1. (Defendant) **was 18 years of age or older; and**

2. (Defendant) **was employed at a [private school] [school] [voluntary prekindergarten education program]; and**

3. (Victim) **was a student at that [private school] [school] [voluntary prekindergarten education program].**

Give as applicable.

"Private school" is defined as (insert definition from § 1002.01, Fla. Stat)**.**

"School" is defined as (insert definition from § 1003.01, Fla. Stat.)**.**

"Voluntary prekindergarten education program" is defined as (insert definition from § 1002.53(3)(a), (b), or (c), Fla. Stat)**.**

Give if applicable. § 810.145(8)(a)3., Fla. Stat.

If you find that (defendant) **committed the crime of Commercial Digital Voyeurism, you must also determine whether the State proved beyond a reasonable doubt that at the time of the Commercial Digital Voyeurism:**

1. (Defendant) **was 24 years of age or older; and**

2. (Victim) **less than 16 years of age.**

It is not necessary for the State to prove the defendant knew or had reason to know the age of (victim)**.**

Lesser Included Offense

COMMERCIAL DIGITAL VOYEURISM — 810.145(4)(b)			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
None			
	Attempt	777.04(1)	5.1

Comments

§ 810.145, Fla. Stat. creates a second degree felony if the defendant had been convicted of or adjudicated delinquent for a violation of § 810.145, Fla.

Stat., that was sentenced or entered separately before the current offense. As of June 2025, it was unclear whether the fact of a prior will be treated as a recidivism factor that the State may prove by a preponderance of the evidence to the sentencing judge or as an element of the crime that must be proven by the State beyond a reasonable doubt to the jury in a bifurcated proceeding. If treated as an element, it is error to inform the jury of a prior conviction before a determination of guilt of the charged offense. Therefore, do not read the allegation of prior conviction or send the information or indictment into the jury room.

This instruction was adopted in 2008 [982 So. 2d 1160] and amended in 2013 [122 So. 3d 263], and on June 27, 2025.

11.13(h) COMMERCIAL DIGITAL VOYEURISM IMAGE OR RECORDING CREATED IN VIOLATION OF SECTION § 810.145(2)(a)3.
§ 810.145(4)(b), Fla. Stat.

To prove the crime of Commercial Digital Voyeurism, the State must prove the following four elements beyond a reasonable doubt:

1. (Defendant) **[or some other person] intentionally used an imaging device to secretly [view] [broadcast] [or] [record] [under] [or] [through] the clothing worn by (victim) for the [amusement] [entertainment] [sexual arousal] [gratification] [or] [profit] of [himself] [herself] [or] [another].**

2. (Defendant's) **[or some other person's] use of the imaging device was for the purpose of viewing [the body of] [or] [the undergarments worn by]** (victim)**.**

3. (Defendant's) **[or some other person's] use of the imaging device was without the knowledge and consent of** (victim)**.**

4. (Defendant) **[disseminated] [distributed] [or] [transferred] an image or recording of** (victim) **created in this manner to another person for that person to sell to others.**

"Broadcast" means electronically transmitting a visual image or visual recording with the intent that it be viewed by another person.

"Imaging device" means any mechanical, digital, or electronic viewing device; still camera; camcorder; motion picture camera; or any other instrument, equipment, or format capable of recording, storing, or transmitting visual images of another person.

Give if applicable § 810.145(2)(c), Fla. Stat. The finding regarding the defendant's age is also a part of § 810.145(7)(b), Fla. Stat.

If you find that (defendant) **committed the crime of Commercial Digital Voyeurism, you must also determine whether the State proved beyond a reasonable doubt that** (defendant) **was 19 years of age or older at the time the Digital Voyeurism occurred.**

Give if applicable. § 810.145(7)(b), Fla. Stat. See defendant's age finding above.

If you find that (defendant) **committed the crime of Commercial Digital Voyeurism, you must also determine whether the State proved beyond a reasonable doubt that** (defendant) **was a family or household**

member of (victim) **or held a position of authority or trust with** (victim) **at the time of the Commercial Digital Voyeurism.**

Give if applicable. § 810.145(8)(a)1., Fla. Stat.

If you find that (defendant) **committed the crime of Commercial Digital Voyeurism, you must also determine whether the State proved beyond a reasonable doubt that at the time of the Commercial Digital Voyeurism:**

1. (Defendant) **was 18 years of age or older; and**

2. (Victim) **less than 16 years of age; and**

3. (Defendant) **was responsible for the welfare of (victim).**

It is not necessary for the State to prove the defendant knew or had reason to know the age of (victim)**.**

Give if applicable. § 810.145(8)(a)2., Fla. Stat.

If you find that (defendant) **committed the crime of Commercial Digital Voyeurism, you must also determine whether the State proved beyond a reasonable doubt that at the time of the Commercial Digital Voyeurism:**

1. (Defendant) **was 18 years of age or older; and**

2. (Defendant) **was employed at a [private school] [school] [voluntary prekindergarten education program]; and**

3. (Victim) **was a student at that [private school] [school] [voluntary prekindergarten education program].**

Give as applicable.

"Private school" is defined as (insert definition from § 1002.01, Fla. Stat)**.**

"School" is defined as (insert definition from § 1003.01, Fla. Stat.)**.**

"Voluntary prekindergarten education program" is defined as (insert definition from § 1002.53(3)(a), (b), or (c), Fla. Stat)**.**

Give if applicable. § 810.145(8)(a)3., Fla. Stat.

If you find that (defendant) **committed the crime of Commercial Digital Voyeurism, you must also determine whether the State proved beyond a reasonable doubt that at the time of the Commercial Digital Voyeurism:**

1. (Defendant) **was 24 years of age or older; and**

2. (Victim) **less than 16 years of age.**

It is not necessary for the State to prove the defendant knew or had reason to know the age of (victim)**.**

Lesser Included Offense

COMMERCIAL DIGITAL VOYEURISM — 810.145(4)(b)			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
None			
	Attempt	777.04(1)	5.1

Comments

§ 810.145, Fla. Stat. creates a second degree felony if the defendant had been convicted of or adjudicated delinquent for a violation of § 810.145, Fla. Stat., that was sentenced or entered separately before the current offense. As of June 2025, it was unclear whether the fact of a prior will be treated as a recidivism factor that the State may prove by a preponderance of the evidence to the sentencing judge or as an element of the crime that must be proven by the State beyond a reasonable doubt to the jury in a bifurcated proceeding. If treated as an element, it is error to inform the jury of a prior conviction before a determination of guilt of the charged offense. Therefore, do not read the allegation of prior conviction or send the information or indictment into the jury room.

This instruction was adopted in 2008 [982 So. 2d 1160] and amended in 2013 [122 So. 3d 263], and on June 27, 2025.

11.14 FAILURE BY A SEXUAL OFFENDER TO COMPLY WITH REGISTRATION REQUIREMENTS (INITIALLY REGISTER, REPORT, OR PROVIDE REGISTRATION ITEMS)

§ 943.0435(2), Fla. Stat.

To prove the crime of Failure by a Sexual Offender to Comply with Registration Requirements, the State must prove the following three elements beyond a reasonable doubt:

Give 1a or 1b as applicable.

1. (Defendant)

a. is a sexual offender.

b. has agreed or stipulated that [he] [she] has been convicted as a sexual offender; therefore, you should consider the sexual offender status an element as proven by agreement of the parties.

If the defendant offers to stipulate, the court must accept the offer after conducting an on-the-record colloquy with the defendant. See Brown v. State, 719 So. 2d 882 (Fla. 1998); Johnson v. State, 842 So. 2d 228 (Fla. 1st DCA 2003). If there is a stipulation, the court should not give the definition of "sexual offender" or "convicted."

2. (Defendant) **[established] [maintained] a permanent, temporary, or transient residence in** (name of county) **County, Florida.**

Give 3a, 3b, 3c, 3d, 3e, or 3f as applicable.

3. (Defendant)

a. knowingly failed to register in person at an office of the sheriff of (name of county) **County within 48 hours after establishing permanent, temporary, or transient residence within this state.**

b. knowingly failed to report in person at an office of the sheriff of (name of county) **County within 48 hours after being released from the [custody, control, or supervision of the Florida Department of Corrections] [custody of a contractor-operated correctional facility].**

c. knowingly failed to register in person at an office

of the sheriff of (name of county) **County within 48 hours after having been convicted by a court in that county of an offense requiring registration.**

d. knowingly failed to provide an office of the sheriff of (name of county) **County with [his] [her] [**(name the single unprovided registration item charged, as worded in the statute)**] [any one or more of the following items: [his] [her]** (name the unprovided registration items charged, as worded in the statute).**]**

e. knowingly failed to report in person at an office of the sheriff of (name of county) **within 48 hours after any change in vehicles owned to report those vehicle information changes.**

f. knowingly failed to provide an office of the sheriff of (name of county) **with** (insert information, such as criminal and corrections records, nonprivileged personnel and treatment records, and evidentiary genetic markers)**, which [he] [she] knew had been deemed necessary by the Department of Law Enforcement and which was available.**

Give if applicable. § 944.710, Fla. Stat.

A "contractor-operated correctional facility" is any facility, which is not operated by the Department of Corrections, for the incarceration of adults or juveniles who have been sentenced by a court and committed to the custody of the Department of Corrections.

Give if the defendant meets his or her burden of production. See Barnes v. State, 108 So. 3d 700 (Fla. 1st DCA 2013).

It is a defense to the crime of Failure by a Sexual Offender to Comply with Registration Requirements that (defendant) **attempted to comply but was misinformed or otherwise prevented from complying by the office of the sheriff.**

There is no statute for the defense of being misinformed or otherwise prevented from registering, and the case law is silent as to (1) which party bears the burden of persuasion of the affirmative defense and (2) the standard for the burden of persuasion. Under the common law, defendants had both the burden of production and the burden of persuasion on an affirmative defense by a preponderance of the evidence.

The Florida Supreme Court has often decided, however, that once a defendant meets the burden of production on an affirmative defense, the burden of persuasion is on the State to disprove the affirmative defense beyond a reasonable doubt (e.g., self-defense and consent to enter in a burglary prosecution). In the absence of case law, trial judges must resolve the issue via a special instruction. See the opinion in Dixon v. United States, 548 U.S. 1 (2006), for further guidance.

If burden of persuasion is on the defendant:

If you find that (defendant) **proved** (insert appropriate burden of persuasion) **that the office of the sheriff misinformed [him] [her] or otherwise prevented [him] [her] from complying with the registration requirements, you should find [him] [her] not guilty. If the defendant did not prove** (insert appropriate burden of persuasion) **that the office of the sheriff misinformed [him] [her] or otherwise prevented [him] [her] from complying, you should find [him] [her] guilty if all the elements of the charge have been proven beyond a reasonable doubt.**

Or, if the burden of disproving the affirmative defense is on the State under the beyond a reasonable standard:

If you find that the State proved beyond a reasonable doubt that the office of the sheriff did not misinform (defendant) **or did not otherwise prevent [him] [her] from complying with the registration requirements, you should find** (defendant) **guilty if all of the elements of the charge have been proven beyond a reasonable doubt. However, if you have a reasonable doubt on the issue of whether the office of the sheriff misinformed** (defendant) **or otherwise prevented [him] [her] from complying with the registration requirements, you should find [him] [her] not guilty.**

Definitions. See instruction 11.14(h) for the applicable definitions.

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comments

In some cases, a special instruction will be needed if the sexual offender initially reported but then failed to properly report a change in the information required to be provided pursuant to § 943.0435(2)(a)2., Fla. Stat.

This instruction was adopted in 2008 [983 So.2d 531] and amended in 2012 [85 So. 3d 1090], 2013 [113 So. 3d 754], 2014 [148 So. 3d 1204], 2016

[195 So. 3d 1088], 2018 [249 So. 2d 554], and on September 20, 2024, and on June 27, 2025.

11.14(a) FAILURE BY A SEXUAL OFFENDER TO COMPLY WITH REGISTRATION REQUIREMENTS (FAILURE TO COMPLY WITH REGISTRATION OF A RESIDENCE, MOTOR VEHICLE, TRAILER, MOBILE HOME, MANUFACTURED HOME, VESSEL, OR HOUSEBOAT)

§ 943.0435(2)(b)1, Fla. Stat.

To prove the crime of Failure by a Sexual Offender to Comply with Registration Requirements, the State must prove the following three elements beyond a reasonable doubt:

Give 1a or1b as applicable.

1. (Defendant)

a. is a sexual offender.

b. has agreed or stipulated that [he] [she] has been convicted as a sexual offender; therefore, you should consider the sexual offender status element as proven by agreement of the parties.

If the defendant offers to stipulate, the court must accept the offer after conducting an on-the-record colloquy with the defendant. See Brown v. State, 719 So. 2d 882 (Fla. 1998); Johnson v. State, 842 So. 2d 228 (Fla. 1st DCA 2003). If there is a stipulation, the court should not give the definition of "sexual offender" or "convicted."

2. (Defendant) **[established] [maintained] a permanent, temporary, or transient residence in** (name of county) **County, Florida.**

Give 3a or 3b as applicable.

3. (Defendant)

a. used as [his] [her] place of residence a [motor vehicle] [trailer] [mobile home] [manufactured home]; and knowingly failed to provide the Department of Law Enforcement through the office of the sheriff of (name of county) **County — [the** (name the single unprovided registration item charged, as worded in the statute)**] [any one or more of the following items:** (name the unprovided registration items charged, as worded in the statute)**] concerning the [motor vehicle] [trailer] [mobile home] [manufactured home] where [he] [she] resided.**

b. used as [his] [her] place of residence a [vessel] [live-aboard vessel] [houseboat]; and knowingly failed to provide the Department of Law Enforcement through the office of the sheriff of (name of county) **County — [the** (name the single unprovided registration item charged, as worded in the statute)**] [any one or more of the following items:** (name the unprovided registration items charged, as worded in the statute**] concerning the [vessel] [live-aboard vessel] [houseboat] where [he] [she] resided.**

Give if the defendant meets his or her burden of production. See Barnes v. State, 108 So. 3d 700 (Fla. 1st DCA 2013).

It is a defense to the crime of Failure by a Sexual Offender to Comply with Registration Requirements that (defendant) **attempted to comply with the requirements but was misinformed or otherwise prevented from complying by the office of the sheriff.**

There is no statute for the defense of being misinformed or otherwise prevented from registering, and the case law is silent as to (1) which party bears the burden of persuasion of the affirmative defense and (2) the standard for the burden of persuasion. Under the common law, defendants had both the burden of production and the burden of persuasion on an affirmative defense by a preponderance of the evidence. In the absence of case law, trial judges must resolve the issue via a special instruction. See the opinion in Dixon v. United States, 548 U.S. 1 (2006), for further guidance.

If burden of persuasion is on the defendant:

If you find that (defendant) **proved** (insert appropriate burden of persuasion) **that the office of the sheriff misinformed [him] [her] or otherwise prevented [him] [her] from complying with the registration requirements, you should find [him] [her] not guilty. If the defendant did not prove** (insert appropriate burden of persuasion) **that the office of the sheriff misinformed [him] [her] or otherwise prevented [him] [her] from complying, you should find [him] [her] guilty if all the elements of the charge have been proven beyond a reasonable doubt.**

Or, if the burden of disproving the affirmative defense is on the State under the beyond a reasonable standard:

If you find that the State proved beyond a reasonable doubt that the office of the sheriff did not misinform (defendant) **or did not otherwise prevent [him] [her] from complying with the registration requirements**, **you should find** (defendant) **guilty, if all of the elements of the charge have**

also been proven beyond a reasonable doubt. However, if you have a reasonable doubt on the issue of whether the office of the sheriff misinformed (defendant) **or otherwise prevented [him] [her] from complying with the registration requirements, you should find [him] [her] not guilty.**

Definitions. See instruction 11.14(h) for the applicable definitions.

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comment

This instruction was adopted in 2008 [983 So.2d 531] and amended in 2012 [85 So. 3d 1090] 2014 [148 So. 2d 1204], 2016 [195 So. 3d 1088], on June 27, 2025, and on March 20, 2026.

11.14(b) FAILURE BY A SEXUAL OFFENDER TO COMPLY WITH REGISTRATION REQUIREMENTS (FAILURE TO COMPLY WITH [REGISTRATION] [OR] [A CHANGE] OF [EMPLOYMENT] [ENROLLMENT] [VOLUNTEERING] AT AN INSTITUTION OF HIGHER LEARNING)

§ 943.0435(2)(b)2., Fla. Stat. or § 943.0435(4)(e)2., Fla. Stat.

To prove the crime of Failure by a Sexual Offender to Comply with Registration Requirements, the State must prove the following three elements beyond a reasonable doubt:

Give 1a or 1b as applicable.

1. (Defendant)

a. is a sexual offender.

b. has agreed or stipulated that [he] [she] has been convicted as a sexual offender; therefore, you should consider the sexual offender status element as proven by agreement of the parties.

If the defendant offers to stipulate, the court must accept the offer after conducting an on-the-record colloquy with the defendant. See Brown v. State, 719 So. 2d 882 (Fla. 1998); Johnson v. State, 842 So. 2d 228 (Fla. 1st DCA 2003). If there is a stipulation, the court should not give the definition of "sexual offender" or "convicted."

2. (Defendant) **[established] [maintained] a permanent, temporary, or transient residence in** (name of county) **County, Florida.**

Give as applicable. 3a is for initial registration with the sheriff and 3b and 3c are for changes to the initial information.

3. a. (Defendant) **was enrolled or employed, whether for compensation or as a volunteer, at an institution of higher education in this state, and knowingly failed to provide the office of the sheriff of** (name of county) **County with the name, address, and county of each institution, including each campus attended, and [his] [her] enrollment, volunteer, or employment status.**

b. (Defendant) **was enrolled or employed, whether for compensation or as a volunteer, at an institution of higher education in this state, and knowingly failed to provide [through the on-line system of the Florida Department of Law Enforcement] [or] [in person at an office of the sheriff of** (name

of county) **County] [or] [in person at the Department of Corrections if [he] [she] was in the custody or control, or under the supervision of the Department of Corrections] [or] [in person at the Department of Juvenile Justice if [he] [she] was in the custody or control, or under the supervision of the Department of Juvenile Justice] with any change to the name, address, and county of each institution, including each campus attended, and [his] [her] enrollment, volunteer, or employment status, within 48 hours after the change.**

c. (Defendant) **knowingly failed to provide the change in [his] [her]** (insert relevant statutory item)**.**

Give if the defendant meets his or her burden of production. See Barnes v. State, 108 So. 3d 700 (Fla. 1st DCA 2013).

It is a defense to the crime of Failure by a Sexual Offender to Comply with Registration Requirements that (defendant) **attempted to comply with the requirements but was misinformed or otherwise prevented from complying by the [office of the sheriff] [Department of Highway Safety and Motor Vehicles] [Department of Corrections] [Department of Juvenile Justice].**

There is no statute for the defense of being misinformed or otherwise prevented from complying with registration requirements, and the case law is silent as to (1) which party bears the burden of persuasion of the affirmative defense and (2) the standard for the burden of persuasion. Under the common law, defendants had both the burden of production and the burden of persuasion on an affirmative defense by a preponderance of the evidence.

The Florida Supreme Court has often decided, however, that once a defendant meets the burden of production on an affirmative defense, the burden of persuasion is on the State to disprove the affirmative defense beyond a reasonable doubt (e.g., self-defense and consent to enter in a burglary prosecution). In the absence of case law, trial judges must resolve the issue via a special instruction. See the opinion in Dixon v. United States, 548 U.S. 1 (2006), for further guidance.

If burden of persuasion is on the defendant:

If you find that (defendant) **proved** (insert appropriate burden of persuasion) **that the [office of the sheriff] [Department of Highway Safety and Motor Vehicles] [Department of Corrections] [Department of Juvenile Justice] misinformed [him] [her] or otherwise prevented [him] [her] from complying with the registration requirements, you should find [him] [her]**

not guilty. If the defendant did not prove (insert appropriate burden of persuasion) **that the [office of the sheriff] [Department of Highway Safety and Motor Vehicles] [Department of Corrections] [Department of Juvenile Justice] misinformed [him] [her] or otherwise prevented [him] [her] from complying, you should find [him] [her] guilty if all the elements of the charge have been proven beyond a reasonable doubt.**

Or, if the burden of disproving the affirmative defense is on the State under the beyond a reasonable standard:

If you find that the State proved beyond a reasonable doubt that the [office of the sheriff] [Department of Highway Safety and Motor Vehicles] [Department of Corrections] [Department of Juvenile Justice] did not misinform (defendant) **or did not otherwise prevent [him] [her] from complying with the registration requirements, you should find [him] [her] guilty, if all of the elements of the charge have also been proven beyond a reasonable doubt. However, if you have a reasonable doubt on the issue of whether the [office of the sheriff] [Department of Highway Safety and Motor Vehicles] [Department of Corrections] [Department of Juvenile Justice] misinformed** (defendant) **or otherwise prevented [him] [her] from complying with the registration requirements, you should find [him] [her] not guilty.**

Definitions. See instruction 11.14(h) for the applicable definitions.

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comment

This instruction was adopted in 2008 [983 So. 2d 531] and amended in 2012 [85 So. 3d 1090], 2014 [148 So. 3d 1204], 2016 [195 So. 3d 1088], 2018 [195 So. 3d 1088], and on June 27, 2025.

11.14(c) FAILURE BY A SEXUAL OFFENDER TO COMPLY WITH REGISTRATION REQUIREMENTS (FAILURE TO REPORT TO DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES)

§ 943.0435(3), Fla. Stat.

To prove the crime of Failure by a Sexual Offender to Comply with Registration Requirements, the State must prove the following three elements beyond a reasonable doubt:

Give 1a or 1b as applicable.

1. (Defendant)

a. is a sexual offender.

b. has agreed or stipulated that [he] [she] has been convicted as a sexual offender; therefore, you should consider the sexual offender status element as proven by agreement of the parties.

If the defendant offers to stipulate, the court must accept the offer after conducting an on-the-record colloquy with the defendant. See Brown v. State, 719 So. 2d 882 (Fla. 1998); Johnson v. State, 842 So. 2d 228 (Fla. 1st DCA 2003). If there is a stipulation, the court should not give the definition of "sexual offender" or "convicted."

2. (Defendant) **[established] [maintained] a permanent, temporary, or transient residence in** (name of county) **County, Florida.**

Give 3a or 3b as applicable.

3. (Defendant)

a. having registered as a sexual offender with an office of the sheriff of (name of county) **County, knowingly failed to report in person to a driver's license office of the Department of Highway Safety and Motor Vehicles within 48 hours after registering to present proof of this registration, and knowingly failed to [secure a Florida driver's license] [renew [his] [her] Florida driver's license] [secure a Florida identification card].**

b. reported in person to a driver's license office of the Department of Highway Safety and Motor Vehicles and [secured a Florida driver's license] [renewed [his] [her]

Florida driver's license] [secured a Florida identification card], but in doing so,

Give one or both of the following as applicable to the charge.

i. **failed to report to that office that [he] [she] was a sexual offender.**

ii. **failed to provide that office with [**(name the single unprovided registration item charged, as worded in the statute)**] [any one or more of the following items:** (name the unprovided registration items charged, as worded in the statute)**].**

Give if the defendant meets his or her burden of production. See Barnes v. State, 108 So. 3d 700 (Fla. 1st DCA 2013).

It is a defense to the crime of Failure by a Sexual Offender to Comply with Registration Requirements that (defendant) **attempted to comply with the requirements but was misinformed or otherwise prevented from complying by the Department of Highway Safety and Motor Vehicles.**

There is no statute for the defense of being misinformed or otherwise prevented from complying, and the case law is silent as to (1) which party bears the burden of persuasion of the affirmative defense and (2) the standard for the burden of persuasion. Under the common law, defendants had both the burden of production and the burden of persuasion on an affirmative defense by a preponderance of the evidence.

The Florida Supreme Court has often decided, however, that once a defendant meets the burden of production on an affirmative defense, the burden of persuasion is on the State to disprove the affirmative defense beyond a reasonable doubt (e.g., self-defense and consent to enter in a burglary prosecution). In the absence of case law, trial judges must resolve the issue via a special instruction. See the opinion in Dixon v. United States, 548 U.S. 1 (2006), for further guidance.

If burden of persuasion is on the defendant:

If you find that (defendant) **proved** (insert appropriate burden of persuasion) **that the Department of Highway Safety and Motor Vehicles misinformed [him] [her] or otherwise prevented [him] [her] from complying with the registration requirements, you should find [him] [her] not guilty. If the defendant did not prove** (insert appropriate burden of persuasion) **that the Department of Highway Safety and Motor Vehicles misinformed [him]**

[her] or otherwise prevented [him] [her] from complying, you should find [him] [her] guilty if all the elements of the charge have been proven beyond a reasonable doubt.

Or, if the burden of disproving the affirmative defense is on the State under the beyond a reasonable standard:

If you find that the State proved beyond a reasonable doubt that the Department of Highway Safety and Motor Vehicles did not misinform (defendant) **or did not otherwise prevent [him] [her] from complying with the registration requirements**, **you should find [him] [her] guilty, if all of the elements of the charge have also been proven beyond a reasonable doubt. However, if you have a reasonable doubt on the issue of whether the Department of Highway Safety and Motor Vehicles misinformed** (defendant) **or otherwise prevented [him] [her] from complying with the registration requirements, you should find [him] [her] not guilty.**

Definitions. See instruction 11.14(h) for the applicable definitions.

Lesser Included Offenses

No lesser included offenses have been identified.

Comment

This instruction was adopted in 2008 [983 So.2d 531] and amended in 2012 [85 So. 3d 1090] and 2014.

11.14(d) FAILURE BY A SEXUAL OFFENDER TO COMPLY WITH REGISTRATION REQUIREMENTS (FAILURE TO REPORT CHANGE OF NAME OR ADDRESS WITHIN THE STATE OR JURISDICTION)

§ 943.0435(4)(a)1. and (4)(a)2., Fla. Stat.

To prove the crime of Failure by a Sexual Offender to Comply with Registration Requirements, the State must prove the following three elements beyond a reasonable doubt:

Give 1a or 1b as applicable.

1. (Defendant)

a. is a sexual offender.

b. has agreed or stipulated that [he] [she] has been convicted as a sexual offender; therefore, you should consider the sexual offender status element as proven by agreement of the parties.

If the defendant offers to stipulate, the court must accept the offer after conducting an on-the-record colloquy with the defendant. See Brown v. State, 719 So. 2d 882 (Fla. 1998); Johnson v. State, 842 So. 2d 228 (Fla. 1st DCA 2003). If there is a stipulation, the court should not give the definition of "sexual offender" or "convicted."

2. (Defendant) **[established] [maintained] a permanent, temporary, or transient residence in** (name of county) **County, Florida.**

Give 3a or 3b or 3c or 3d as applicable.

3. (Defendant)

a. knowingly failed to report a change in [his] [her] [permanent, temporary, or transient residence] [name, by reason of marriage or other legal process] within 48 hours after the change, in person, to a driver's license office, when [his] [her] driver's license or identification card was subject to renewal.

b. was unable to secure or update a driver license or an identification card with the Department of Highway Safety and Motor Vehicles, and [he] [she] knowingly failed to report any change in [his] [her] [permanent, temporary, or transient residence] [name, by reason of marriage or other legal process] within 48 hours after the change, in

person, to the office of the sheriff of (name of county) **County.**

c. knowingly failed to report an in-state travel residence, within 48 hours after establishing the residence, either through the Department of Law Enforcement's online system or in person to an office of the sheriff of (name of county) **County.**

d. was in the custody or control of the Department of [Corrections] [Juvenile Justice] and knowingly failed to report an in-state travel residence within 48 hours after establishing the residence, in person, at the Department of [Corrections] [Juvenile Justice].

Give if the defendant meets his or her burden of production. See Barnes v. State, 108 So. 3d 700 (Fla. 1st DCA 2013).

It is a defense to the crime of Failure by a Sexual Offender to Comply with Registration Requirements that (defendant) **attempted to comply with the requirements but was misinformed or otherwise prevented from complying by the [office of the sheriff] [Department of Highway Safety and Motor Vehicles].**

There is no statute for the defense of being misinformed or otherwise prevented from registering, and the case law is silent as to (1) which party bears the burden of persuasion of the affirmative defense and (2) the standard for the burden of persuasion. Under the common law, defendants had both the burden of production and the burden of persuasion on an affirmative defense by a preponderance of the evidence. In the absence of case law, trial judges must resolve the issue via a special instruction. See the opinion in Dixon v. United States, 548 U.S. 1 (2006), for further guidance.

If burden of persuasion is on the defendant:

If you find that (defendant) **proved** (insert appropriate burden of persuasion) **that the [office of the sheriff] [Department of Highway Safety and Motor Vehicles] misinformed [him] [her] or otherwise prevented [him] [her] from complying with the registration requirements, you should find [him] [her] not guilty. If the defendant did not prove** (insert appropriate burden of persuasion) **that the[office of the sheriff] [Department of Highway Safety and Motor Vehicles] misinformed [him] [her] or otherwise prevented [him] [her] from complying, you should find [him] [her] guilty if all the elements of the charge have been proven beyond a reasonable doubt.**

Or, if the burden of disproving the affirmative defense is on the State under the beyond a reasonable standard:

If you find that the State proved beyond a reasonable doubt that the [office of the sheriff] [Department of Highway Safety and Motor Vehicles] did not misinform (defendant) **or did not otherwise prevent [him] [her] from complying with the registration requirements**, **you should find [him] [her] guilty, if all of the elements of the charge have also been proven beyond a reasonable doubt. However, if you have a reasonable doubt on the issue of whether the [office of the sheriff] [Department of Highway Safety and Motor Vehicles] misinformed** (defendant) **or otherwise prevented [him] [her] from complying with the registration requirements, you should find [him] [her] not guilty.**

Definitions. See instruction 11.14(h) for the applicable definitions.

Lesser Included Offenses

No lesser included offenses have been identified.

Comment

This instruction was adopted in 2008 [983 So.2d 531] and amended in 2012 [85 So. 3d 1090] 2014 [195 So. 3d 1088], and on March 20, 2026.

11.14(e) FAILURE BY A SEXUAL OFFENDER TO COMPLY WITH REGISTRATION REQUIREMENTS (FAILURE TO REPORT CHANGE OF RESIDENCE TO ANOTHER STATE OR JURISDICTION OR COUNTRY)

§ 943.0435(7), Fla. Stat.

To prove the crime of Failure by a Sexual Offender to Comply with Registration Requirements, the State must prove the following four elements beyond a reasonable doubt:

Give 1a or 1b as applicable.

1. (Defendant)

a. is a sexual offender.

b. has agreed or stipulated that [he] [she] has been convicted as a sexual offender; therefore, you should consider the sexual offender status element as proven by agreement of the parties.

If the defendant offers to stipulate, the court must accept the offer after conducting an on-the-record colloquy with the defendant. See Brown v. State, 719 So. 2d 882 (Fla. 1998); Johnson v. State, 842 So. 2d 228 (Fla. 1st DCA 2003). If there is a stipulation, the court should not give the definition of "sexual offender" or "convicted."

2. (Defendant) **[established] [maintained] a permanent, temporary, or transient residence in** (name of county) **County, Florida.**

3. (Defendant) **intended to leave this State to establish residence in another [state] [jurisdiction] [country] on** (date)**.**

Give as applicable.

4. **a.** (Defendant) **knowingly failed to report in person to an office of the sheriff in the county of [his] [her] current residence within 48 hours before the date on which [he] [she] intended to leave this state to establish residence in another state or jurisdiction within the United States.**

b. (Defendant) **knowingly failed to report in person to an office of the sheriff in the county of [his] [her] current residence [at least 21 days before the date on which [he] [she] intended to travel outside the United States] [as soon as possible before departure if [he] [she] did not know about leaving this state to travel outside the United States at least 21 days in advance of**

the departure].

c. (Defendant) **knowingly failed to provide the [address, municipality, county, and state] [address and country] of [his] [her] intended address, when [he] [she] reported to the sheriff's office of the county of [his] [her] current residence [his] [her] intention to establish residence in another [state] [jurisdiction] [country].**

d. (Defendant) **intended to travel internationally and knowingly failed to provide to the office of the sheriff in the county of [his] [her] residence [his] [her] expected departure and return dates, flight number, [airport] [cruise] of departure or any other means of intended travel.**

Give if the defendant meets his or her burden of production. See Barnes v. State, 108 So. 3d 700 (Fla. 1st DCA 2013).

It is a defense to the crime of Failure by a Sexual Offender to Comply with Registration Requirements that (defendant) **attempted to comply with the requirements but was misinformed or otherwise prevented from complying by the office of the sheriff.**

There is no statute for the defense of being misinformed or otherwise prevented from registering, and the case law is silent as to (1) which party bears the burden of persuasion of the affirmative defense and (2) the standard for the burden of persuasion. Under the common law, defendants had both the burden of production and the burden of persuasion on an affirmative defense by a preponderance of the evidence.

The Florida Supreme Court has often decided, however, that once a defendant meets the burden of production on an affirmative defense, the burden of persuasion is on the State to disprove the affirmative defense beyond a reasonable doubt (e.g., self-defense and consent to enter in a burglary prosecution). In the absence of case law, trial judges must resolve the issue via a special instruction. See the opinion in Dixon v. United States, 548 U.S. 1 (2006), for further guidance.

If burden of persuasion is on the defendant:

If you find that (defendant) **proved** (insert appropriate burden of persuasion) **that the office of the sheriff misinformed [him] [her] or otherwise prevented [him] [her] from complying with the registration requirements, you should find [him] [her] not guilty. If the defendant did not prove** (insert appropriate burden of persuasion) **that the office of the sheriff misinformed [him] [her] or otherwise prevented [him] [her] from**

complying, you should find [him] [her] guilty if all the elements of the charge have been proven beyond a reasonable doubt.

Or, if the burden of disproving the affirmative defense is on the State under the beyond a reasonable standard:

If you find that the State proved beyond a reasonable doubt that the office of the sheriff did not misinform (defendant) **or did not otherwise prevent [him] [her] from complying with the registration requirements, you should find [him] [her] guilty, if all of the elements of the charge have also been proven beyond a reasonable doubt. However, if you have a reasonable doubt on the issue of whether the office of the sheriff misinformed** (defendant) **or otherwise prevented [him] [her] from complying with the registration requirements, you should find [him] [her] not guilty.**

Definitions. See instruction 11.14(h) for the applicable definitions.

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comment

This instruction was adopted in 2008 [983 So.2d 531] and amended in 2012 [85 So. 3d 1090], 2014 [148 So. 3d 1204], 2016 [195 So. 3d 1088], 2018 [249 So. 3d 554], and on June 27, 2025.

11.14(f) FAILURE BY A SEXUAL OFFENDER TO COMPLY WITH REGISTRATION REQUIREMENTS (FAILURE TO REPORT INTENT TO REMAIN WITHIN THE STATE OR JURISDICTION)

§ 943.0435(8), Fla. Stat.

To prove the crime of Failure by a Sexual Offender to Comply with Registration Requirements, the State must prove the following five elements beyond a reasonable doubt:

Give 1a or 1b as applicable.

1. (Defendant)

a. is a sexual offender.

b. has agreed or stipulated that [he] [she] has been convicted as a sexual offender; therefore, you should consider the sexual offender status element as proven by agreement of the parties.

If the defendant offers to stipulate, the court must accept the offer after conducting an on-the-record colloquy with the defendant. See Brown v. State, 719 So. 2d 882 (Fla. 1998); Johnson v. State, 842 So. 2d 228 (Fla. 1st DCA 2003). If there is a stipulation, the court should not give the definition of "sexual offender" or "convicted."

2. (Defendant) **[established] [maintained] a permanent, temporary, or transient residence in** (name of county) County, Florida.

3. (Defendant) **indicated to an office of the sheriff of** (name of county) **County [his] [her] intent to leave this state on** (date of intended departure) **and establish a permanent, temporary, or transient residence in another state or jurisdiction or an intent to travel to another country.**

4. (Defendant) **later decided to remain in this state.**

5. Within 48 hours after the date of [his] [her] originally intended departure from this state, (defendant) **knowingly failed to report to an office of the sheriff of** (name of county) **County that [he] [she] instead decided to remain in this state.**

Give if the defendant meets his or her burden of production. See Barnes v. State, 108 So. 3d 700 (Fla. 1st DCA 2013).

It is a defense to the crime of Failure by a Sexual Offender to Comply with Registration Requirements that (defendant) **attempted to comply with the requirements but was misinformed or otherwise prevented from complying by the office of the sheriff.**

There is no statute for the defense of being misinformed or otherwise prevented from registering, and the case law is silent as to (1) which party bears the burden of persuasion of the affirmative defense and (2) the standard for the burden of persuasion. Under the common law, defendants had both the burden of production and the burden of persuasion on an affirmative defense by a preponderance of the evidence.

The Florida Supreme Court has often decided, however, that once a defendant meets the burden of production on an affirmative defense, the burden of persuasion is on the State to disprove the affirmative defense beyond a reasonable doubt (e.g., self-defense and consent to enter in a burglary prosecution). In the absence of case law, trial judges must resolve the issue via a special instruction. See the opinion in Dixon v. United States, 548 U.S. 1 (2006), for further guidance.

If burden of persuasion is on the defendant:

If you find that (defendant) **proved** (insert appropriate burden of persuasion) **that the office of the sheriff misinformed [him] [her] or otherwise prevented [him] [her] from complying with the registration requirements, you should find [him] [her] not guilty. If the defendant did not prove** (insert appropriate burden of persuasion) **that the office of the sheriff misinformed [him] [her] or otherwise prevented [him] [her] from complying, you should find [him] [her] guilty if all the elements of the charge have been proven beyond a reasonable doubt.**

Or, if the burden of disproving the affirmative defense is on the State under the beyond a reasonable standard:

If you find that the State proved beyond a reasonable doubt that the office of the sheriff did not misinform (defendant) **or did not otherwise prevent [him] [her] from complying with the registration requirements**, **you should find [him] [her] guilty, if all of the elements of the charge have also been proven beyond a reasonable doubt. However, if you have a reasonable doubt on the issue of whether the office of the sheriff misinformed** (defendant) **or otherwise prevented [him] [her] from complying with the registration requirements, you should find [him] [her] not guilty.**

Definitions. See instruction 11.14(h) for the applicable definitions.

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comment

This instruction was adopted in 2008 [983 So. 2d 531] and amended in 2012 [85 So. 3d 1090], 2014 [148 So. 3d 1204], and on June 27, 2025.

11.14(g) FAILURE BY A SEXUAL OFFENDER TO COMPLY WITH REGISTRATION REQUIREMENTS (FAILURE TO REPORT TWICE A YEAR/FAILURE TO REPORT QUARTERLY/PROVIDING FALSE INFORMATION)

§ 943.0435(14)(a)–(b), Fla. Stat.

Give this statement if the charge is failure to report twice a year during the sexual offender's birthday month and six months later pursuant to § 943.0435(14)(a), Fla. Stat., or, for certain specified violators, failure to report during the sexual offender's birthday month and every third month thereafter pursuant to § 943.0435(14)(b), Fla. Stat.

To prove the crime of Failure by a Sexual Offender to Comply with Registration Requirements, the State must prove the following three elements beyond a reasonable doubt:

Give 1a or 1b as applicable if § 943.0435(14)(a), Fla. Stat., is charged.

1. (Defendant)

a. is a sexual offender.

b. has agreed or stipulated that [he] [she] has been convicted as a sexual offender; therefore, you should consider the sexual offender status element as proven by agreement of the parties.

Give 1c or 1d as applicable if § 943.0435(14)(b), Fla. Stat., is charged.

c. is a sexual offender and is required to report and reregister as a result of a conviction for (insert relevant factor in § 943.0435(14)(b)1.–(14)(b)11., Fla. Stat.).

d. has agreed or stipulated that [he] [she] has been convicted as a sexual offender and that [he] [she] is required by law to report in person during [his] [her] birthday month and reregister every third month following [his] [her] (year) birthday month to an office of the sheriff in the county in which [he] [she] resides or is otherwise located.

If the defendant offers to stipulate, the court must accept the offer after conducting an on-the-record colloquy with the defendant. See Brown v. State, 719 So. 2d 882 (Fla. 1998); Johnson v. State, 842 So. 2d 228 (Fla. 1st DCA

2003). If there is a stipulation, the court should not give the definition of "sexual offender" or "convicted."

2. (Defendant) **[established] [maintained] a permanent, temporary, or transient residence in** (name of county) **County, Florida.**

Give 3a, 3b, 3c, 3d, 3e, 3f, or 3g as applicable.

3. (Defendant)

a. knowingly failed to reregister by reporting in person during [his] [her] birthday month in (year) to an office of the sheriff in the county in which [he] [she] resides or is otherwise located.

b. knowingly failed to reregister by reporting in person during the sixth month following [his] [her] (year) birthday month to an office of the sheriff in the county in which [he] [she] resides or is otherwise located.

c. knowingly failed to reregister by reporting in person during every third month following [his] [her] (year) birthday month to an office of the sheriff in the county in which [he] [she] resides or is otherwise located.

d. knowingly failed to respond to the address verification correspondence from the Florida Department of Law Enforcement within three weeks from the date of the correspondence.

e. reported to an office of the sheriff of (name of county) to reregister,

and

Give i or ii as applicable.

i. knowingly failed to provide that office with (name the single unprovided registration item charged, as worded in the statute).

ii. knowingly failed to provide that office with any one or more of the following items: (name the unprovided registration items charged, as worded in the statute)**.**

f. knowingly failed to report all [electronic mail addresses] [and] [or] [all internet identifiers].

g. knowingly provided false registration information by act or omission.

Read only if the defendant is charged with failing to provide a physical residential address.

The defendant shall provide a physical residential address. A post office box shall not be provided in lieu of a physical residential address.

Give if the defendant meets his or her burden of production. See Barnes v. State, 108 So. 3d 700 (Fla. 1st DCA 2013).

It is a defense to the crime of Failure by a Sexual Offender to Comply with Registration Requirements that (defendant) **attempted to comply with the requirements but was misinformed or otherwise prevented from complying by the office of the sheriff.**

There is no statute for the defense of being misinformed or otherwise prevented from registering, and the case law is silent as to (1) which party bears the burden of persuasion of the affirmative defense and (2) the standard for the burden of persuasion. Under the common law, defendants had both the burden of production and the burden of persuasion on an affirmative defense by a preponderance of the evidence.

The Florida Supreme Court has often decided, however, that once a defendant meets the burden of production on an affirmative defense, the burden of persuasion is on the State to disprove the affirmative defense beyond a reasonable doubt (e.g., self-defense and consent to enter in a burglary prosecution). In the absence of case law, trial judges must resolve the issue via a special instruction. See the opinion in Dixon v. United States, 548 U.S. 1 (2006), for further guidance.

If burden of persuasion is on the defendant:

If you find that (defendant) **proved** (insert appropriate burden of persuasion) **that the [office of the sheriff] [Florida Department of Law Enforcement] misinformed [him] [her] or otherwise prevented [him] [her] from complying with the registration requirements, you should find [him] [her] not guilty. If the defendant did not prove** (insert appropriate burden of persuasion) **that the [office of the sheriff] [Florida Department of Law Enforcement] misinformed [him] [her] or otherwise prevented [him] [her] from complying, you should find [him] [her] guilty if all the elements of the charge have been proven beyond a reasonable doubt.**

Or, if the burden of disproving the affirmative defense is on the State under the beyond a reasonable standard:

If you find that the State proved beyond a reasonable doubt that the [office of the sheriff] [Florida Department of Law Enforcement] did not misinform (defendant) **or did not otherwise prevent [him] [her] from complying with the registration requirements, you should find [him] [her] guilty, if all of the elements of the charge have also been proven beyond a reasonable doubt. However, if you have a reasonable doubt on the issue of whether the [office of the sheriff] [Florida Department of Law Enforcement] misinformed** (defendant) **or otherwise prevented [him] [her] from complying, with the registration requirements, you should find [him] [her] not guilty.**

Definitions. See instruction 11.14(h) for the applicable definitions.

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comments

This instruction covers some of the ways a defendant can violate § 943.0435(14), Fla. Stat. There are other possibilities within the statute that will require a special instruction.

This instruction was adopted in 2008 [983 So. 2d 531] and amended in 2012 [85 So. 3d 1090], 2013 [113 So. 3d 754], 2014 [140 So. 3d 1204], 2016 [195 So. 3d 1088], and 2018.

11.14(h) SEXUAL OFFENDER DEFINITIONS

§ 943.0435(1), Fla. Stat.

"Sexual offender" means a person who *(Insert the appropriate criteria specified by § 943.0435(1)), Fla. Stat.*

"Convicted" means there has been a determination of guilt as a result of a trial or the entry of a plea of guilty or nolo contendere, regardless of whether adjudication is withheld. *(Note to Judge: For juvenile, military, federal, and out of state convictions see § 943.0435(1), Fla. Stat.)*

"Change in status at an institution of higher education" means the commencement or termination of enrollment, including, but not limited to, traditional classroom setting or online courses, or employment, whether for compensation or as a volunteer, at an institution of higher education or a change in location of enrollment or employment, whether for compensation or as a volunteer, at an institution of higher education.

"Electronic mail address" means a destination, commonly expressed as a string of characters, to which electronic mail may be sent or delivered.

"Institution of higher education" means a career center, community college, college, state university, or independent postsecondary institution.

"Internet identifier" means any designation, moniker, screen name, username, or other name used for self-identification to send or receive social Internet communication. "Internet identifier" does not include a date of birth, social security number, personal identification number (PIN), or password.

"Social Internet communication" means any communication through a commercial social networking website or application software. The term does not include any of the following:

1. **Communication for which the primary purpose is the facilitation of commercial transactions involving goods or services;**

2. **Communication on an Internet website for which the primary purpose of the website is the dissemination of news; or**

3. **Communication with a governmental entity.**

"Commercial social networking website" means a commercially operated Internet website that allows users to create web pages or profiles

that provide information about themselves and are available publicly or to other users and that offers a mechanism for communication with other users, such as a forum, chat room, electronic mail, or instant messenger.

"Application software" means any computer program designed to run on a mobile device such as a smartphone or tablet computer, that allows users to create web pages or profiles that provide information about themselves and are available publicly or to other users, and that offers a mechanism for communication with other users through a forum, a chatroom, electronic mail, or an instant messenger.

"Physical residential address" does not include a post office box but may be a location that has no specific street address.

"Permanent residence" means a place where the person abides, lodges, or resides for 3 or more consecutive days that is the person's home or other place where the person primarily lives. The first day that a person abides, lodges, or resides at a place is excluded and each subsequent day is counted. A day includes any part of a calendar day.

"Professional license" means the document of authorization or certification issued by an agency of this state for a regulatory purpose, or by any similar agency in another jurisdiction for a regulatory purpose, to a person to engage in an occupation or to carry out a trade or business.

"Temporary residence" means a place where the person abides, lodges, or resides including, but not limited to, vacation, business, or personal travel destinations in or out of this state, for 3 or more days in the aggregate during any calendar year that is not the person's permanent or transient residence. For a person whose permanent residence is not in this state, the term also includes a place where the person is employed, practices a vocation, or is enrolled as a student for any period of time in this state. The term includes an "in-state travel residence," which means a temporary residence in this state established by a person who already has an existing permanent, temporary, or transient residence in this state. The first day that a person abides, lodges, or resides at a place is excluded and each subsequent day is counted. A day includes any part of a calendar day.

"Transient residence" means a place or county where a person lives, remains, or is located for the purpose of abiding, lodging, or residing for 3 or more days in the aggregate during a calendar year that is not the person's permanent or temporary residence. The term includes, but is not limited to, a place where the person sleeps or seeks shelter and a location that has no specific street address. The first day that a person abides,

lodges, or resides at a place is excluded and each subsequent day is counted. A day includes any part of a calendar day.

"Vehicles owned" means any motor vehicle which is registered, co-registered, leased, titled, or rented by a sexual predator or sexual offender; a rented vehicle that a sexual predator or sexual offender is authorized to drive; or a vehicle for which a sexual predator or sexual offender is insured as a driver. The term also includes any motor vehicle which is registered, co-registered, leased, titled, or rented by a person or persons residing at a sexual predator's or sexual offender's permanent residence for 3 or more consecutive days.

Many of these terms have their own statutory definition which should be defined if applicable.

"Motor vehicle" means an automobile, motorcycle, truck, trailer, semitrailer, truck tractor and semitrailer combination, or any other vehicle operated on the roads of this state, used to transport persons or property, and propelled by power other than muscular power [but the term does not include traction engines, road rollers, motorized scooters, micromobility devices, personal delivery devices, mobile carriers, special mobile equipment, vehicles that run only upon a track, bicycles, electric bicycles, swamp buggies, or mopeds].

["Motor vehicle" includes a recreational vehicle-type unit primarily designed as temporary living quarters for recreational, camping, or travel use, which either has its own motive power or is mounted on or drawn by another vehicle.] *There are additional definitions for recreational vehicle-type units in § 320.01(1)(b), Fla. Stat. that may need to be given.*

Comments

Additional definitions are in § 943.0435, Fla. Stat.

This instruction was adopted in 2008 [983 So. 2d 531] and amended in 2012 [85 So. 3d 1090], 2013 [113 So. 3d 754], 2016 [195 So. 3d 1088], 2018 [249 So. 3d 554], 2018 [260 So. 3d 1024], on October 2, 2020, on June 27, 2025, and on March 20, 2026.

11.14(i) FAILURE BY A SEXUAL OFFENDER TO COMPLY WITH REGISTRATION REQUIREMENTS (FAILURE TO REPORT EVERY 30 DAYS FOR TRANSIENT RESIDENCES)

§ 943.0435(4)(b)2. and § 943.0435(4)(d), Fla. Stat.

Give this if the charge is failure to report every 30 days after registering with information regarding a transient residence.

To prove the crime of Failure by a Sexual Offender to Comply with Registration Requirements, the State must prove the following three elements beyond a reasonable doubt:

Give 1a or 1b as applicable.

1. (Defendant)

a. is a sexual offender.

b. has agreed or stipulated that [he] [she] has been convicted as a sexual offender; therefore, you should consider the sexual offender status element as proven by agreement of the parties.

If the defendant offers to stipulate, the court must accept the offer after conducting an on-the-record colloquy with the defendant. See Brown v. State, 719 So. 2d 882 (Fla. 1998); Johnson v. State, 842 So. 2d 228 (Fla. 1st DCA 2003). If there is a stipulation, the court should not give the definition of "sexual offender" or "convicted."

2. Defendant) **established a transient residence in** (name of county) **County, Florida.**

3. (Defendant) **knowingly failed to report the address and location where [he] [she] maintained a transient residence, in person, to the office of the sheriff in the county in which [he] [she] maintained a transient residence, every 30 days after [he] [she] initially reported to the sheriff that [he] [she] had established a transient residence.**

Read only if the defendant is charged with failing to provide a physical residential address.

The defendant shall provide a physical residential address. A post office box shall not be provided in lieu of a physical residential address.

Give if the defendant meets his or her burden of production. See Barnes v. State, 108 So. 3d 700 (Fla. 1st DCA 2013).

It is a defense to the crime of Failure by a Sexual Offender to Comply with Registration Requirements that (defendant) **attempted to comply with the requirements but was misinformed or otherwise prevented from complying by the office of the sheriff.**

There is no statute for the defense of being misinformed or otherwise prevented from registering, and the case law is silent as to (1) which party bears the burden of persuasion of the affirmative defense and (2) the standard for the burden of persuasion. Under the common law, defendants had both the burden of production and the burden of persuasion on an affirmative defense by a preponderance of the evidence.

The Florida Supreme Court has often decided, however, that once a defendant meets the burden of production on an affirmative defense, the burden of persuasion is on the State to disprove the affirmative defense beyond a reasonable doubt (e.g., self-defense and consent to enter in a burglary prosecution). In the absence of case law, trial judges must resolve the issue via a special instruction. See the opinion in Dixon v. United States, 548 U.S. 1 (2006), for further guidance.

If burden of persuasion is on the defendant:

If you find that (defendant) **proved** (insert appropriate burden of persuasion) **that the [office of the sheriff] [Florida Department of Law Enforcement] misinformed [him] [her] or otherwise prevented [him] [her] from complying with the registration requirements, you should find [him] [her] not guilty. If the defendant did not prove (insert appropriate burden of persuasion) that the [office of the sheriff] [Florida Department of Law Enforcement] misinformed [him] [her] or otherwise prevented [him] [her] from complying, you should find [him] [her] guilty if all the elements of the charge have been proven beyond a reasonable doubt.**

Or, if the burden of disproving the affirmative defense is on the State under the beyond a reasonable doubt standard:

If you find that the State proved beyond a reasonable doubt that the [office of the sheriff] [Florida Department of Law Enforcement] did not misinform (defendant) **or did not otherwise prevent [him] [her] from complying with the registration requirements, you should find [him] [her] guilty, if all of the elements of the charge have also been proven beyond a reasonable doubt. However, if you have a reasonable doubt on the issue of whether the [office of the sheriff] [Florida Department of Law**

Enforcement] misinformed (defendant) **or otherwise prevented [him] [her] from complying with the registration requirements, you should find [him] [her] not guilty.**

Definitions. See instruction 11.14(h) for the applicable definitions.

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comment

This instruction was adopted in 2016.

11.14(j) FAILURE BY A SEXUAL OFFENDER TO COMPLY WITH REGISTRATION REQUIREMENTS

§ 943.0435(9), Fla. Stat.

To prove the crime of Failure by a Sexual Offender to Comply with Registration Requirements, the State must prove the following three elements beyond a reasonable doubt:

Give 1a or 1b as applicable.

1. (Defendant)

a. is a sexual offender.

b. has agreed or stipulated that [he] [she] has been convicted as a sexual offender; therefore, you should consider the sexual offender status an element as proven by agreement of the parties.

If the defendant offers to stipulate, the court must accept the offer after conducting an on-the-record colloquy with the defendant. See Brown v. State, 719 So. 2d 882 (Fla. 1998); Johnson v. State, 842 So. 2d 228 (Fla. 1st DCA 2003). If there is a stipulation, the court should not give the definition of "sexual offender" or "convicted."

2. (Defendant) **[established] [maintained] a permanent, temporary, or transient residence in** (name of county) **County, Florida.**

3. (Defendant)

a. knowingly failed, by act or omission to (name the unprovided registration items charged, as worded in the statute)**.**

b. knowingly provided false registration information, by act or omission.

It is a defense to the crime of Failure by a Sexual Offender to Comply with Registration Requirements that (defendant) **attempted to comply but was misinformed or otherwise prevented from complying by the office of the sheriff.**

There is no statute for the defense of being misinformed or otherwise prevented from registering, and the case law is silent as to (1) which party bears the burden of persuasion of the affirmative defense and (2) the standard for the burden of persuasion. Under the common law, defendants had both the burden

of production and the burden of persuasion on an affirmative defense by a preponderance of the evidence.

The Florida Supreme Court has often decided, however, that once a defendant meets the burden of production on an affirmative defense, the burden of persuasion is on the State to disprove the affirmative defense beyond a reasonable doubt (e.g., self-defense and consent to enter in a burglary prosecution). In the absence of case law, trial judges must resolve the issue via a special instruction. See the opinion in Dixon v. United States, 548 U.S. 1 (2006), for further guidance.

If burden of persuasion is on the defendant:

If you find that (defendant) **proved** (insert appropriate burden of persuasion) **that the office of the sheriff misinformed [him] [her] or otherwise prevented [him] [her] from complying with the registration requirements, you should find [him] [her] not guilty. If the defendant did not prove** (insert appropriate burden of persuasion) **that the office of the sheriff misinformed [him] [her] or otherwise prevented [him] [her] from complying, you should find [him] [her] guilty if all the elements of the charge have been proven beyond a reasonable doubt.**

Or, if the burden of disproving the affirmative defense is on the State under the beyond a reasonable standard:

If you find that the State proved beyond a reasonable doubt that the office of the sheriff did not misinform (defendant) **or did not otherwise prevent [him] [her] from complying with the registration requirements, you should find** (defendant) **guilty if all of the elements of the charge have been proven beyond a reasonable doubt. However, if you have a reasonable doubt on the issue of whether the office of the sheriff misinformed** (defendant) **or otherwise prevented [him] [her] from complying with the registration requirements, you should find [him] [her] not guilty.**

Definitions. See instruction 11.14(h) for the applicable definitions.

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comment

This instruction was adopted on June 27, 2025.

11.15 FAILURE TO REGISTER AS A SEXUAL PREDATOR (INITIALLY REGISTER – IN CUSTODY, CONTROL OR UNDER THE SUPERVISION OF THE DEPARTMENT OF CORRECTIONS)

§ 775.21(6)(b), Fla. Stat.

To prove the crime of Failure to Register as a Sexual Predator, the State must prove the following three elements beyond a reasonable doubt:

Give 1a or 1b as applicable.

1. (Defendant)

a. is a sexual predator.

b. has agreed or stipulated that [he] [she] has been convicted as a sexual predator; therefore, you should consider the sexual predator status element as proven by agreement of the parties.

If the defendant offers to stipulate, the court must accept the offer after conducting an on-the-record colloquy with the defendant. See Brown v. State, 719 So. 2d 882 (Fla. 1998); Johnson v. State, 842 So. 2d 228 (Fla. 1st DCA 2003). If there is a stipulation, the court should not give the definition of "sexual predator" or "convicted."

2. (Defendant) **is [in the custody or control of the Department of Corrections] [under the supervision of the Department of Corrections] [in the custody of a contractor-operated correctional facility] [under the supervision of the Department of Corrections, but not incarcerated].**

3. (Defendant) **[knowingly failed to register with the Department of Corrections as a sexual predator] [knowingly failed to register with the Department of Corrections within 3 days of having been classified as a sexual predator].**

Give if applicable. § 944.710, Fla. Stat.

A "contractor-operated correctional facility" is any facility, which is not operated by the Department of Corrections, for the incarceration of adults or juveniles who have been sentenced by a court and committed to the custody of the Department of Corrections.

Give if the defendant meets his or her burden of production. See Barnes v. State, 108 So. 3d 700 (Fla. 1st DCA 2013).

It is a defense to the crime of Failure to Register as a Sexual Predator that (defendant) **attempted to register as required by law but was misinformed or otherwise prevented from timely registering by the Department of Corrections.**

There is no statute for the defense of being misinformed or otherwise prevented from registering, and the case law is silent as to (1) which party bears the burden of persuasion of the affirmative defense and (2) the standard for the burden of persuasion. Under the common law, defendants had both the burden of production and the burden of persuasion on an affirmative defense by a preponderance of the evidence.

The Florida Supreme Court has often decided, however, that once a defendant meets the burden of production on an affirmative defense, the burden of persuasion is on the State to disprove the affirmative defense beyond a reasonable doubt (e.g., self-defense and consent to enter in a burglary prosecution). In the absence of case law, trial judges must resolve the issue via a special instruction. See the opinion in Dixon v. United States, 548 U.S. 1 (2006), for further guidance.

If burden of persuasion is on the defendant:

If you find that (defendant) **proved** (insert appropriate burden of persuasion) **that the Department of Corrections misinformed [him] [her] or otherwise prevented [him] [her] from registering, you should find [him] [her] not guilty. If the defendant did not prove** (insert appropriate burden of persuasion) **that the Department of Corrections misinformed [him] [her] or otherwise prevented [him] [her] from registering, you should find [him] [her] guilty if all the elements of the charge have been proven beyond a reasonable doubt.**

Or, if the burden of disproving the affirmative defense is on the State under the beyond a reasonable standard:

If you find that the State proved beyond a reasonable doubt that the Department of Corrections did not misinform (defendant) **or did not otherwise prevent [him] [her] from registering**, **you should find [him] [her] guilty, if all of the elements of the charge have also been proven beyond a reasonable doubt. However, if you have a reasonable doubt on the issue of whether the Department of Corrections misinformed** (defendant) **or otherwise prevented [him] [her] from registering, you should find [him] [her] not guilty.**

Definitions. See instruction 11.15(l) for the applicable definitions.

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comment

This instruction was adopted in 2008 [983 So. 2d 531] and amended in 2014 [148 So. 2d 1204] and on September 20, 2024.

11.15(a) FAILURE TO REGISTER AS A SEXUAL PREDATOR (INITIALLY REGISTER – NOT IN CUSTODY, CONTROL OR UNDER SUPERVISION OF THE DEPARTMENT OF CORRECTIONS OR A CONTRACTOR-OPERATED CORRECTIONAL FACILITY)

§ 775.21(6)(e), Fla. Stat.

To prove the crime of Failure to Register as a Sexual Predator, the State must prove the following four elements beyond a reasonable doubt:

Give 1a or 1b as applicable.

1. (Defendant)

a. is a sexual predator.

b. has agreed or stipulated that [he] [she] has been convicted as a sexual predator; therefore, you should consider the sexual predator status element as proven by agreement of the parties.

If the defendant offers to stipulate, the court must accept the offer after conducting an on-the-record colloquy with the defendant. See Brown v. State, 719 So. 2d 882 (Fla. 1998); Johnson v. State, 842 So. 2d 228 (Fla.1st DCA 2003). If there is a stipulation, the court should not give the definition of "sexual predator" or "convicted."

(Defendant) established or maintained a permanent, temporary, or transient residence in (name of county) County, Florida.

2. (Defendant) **was not in the custody or control of or under the supervision of the Department of Corrections and was not in the custody of a contractor-operated correctional facility.**

Give 3a or 3b as appropriate.

3. a. (Defendant) **knowingly failed to register in person with an office of the sheriff in the county where [he] [she] [established] [maintained] residence within 48 hours after [he] [she] established permanent, temporary, or transient residence in this state.**

b. (Defendant) **knowingly failed to register in person with an office of the sheriff in the county where [he] [she] was designated a sexual predator within 48 hours after having been so designated by the court.**

§ 944.710, Fla. Stat.

A "contractor-operated correctional facility" is any facility, which is not operated by the Department of Corrections, for the incarceration of adults or juveniles who have been sentenced by a court and committed to the custody of the Department of Corrections.

Give if the defendant meets his or her burden of production. See Barnes v. State, 108 So. 3d 700 (Fla. 1st DCA 2013).

It is a defense to the crime of Failure to Register as a Sexual Predator that (defendant) **attempted to register as required by law but was misinformed or otherwise prevented from timely registering by the office of the sheriff.**

There is no statute for the defense of being misinformed or otherwise prevented from registering, and the case law is silent as to (1) which party bears the burden of persuasion of the affirmative defense and (2) the standard for the burden of persuasion. Under the common law, defendants had both the burden of production and the burden of persuasion on an affirmative defense by a preponderance of the evidence.

The Florida Supreme Court has often decided, however, that once a defendant meets the burden of production on an affirmative defense, the burden of persuasion is on the State to disprove the affirmative defense beyond a reasonable doubt (e.g., self-defense and consent to enter in a burglary prosecution). In the absence of case law, trial judges must resolve the issue via a special instruction. See the opinion in Dixon v. United States, 548 U.S. 1 (2006), for further guidance.

If burden of persuasion is on the defendant:

If you find that (defendant) **proved** (insert appropriate burden of persuasion) **that the office of the sheriff misinformed [him] [her] or otherwise prevented [him] [her] from registering, you should find [him] [her] not guilty. If the defendant did not prove** (insert appropriate burden of persuasion) **that the office of the sheriff misinformed [him] [her] or otherwise prevented [him] [her] from registering, you should find [him] [her] guilty if all the elements of the charge have been proven beyond a reasonable doubt.**

Or, if the burden of disproving the affirmative defense is on the State under the beyond a reasonable standard:

If you find that the State proved beyond a reasonable doubt that the office of the sheriff did not misinform (defendant) **or did not otherwise prevent [him] [her] from registering**, **you should find [him] [her] guilty, if all of the elements of the charge have also been proven beyond a reasonable doubt. However, if you have a reasonable doubt on the issue of whether the office of the sheriff misinformed** (defendant) **or otherwise prevented [him] [her] from registering, you should find [him] [her] not guilty.**

Definitions. See instruction 11.15(l) for the applicable definitions.

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comment

This instruction was adopted in 2008 [983 So.2d 531] and amended in 2012 [85 So. 3d 1090], 2014 [148 So. 2d 1204], and on September 20, 2024.

11.15(b) FAILURE BY A SEXUAL PREDATOR TO COMPLY WITH REGISTRATION REQUIREMENTS (FAILURE TO PROVIDE REQUIRED INFORMATION)

§ 775.21(6)(a)1., and (6)(a)1.d., Fla. Stat.

To prove the crime of Failure by a Sexual Predator to Comply with Registration Requirements, the State must prove the following three elements beyond a reasonable doubt:

Give 1a or 1b as applicable.

1. (Defendant)

a. is a sexual predator.

b. has agreed or stipulated that [he] [she] has been convicted as a sexual predator; therefore, you should consider the sexual predator status element as proven by agreement of the parties.

If the defendant offers to stipulate, the court must accept the offer after conducting an on-the-record colloquy with the defendant. See Brown v. State, 719 So. 2d 882 (Fla. 1998); Johnson v. State, 842 So. 2d 228 (Fla. 1st DCA 2003). If there is a stipulation, the court should not give the definition of "sexual predator" or "convicted."

2. (Defendant) **established or maintained a permanent, temporary, or transient residence in** (name of county) **County, Florida.**

Give 3a or 3b as applicable.

§ 775.21(6)(a)1., Fla. Stat.

3. **a.** (Defendant) **knowingly failed to provide an office of the sheriff of** (name of county) **County with [his] [her] [**(name the single unprovided registration item charged, as worded in the statute)**] [any one or more of the following items: [his] [her]** (name the unprovided registration items charged, as worded in the statute)**].**

§ 775.21(6)(a)1.d., Fla. Stat.

b. (Defendant) **knowingly failed to provide either an office of the sheriff of** (name of county) **or the Department of Law Enforcement through the department's online**

system within 48 hours after a change in vehicles owned to report those vehicle information changes.

Give if the defendant meets his or her burden of production. See Barnes v. State, 108 So. 3d 700 (Fla. 1st DCA 2013).

It is a defense to the crime of Failure by a Sexual Predator to Comply with Registration Requirements that (defendant) **attempted to comply with the requirements but was misinformed or otherwise prevented from complying by the office of the sheriff.**

There is no statute for the defense of being misinformed or otherwise prevented from registering, and the case law is silent as to (1) which party bears the burden of persuasion of the affirmative defense and (2) the standard for the burden of persuasion. Under the common law, defendants had both the burden of production and the burden of persuasion on an affirmative defense by a preponderance of the evidence.

The Florida Supreme Court has often decided, however, that once a defendant meets the burden of production on an affirmative defense, the burden of persuasion is on the State to disprove the affirmative defense beyond a reasonable doubt (e.g., self-defense and consent to enter in a burglary prosecution). In the absence of case law, trial judges must resolve the issue via a special instruction. See the opinion in Dixon v. United States, 548 U.S. 1 (2006), for further guidance.

If burden of persuasion is on the defendant:

If you find that (defendant) **proved** (insert appropriate burden of persuasion) **that the office of the sheriff misinformed [him] [her] or otherwise prevented [him] [her] from complying with the registration requirements, you should find [him] [her] not guilty. If the defendant did not prove** (insert appropriate burden of persuasion) **that the office of the sheriff misinformed [him] [her] or otherwise prevented [him] [her] from complying, you should find [him] [her] guilty if all the elements of the charge have been proven beyond a reasonable doubt.**

Or, if the burden of disproving the affirmative defense is on the State under the beyond a reasonable standard:

If you find that the State proved beyond a reasonable doubt that the office of the sheriff did not misinform (defendant) **or did not otherwise prevent [him] [her] from complying with the registration requirements, you should find [him] [her] guilty, if all of the elements of the charge have also been proven beyond a reasonable doubt. However, if you have a reasonable doubt on the issue of whether the office of the sheriff**

misinformed (defendant) **or otherwise prevented [him] [her] from complying with the registration requirements, you should find [him] [her] not guilty.**

Definitions. See instruction 11.15(l) for the applicable definitions.

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comment

This instruction was adopted in 2008 [983 So. 2d 531] and amended in 2012 [85 So. 2d 1090], 2013 [113 So. 3d 754], 2014 [148 So. 3d 1204], 2016 [195 So. 3d 1088], 2018 [113 So. 3d 754], and on June 27, 2025.

11.15(c) FAILURE BY A SEXUAL PREDATOR TO COMPLY WITH REGISTRATION REQUIREMENTS (FAILURE TO COMPLY WITH REGISTRATION OF A RESIDENCE, MOTOR VEHICLE, TRAILER, MOBILE HOME, OR MANUFACTURED HOME)

§775.21(6)(a)1.b., Fla. Stat.

To prove the crime of Failure by a Sexual Predator to Comply with Registration Requirements, the State must prove the following three elements beyond a reasonable doubt:

Give 1a or 1b as applicable.

1. (Defendant)

a. is a sexual predator.

b. has agreed or stipulated that [he] [she] has been convicted as a sexual predator; therefore, you should consider the sexual predator status element as proven by agreement of the parties.

If the defendant offers to stipulate, the court must accept the offer after conducting an on-the-record colloquy with the defendant. See Brown v. State, 719 So. 2d 882 (Fla. 1998); Johnson v. State, 842 So. 2d 228 (Fla. 1st DCA 2003). If there is a stipulation, the court should not give the definition of "sexual predator" or "convicted."

2. (Defendant) **established or maintained a permanent, temporary, or transient residence in** (name of county) **County, Florida.**

Give 3a or 3b as applicable.

3. (Defendant)

a. used as [his] [her] place of residence a [motor vehicle] [trailer] [mobile home] [manufactured home];

and

knowingly failed to provide an office of the sheriff of (name of county) **County with [the** (name the single unprovided registration item charged, as worded in the statute)**] [any one or more of the following items:** (name the unprovided registration items charged, as worded in the statute)**]of the [motor vehicle] [trailer] [mobile home] [manufactured home] where [he] [she] resides.**

b. used as [his] [her] place of residence a [vessel] [live-aboard vessel] [houseboat];

and

knowingly failed to provide an office of the sheriff of (name of the county) **County with [the** (name the single unprovided registration item charged, as worded in the statute)**] [any one or more of the following items:** (name the unprovided registration items charged, as worded in the statute)**] of the [vessel] [live-aboard vessel] [houseboat] where [he] [she] resides.**

Give if the defendant meets his or her burden of production. See Barnes v. State, 108 So. 3d 700 (Fla. 1st DCA 2013).

It is a defense to the crime of Failure by a Sexual Predator to Comply with Registration Requirements that (defendant) **attempted to comply with the requirements but was misinformed or otherwise prevented from complying by the office of the sheriff.**

There is no statute for the defense of being misinformed or otherwise prevented from registering, and the case law is silent as to (1) which party bears the burden of persuasion of the affirmative defense and (2) the standard for the burden of persuasion. Under the common law, defendants had both the burden of production and the burden of persuasion on an affirmative defense by a preponderance of the evidence.

The Florida Supreme Court has often decided, however, that once a defendant meets the burden of production on an affirmative defense, the burden of persuasion is on the State to disprove the affirmative defense beyond a reasonable doubt (e.g., self-defense and consent to enter in a burglary prosecution). In the absence of case law, trial judges must resolve the issue via a special instruction. See the opinion in Dixon v. United States, 548 U.S. 1 (2006), for further guidance.

If burden of persuasion is on the defendant:

If you find that (defendant) **proved** (insert appropriate burden of persuasion) **that the office of the sheriff misinformed [him] [her] or otherwise prevented [him] [her] from complying with the registration requirements, you should find [him] [her] not guilty. If the defendant did not prove** (insert appropriate burden of persuasion) **that the office of the sheriff misinformed [him] [her] or otherwise prevented [him] [her] from complying, you should find [him] [her] guilty if all the elements of the charge have been proven beyond a reasonable doubt.**

Or, if the burden of disproving the affirmative defense is on the State under the beyond a reasonable standard:

If you find that the State proved beyond a reasonable doubt that the office of the sheriff did not misinform (defendant) **or did not otherwise prevent [him] [her] from complying with the registration requirements, you should find [him] [her] guilty, if all of the elements of the charge have also been proven beyond a reasonable doubt. However, if you have a reasonable doubt on the issue of whether the office of the sheriff misinformed** (defendant) **or otherwise prevented [him] [her] from complying with the registration requirements, you should find [him] [her] not guilty.**

Definitions. See instruction 11.15(l) for the applicable definitions. The definitions for trailer, mobile home, and manufactured home are in § 320.01, Fla. Stat., and the definitions for vessel, live-aboard vessel, and houseboat are in § 327.02, Fla. Stat.

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comment

This instruction was adopted in 2008 [983 So.2d 531] and amended in 2012 [85 So. 3d 1090], 2014 [148 So. 3d 1204], 2016 [195 So. 3d 1088], and 2018.

11.15(d) FAILURE BY A SEXUAL PREDATOR TO COMPLY WITH REGISTRATION REQUIREMENTS (FAILURE TO COMPLY WITH [REGISTRATION] [OR] [A CHANGE] OF [ENROLLMENT] [EMPLOYMENT] [VOLUNTEERING] AT AN INSTITUTION OF HIGHER EDUCATION)

§ 775.21(6)(a)1.c., Fla. Stat. and § 775.21(6)(g)5.b.

To prove the crime of Failure by a Sexual Predator to Comply with Registration Requirements, the State must prove the following three elements beyond a reasonable doubt:

Give 1a or 1b as applicable.

1. (Defendant)

a. is a sexual predator.

b. has agreed or stipulated that [he] [she] has been convicted as a sexual predator; therefore, you should consider the sexual predator status element as proven by agreement of the parties.

If the defendant offers to stipulate, the court must accept the offer after conducting an on-the-record colloquy with the defendant. See Brown v. State, 719 So. 2d 882 (Fla. 1998); Johnson v. State, 842 So. 2d 228 (Fla. 1st DCA 2003). If there is a stipulation, the Court should not give the definition of "sexual predator" or "convicted.

1. (Defendant) [**established] [maintained] a permanent, temporary, or transient residence in** (name of county) **County, Florida.**

Give 3a or 3b as applicable. 3a is for initial registration with the sheriff and 3b is for changes to the initial information.

2. **a.** (Defendant) **was enrolled or employed, whether for compensation or as a volunteer, at an institution of higher education in this state, and knowingly failed to provide the office of the sheriff of** (name of county) **County with the name, address, and county of each institution, including each campus attended, and [his] [her] enrollment, volunteer, or employment status.**

b. (Defendant) **was enrolled or employed, whether for compensation or as a volunteer, at an institution of higher education in this state, and knowingly failed to provide [through the on-line system of the Florida Department of Law Enforcement] [or] [in person at an office of the sheriff of** (name

of county) **County] [or] [in person at the Department of Corrections if [he] [she] was in the custody or control, or under the supervision of the Department of Corrections] [or] [in person at the Department of Juvenile Justice if [he] [she] was in the custody or control, or under the supervision of the Department of Juvenile Justice] with a change in the name, address, and county of each institution, including each campus attended, and [his] [her] enrollment, volunteer, or employment status, within 48 hours after the change.**

Give if the defendant meets his or her burden of production. See Barnes v. State, 108 So. 3d 700 (Fla. 1st DCA 2013).

It is a defense to the crime of Failure by a Sexual Predator to Comply with Registration Requirements that (defendant) **attempted to comply with the requirements but was misinformed or otherwise prevented from complying by the [office of the sheriff] [Department of Corrections] [Department of Juvenile Justice].**

There is no statute for the defense of being misinformed or otherwise prevented from registering, and the case law is silent as to (1) which party bears the burden of persuasion of the affirmative defense and (2) the standard for the burden of persuasion. Under the common law, defendants had both the burden of production and the burden of persuasion on an affirmative defense by a preponderance of the evidence.

The Florida Supreme Court has often decided, however, that once a defendant meets the burden of production on an affirmative defense, the burden of persuasion is on the State to disprove the affirmative defense beyond a reasonable doubt (e.g., self-defense and consent to enter in a burglary prosecution). In the absence of case law, trial judges must resolve the issue via a special instruction. See the opinion in Dixon v. United States, 548 U.S. 1 (2006), for further guidance.

If burden of persuasion is on the defendant:

If you find that (defendant) **proved** (insert appropriate burden of persuasion) **that the [office of the sheriff] [Department of Corrections] [Department of Juvenile Justice] misinformed [him] [her] or otherwise prevented [him] [her] from complying with the registration requirements, you should find [him] [her] not guilty. If the defendant did not prove** (insert appropriate burden of persuasion) **that the [office of the sheriff] [Department of Corrections] [Department of Juvenile Justice] misinformed [him] [her] or otherwise prevented [him] [her] from complying, you should**

find [him] [her] guilty if all the elements of the charge have been proven beyond a reasonable doubt.

Or, if the burden of disproving the affirmative defense is on the State under the beyond a reasonable standard:

If you find that the State proved beyond a reasonable doubt that the [office of the sheriff] [Department of Corrections] [Department of Juvenile Justice]did not misinform (defendant) **or did not otherwise prevent [him] [her] from complying with the registration requirements, you should find [him] [her] guilty, if all of the elements of the charge have also been proven beyond a reasonable doubt. However, if you have a reasonable doubt on the issue of whether the [office of the sheriff] [Department of Corrections] [Department of Juvenile Justice] misinformed** (defendant) **or otherwise prevented [him] [her] from complying with the registration requirements, you should find [him] [her] not guilty.**

Definitions. See instruction 11.15(l) for the applicable definitions.

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comment

This instruction was adopted in 2008 [983 So.2d 531] and amended in 2012 [85 So. 3d 1090], 2014 [148 So. 3d 1204], 2016 [195 So. 3d 1088], and 2018.

11.15(e) FAILURE BY A SEXUAL PREDATOR TO COMPLY WITH REGISTRATION REQUIREMENTS (FAILURE TO REPORT TO DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES)

§ 775.21(6)(f), Fla. Stat.

To prove the crime of Failure by a Sexual Predator to Comply with Registration Requirements, the State must prove the following three elements beyond a reasonable doubt:

Give 1a or 1b as applicable.

1. (Defendant)

a. is a sexual predator.

b. has agreed or stipulated that [he] [she] has been convicted as a sexual predator; therefore, you should consider the sexual predator status element as proven by agreement of the parties.

If the defendant offers to stipulate, the court must accept the offer after conducting an on-the-record colloquy with the defendant. See Brown v. State, 719 So. 2d 882 (Fla. 1998); Johnson v. State, 842 So. 2d 228 (Fla. 1st DCA 2003). If there is a stipulation, the court should not give the definition of "sexual predator" or "convicted."

2. (Defendant) [**established] [maintained] a [permanent] [temporary] [transient] residence in** (name of county) **County, Florida.**

Give as applicable.

3. (Defendant) **was not incarcerated and had registered as a sexual predator with an office of the sheriff of** (name of county) **County,**

a. but [he] [she] failed to report in person at a driver license office of the Department of Highway Safety and Motor Vehicles within 48 hours after registering with the sheriff's office to present proof of this registration.

b. and had reported in person to a driver license office of the Department of Highway Safety and Motor Vehicles, but [he] [she] knowingly failed to [secure a Florida driver's license] [renew a Florida driver's license] [secure an identification card].

c. and had reported in person to a driver license office of the Department of Highway Safety and Motor Vehicles, but [he] [she] did not report to that office that [he] [she] was a sexual predator.

d. and had reported in person to a driver license office of the Department of Highway Safety and Motor Vehicles, but [he] [she] failed to provide that office with (insert unprovided registration items).

e. and had reported in person to a driver license office of the Department of Highway Safety and Motor Vehicles, but [he] [she] failed to provide that office with (insert unprovided registration item)**, which were necessary to confirm [his] [her] identity.**

f. and had reported in person to a driver license office of the Department of Highway Safety and Motor Vehicles, but [his] [her] place of residence was a [motor vehicle] [trailer] [mobile home] [manufactured home] [vessel] and [he] [she] failed to provide that office with (insert unprovided registration item).

Give if the defendant meets his or her burden of production. See Barnes v. State, 108 So. 3d 700 (Fla. 1st DCA 2013).

It is a defense to the crime of Failure by a Sexual Predator to Comply with Registration Requirements that (defendant) **attempted to comply with the requirements but was misinformed or otherwise prevented from complying by the Department of Highway Safety and Motor Vehicles.**

There is no statute for the defense of being misinformed or otherwise prevented from registering, and the case law is silent as to (1) which party bears the burden of persuasion of the affirmative defense and (2) the standard for the burden of persuasion. Under the common law, defendants had both the burden of production and the burden of persuasion on an affirmative defense by a preponderance of the evidence.

The Florida Supreme Court has often decided, however, that once a defendant meets the burden of production on an affirmative defense, the burden of persuasion is on the State to disprove the affirmative defense beyond a reasonable doubt (e.g., self-defense and consent to enter in a burglary prosecution). In the absence of case law, trial judges must resolve the issue via a

special instruction. See the opinion in Dixon v. United States, 548 U.S. 1 (2006), for further guidance.

If burden of persuasion is on the defendant:

If you find that (defendant) **proved** (insert appropriate burden of persuasion) **that the Department of Highway Safety and Motor Vehicles misinformed [him] [her] or otherwise prevented [him] [her] from complying with the registration requirements, you should find [him] [her] not guilty. If the defendant did not prove** (insert appropriate burden of persuasion) **that the Department of Highway Safety and Motor Vehicles misinformed [him] [her] or otherwise prevented [him] [her] from complying, you should find [him] [her] guilty if all the elements of the charge have been proven beyond a reasonable doubt.**

Or, if the burden of disproving the affirmative defense is on the State under the beyond a reasonable standard:

If you find that the State proved beyond a reasonable doubt that the Department of Highway Safety and Motor Vehicles did not misinform (defendant) **or did not otherwise prevent [him] [her] from complying with the registration requirements, you should find [him] [her] guilty, if all of the elements of the charge have also been proven beyond a reasonable doubt. However, if you have a reasonable doubt on the issue of whether the Department of Highway Safety and Motor Vehicles misinformed** (defendant) **or otherwise prevented [him] [her] from complying with the registration requirements, you should find [him] [her] not guilty.**

Definitions. See instruction 11.15(l) for the applicable definitions.

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comments

§ 775.21(6)(f), Fla. Stat., has an exception if a driver license or identification card that complies with the requirements of § 322.141(3), Fla. Stat., was previously secured or updated under § 944.607, Fla. Stat. If this provision of the statute is an issue in the case, the trial judge will have to draft a special instruction.

This instruction was adopted in 2008 [983 So. 2d 531] and amended in 2012 [85 So. 3d 1090], 2014 [148 So. 3d 1204], 2016 [195 So. 3d 1088], and 2018.

11.15(f) FAILURE BY A SEXUAL PREDATOR TO COMPLY WITH REGISTRATION REQUIREMENTS (FAILURE TO PROVIDE OTHER NECESSARY INFORMATION REQUESTED BY DEPARTMENT OF LAW ENFORCEMENT)

§ 775.21(6)(a)2, Fla. Stat.

To prove the crime of Failure by a Sexual Predator to Comply with Registration Requirements, the State must prove the following three elements beyond a reasonable doubt:

Give 1a or 1b as applicable.

1. (Defendant)

a. is a sexual predator.

b. has agreed or stipulated that [he] [she] has been convicted as a sexual predator; therefore, you should consider the sexual predator status element as proven by agreement of the parties.

If the defendant offers to stipulate, the court must accept the offer after conducting an on-the-record colloquy with the defendant. See Brown v. State, 719 So. 2d 882 (Fla. 1998); Johnson v. State, 842 So. 2d 228 (Fla. 1st DCA 2003). If there is a stipulation, the court should not give the definition of "sexual predator" or "convicted."

1. (Defendant) **established or maintained a permanent, temporary, or transient residence in** (name of county) **County, Florida.**

2. (Defendant) **knowingly failed to provide an office of the sheriff of** (name of county) **County with [his] [her] [(name the single unprovided registration item charged, as worded in the statute)] [any one or more of the following items determined necessary by the Florida Department of Law Enforcement: [his] [her]** (name the unprovided registration items charged, as worded in the statute)**].**

Give if the defendant meets his or her burden of production. See Barnes v. State, 108 So. 3d 700 (Fla. 1st DCA 2013).

It is a defense to the crime of Failure by a Sexual Predator to Comply with Registration Requirements that (defendant) **attempted to comply with the requirements but was misinformed or otherwise prevented from complying by the office of the sheriff.**

There is no statute for the defense of being misinformed or otherwise prevented from registering, and the case law is silent as to (1) which party bears the burden of persuasion of the affirmative defense and (2) the standard for the burden of persuasion. Under the common law, defendants had both the burden of production and the burden of persuasion on an affirmative defense by a preponderance of the evidence.

The Florida Supreme Court has often decided, however, that once a defendant meets the burden of production on an affirmative defense, the burden of persuasion is on the State to disprove the affirmative defense beyond a reasonable doubt (e.g., self-defense and consent to enter in a burglary prosecution). In the absence of case law, trial judges must resolve the issue via a special instruction. See the opinion in Dixon v. United States, 548 U.S. 1 (2006), for further guidance.

If burden of persuasion is on the defendant:

If you find that (defendant) **proved** (insert appropriate burden of persuasion) **that the office of the sheriff misinformed [him] [her] or otherwise prevented [him] [her] from complying with the registration requirements**, **you should find [him] [her] not guilty. If the defendant did not prove** (insert appropriate burden of persuasion) **that the office of the sheriff misinformed [him] [her] or otherwise prevented [him] [her] from complying, you should find [him] [her] guilty if all the elements of the charge have been proven beyond a reasonable doubt.**

Or, if the burden of disproving the affirmative defense is on the State under the beyond a reasonable standard:

If you find that the State proved beyond a reasonable doubt that the office of the sheriff did not misinform (defendant) **or did not otherwise prevent [him] [her] from complying with the registration requirements**, **you should find [him] [her] guilty, if all of the elements of the charge have also been proven beyond a reasonable doubt. However, if you have a reasonable doubt on the issue of whether the office of the sheriff misinformed** (defendant) **or otherwise prevented [him] [her] from complying with the registration requirements, you should find [him] [her] not guilty.**

Definitions. See instruction 11.15(l) for the applicable definitions.

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comment

This instruction was adopted in 2008 [983 So. 2d 531] and amended in 2012 [85 So. 3d 1090], and 2014.

11.15(g) FAILURE BY A SEXUAL PREDATOR TO COMPLY WITH REGISTRATION REQUIREMENTS (FAILURE TO REPORT CHANGE OF NAME OR ADDRESS WITHIN THE STATE OR JURISDICTION)

§ 775.21(6)(g)1.a.; § 775.21(6)(g)1.b.; § 775.21(6)(g)2.a.; § 775.21(6)(g)3.; Fla. Stat.

To prove the crime of Failure by a Sexual Predator to Comply with Registration Requirements, the State must prove the following three elements beyond a reasonable doubt:

Give 1a or 1b as applicable.

1. (Defendant)

a. is a sexual predator.

b. has agreed or stipulated that [he] [she] has been convicted as a sexual predator; therefore, you should consider the sexual predator status element as proven by agreement of the parties.

If the defendant offers to stipulate, the court must accept the offer after conducting an on-the-record colloquy with the defendant. See Brown v. State, 719 So. 2d 882 (Fla. 1998); Johnson v. State, 842 So. 2d 228 (Fla. 1st DCA 2003). If there is a stipulation, the court should not give the definition of "sexual predator" or "convicted."

2. (Defendant) [**established] [maintained] a [permanent] [temporary] [transient] residence in** (name of county) **County, Florida.**

Give as applicable.

3. (Defendant)

a. knowingly failed to report a change in [his] [her] [permanent, temporary, or transient residence] [name, by reason of marriage or other legal process] within 48 hours after the change, in person, to a driver's license office, when [his] [her] driver's license or identification card was subject to renewal.

b. was unable to secure or update a driver license or an identification card with the Department of Highway Safety and Motor Vehicles, and [he] [she] knowingly failed to report any change in [his] [her] [permanent, temporary,

or transient residence] [name, by reason of marriage or other legal process] within 48 hours after the change, in person, to the office of the sheriff of (name of county) **County.**

c. knowingly failed to report an in-state travel residence, within 48 hours after establishing the residence, either through the Department of Law Enforcement's online system or in person to an office of the sheriff of (name of county) **County.**

d. was in the custody or control of the Department of [Corrections] [Juvenile Justice] and knowingly failed to report an in-state travel residence within 48 hours after establishing the residence, in person, at the Department of [Corrections] [Juvenile Justice].

e. vacated a permanent, temporary, or transient residence, and failed to establish or maintain another permanent, temporary, or transient residence, and knowingly failed to report in person to the office of the sheriff of (name of county) **County within 48 hours after vacating the permanent, temporary, or transient residence.**

f. vacated a permanent, temporary, or transient residence and failed to establish or maintain another permanent, temporary, or transient residence, and knowingly failed to report in person to the office of the sheriff of (name of county) **County the[date upon which [he] [she] vacated the residence] [updated information regarding** (insert necessary registration information)**] [an address for the residence or other place where [he] [she] was or would be located during the time that [he] [she] failed to establish or maintain a permanent or temporary residence.**

g. remained at a permanent, temporary, or transient residence after having reported [his] [her] intent to vacate such residence, and knowing failed to report in person to the office of the sheriff of (name of county) **County [his] [her] address within 48 hours after the date upon which [he] [she] indicated [he] [she] would or did vacate such residence.**

Give if the defendant meets his or her burden of production. See Barnes v. State, 108 So. 3d 700 (Fla. 1st DCA 2013).

It is a defense to the crime of Failure by a Sexual Offender to Comply with Registration Requirements that (defendant) **attempted to comply with the requirements but was misinformed or otherwise prevented from complying by the [office of the sheriff] [Department of Highway Safety and Motor Vehicles] [Department of Law Enforcement].**

There is no statute for the defense of being misinformed or otherwise prevented from registering, and the case law is silent as to (1) which party bears the burden of persuasion of the affirmative defense and (2) the standard for the burden of persuasion. Under the common law, defendants had both the burden of production and the burden of persuasion on an affirmative defense by a preponderance of the evidence. In the absence of case law, trial judges must resolve the issue via a special instruction. See the opinion in Dixon v. United States, 548 U.S. 1 (2006), for further guidance.

If burden of persuasion is on the defendant:

If you find that (defendant) **proved** (insert appropriate burden of persuasion) **that the [office of the sheriff] [Department of Highway Safety and Motor Vehicles] [Department of Law Enforcement] misinformed [him] [her] or otherwise prevented [him] [her] from complying with the registration requirements, you should find [him] [her] not guilty. If the defendant did not prove** (insert appropriate burden of persuasion) **that the [office of the sheriff] [Department of Highway Safety and Motor Vehicles] [Department of Law Enforcement] misinformed [him] [her] or otherwise prevented [him] [her] from complying, you should find [him] [her] guilty if all the elements of the charge have been proven beyond a reasonable doubt.**

Or, if the burden of disproving the affirmative defense is on the State under the beyond a reasonable standard:

If you find that the State proved beyond a reasonable doubt that the [office of the sheriff] [Department of Highway Safety and Motor Vehicles] [Department of Law Enforcement] did not misinform (defendant) **or otherwise prevent [him] [her] from complying with the registration requirements**, **you should find [him] [her] guilty, if all of the elements of the charge have also been proven beyond a reasonable doubt. However, if you have a reasonable doubt on the issue of whether the [office of the sheriff] [Department of Highway Safety and Motor Vehicles] [Department of Law Enforcement] misinformed** (defendant) **or otherwise prevented [him] [her] from complying with the registration requirements, you should find [him] [her] not guilty.**

Definitions. See instruction 11.15(l) for the applicable definitions.

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comment

This instruction was adopted in 2008 [983 So.2d 531] and amended in 2012 [85 So. 3d 1090], 2016 [195 So. 3d 1088], and on March 20, 2026.

11.15(h) FAILURE BY A SEXUAL PREDATOR TO COMPLY WITH REGISTRATION REQUIREMENTS (FAILURE TO RESPOND)

§ 775.21(10)(a), Fla. Stat.

To prove the crime of Failure by a Sexual Predator to Comply with Registration Requirements, the State must prove the following three elements beyond a reasonable doubt:

Give 1a or 1b as applicable.

1. (Defendant)

a. is a sexual predator.

b. has agreed or stipulated that [he] [she] has been convicted as a sexual predator; therefore, you should consider the sexual predator status element as proven by agreement of the parties.

If the defendant offers to stipulate, the court must accept the offer after conducting an on-the-record colloquy with the defendant. See Brown v. State, 719 So. 2d 882 (Fla. 1998); Johnson v. State, 842 So. 2d 228 (Fla. 1st DCA 2003). If there is a stipulation, the court should not give the definition of "sexual predator" or "convicted."

2. (Defendant) **established or maintained a permanent, temporary, or transient residence in** (name of county) **County, Florida.**

Give 3a, 3b, or 3c as applicable.

3. a. (Defendant) **knowingly failed to respond to address verification correspondence from the Florida Department of Law Enforcement or from a county or local law enforcement agency within three weeks from the date of the correspondence.**

b. (Defendant) **knowingly provided false registration information by act or omission.**

c. (Defendant) **knowingly failed, by act or omission, to** (insert what is alleged and required by the statute)**.**

Give if the defendant meets his or her burden of production. See Barnes v. State, 108 So. 3d 700 (Fla. 1st DCA 2013).

It is a defense to the crime of Failure by a Sexual Predator to Comply with Registration Requirements that (defendant) **attempted to comply with the requirements but was misinformed or otherwise prevented from complying by the Florida Department of Law Enforcement.**

There is no statute for the defense of being misinformed or otherwise prevented from registering, and the case law is silent as to (1) which party bears the burden of persuasion of the affirmative defense and (2) the standard for the burden of persuasion. Under the common law, defendants had both the burden of production and the burden of persuasion on an affirmative defense by a preponderance of the evidence.

The Florida Supreme Court has often decided, however, that once a defendant meets the burden of production on an affirmative defense, the burden of persuasion is on the State to disprove the affirmative defense beyond a reasonable doubt (e.g., self-defense and consent to enter in a burglary prosecution). In the absence of case law, trial judges must resolve the issue via a special instruction. See the opinion in Dixon v. United States, 548 U.S. 1 (2006), for further guidance.

If burden of persuasion is on the defendant:

If you find that (defendant) **proved** (insert appropriate burden of persuasion) **that the Florida Department of Law Enforcement misinformed [him] [her] or otherwise prevented [him] [her] from complying with the registration requirements, you should find [him] [her] not guilty. If the defendant did not prove** (insert appropriate burden of persuasion) **that the Florida Department of Law Enforcement misinformed [him] [her] or otherwise prevented [him] [her] from complying, you should find [him] [her] guilty if all the elements of the charge have been proven beyond a reasonable doubt.**

Or, if the burden of disproving the affirmative defense is on the State under the beyond a reasonable standard:

If you find that the State proved beyond a reasonable doubt that the Florida Department of Law Enforcement did not misinform (defendant) **or did not otherwise prevent [him] [her] from complying with the registration requirements, you should find [him] [her] guilty, if all of the elements of the charge have also been proven beyond a reasonable doubt. However, if you have a reasonable doubt on the issue of whether the Florida Department of Law Enforcement misinformed** (defendant) **or otherwise prevented [him] [her] from complying, you should find [him] [her] not guilty.**

Definitions. See instruction 11.15(l) for the applicable definitions.

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comment

This instruction was adopted in 2008 [983 So. 2d 531] and amended in 2012 [85 So. 3d 1090], 2014 [148 So. 3d 1204], 2016 [195 So. 3d 1088], 2018 [249 So. 3d 554], and on June 27, 2025.

11.15(i) FAILURE BY A SEXUAL PREDATOR TO COMPLY WITH REGISTRATION REQUIREMENTS (FAILURE TO REPORT INTENT TO MOVE TO ANOTHER STATE, JURISDICTION, OR COUNTRY)

§ 775.21(6)(i), Fla. Stat.

To prove the crime of Failure by a Sexual Predator to Comply with Registration Requirements, the State must prove the following three elements beyond a reasonable doubt:

Give 1a or 1b as applicable.

1. (Defendant)

a. is a sexual predator.

b. has agreed or stipulated that he has been convicted as a sexual predator; therefore, you should consider the sexual predator status element as proven by agreement of the parties.

If the defendant offers to stipulate, the court must accept the offer after conducting an on-the-record colloquy with the defendant. See Brown v. State, 719 So. 2d 882 (Fla. 1998); Johnson v. State, 842 So. 2d 228 (Fla. 1st DCA 2003). If there is a stipulation, the court should not also give the definition of "sexual predator" or "convicted."

2. (Defendant) **established or maintained a permanent, temporary, or transient residence in** (name of county) **County, Florida.**

Give 3a, 3b or 3c as applicable.

3. (Defendant)

a. intended to leave this State to establish a permanent, temporary, or transient residence in another state, jurisdiction, or country on (date);

and

i. knowingly failed to report in person to an office of the sheriff in the county of [his] [her] current residence at least 48 hours before the date on which [he] [she] intended to leave this state to establish residence in another state or jurisdiction within the United States.

or

ii. knowingly failed to report in person to an office of the sheriff in the county of [his] [her] current residence [at least 21 days before the date on which [he] [she] intended to travel outside the United States] [as soon as possible before departure if [he] [she] did not know about leaving this state to travel outside the United States at least 21 days in advance of the departure].

b. (Defendant)

reported to an office of the sheriff of the county of [his] [her] current residence [his] [her] intention to establish residence in another state, or jurisdiction, or country;

and

knowingly failed to provide [[his] [her] (name the single unprovided registration item charged, as worded in the statute)] [any one or more of the following items: [his] [her] (name the unprovided registration items charged, as worded in the statute).]

c. (Defendant) **intended to travel internationally and knowingly failed to provide to the office of the sheriff in the county of [his] [her] current residence [his] [her] expected departure and return dates, flight number, [airport] [cruise] of departure or any other means of intended travel.**

Read only if the defendant is charged with failing to provide a physical residential address.

The defendant shall provide a physical residential address. A post office box shall not be provided in lieu of a physical residential address.

Give if the defendant meets his or her burden of production. See Barnes v. State, 108 So. 3d 700 (Fla. 1st DCA 2013).

It is a defense to the crime of Failure by a Sexual Predator to Comply with Registration Requirements that (defendant) **attempted to comply with the requirements but was misinformed or otherwise prevented from complying by the office of the sheriff.**

There is no statute for the defense of being misinformed or otherwise prevented from registering, and the case law is silent as to (1) which party bears the burden of persuasion of the affirmative defense and (2) the standard for the burden of persuasion. Under the common law, defendants had both the burden

of production and the burden of persuasion on an affirmative defense by a preponderance of the evidence.

The Florida Supreme Court has often decided, however, that once a defendant meets the burden of production on an affirmative defense, the burden of persuasion is on the State to disprove the affirmative defense beyond a reasonable doubt (e.g., self-defense and consent to enter in a burglary prosecution). In the absence of case law, trial judges must resolve the issue via a special instruction. See the opinion in Dixon v. United States, 548 U.S. 1 (2006), for further guidance.

If burden of persuasion is on the defendant:

If you find that (defendant) **proved** (insert appropriate burden of persuasion) **that the office of the sheriff misinformed [him] [her] or otherwise prevented [him] [her] from complying with the registration requirements, you should find [him] [her] not guilty. If the defendant did not prove** (insert appropriate burden of persuasion) **that the office of the sheriff misinformed [him] [her] or otherwise prevented [him] [her] from complying, you should find [him] [her] guilty if all the elements of the charge have been proven beyond a reasonable doubt.**

Or, if the burden of disproving the affirmative defense is on the State under the beyond a reasonable standard:

If you find that the State proved beyond a reasonable doubt that the office of the sheriff did not misinform (defendant) **or did not otherwise prevent [him] [her] from complying with the registration requirements, you should find [him] [her] guilty, if all of the elements of the charge have also been proven beyond a reasonable doubt. However, if you have a reasonable doubt on the issue of whether the office of the sheriff misinformed** (defendant) **or otherwise prevented [him] [her] from complying with the registration requirements, you should find [him] [her] not guilty.**

Definitions. See instruction 11.15(l) for the applicable definitions.

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comment

This instruction was adopted in 2008 [983 So. 2d 531] and amended in 2012 [85 So. 3d 1090], 2013 [113 So. 3d 754], 2014 [148 So. 3d 1204], 2016 [195 So. 3d 1088], 2018 [113 So. 3d 754], and on June 27, 2025.

11.15(j) FAILURE BY A SEXUAL PREDATOR TO COMPLY WITH REGISTRATION REQUIREMENTS (FAILURE TO REPORT INTENT TO REMAIN WITHIN THE STATE OR JURISDICTION)

§ 775.21(6)(j), Fla. Stat.

To prove the crime of Failure by a Sexual Predator to Comply with Registration Requirements, the State must prove the following five elements beyond a reasonable doubt:

Give 1a or 1b as applicable.

1. (Defendant)

a. is a sexual predator.

b. has agreed or stipulated that [he] [she] has been convicted as a sexual predator; therefore, you should consider the sexual predator status element as proven by agreement of the parties.

If the defendant offers to stipulate, the court must accept the offer after conducting an on-the-record colloquy with the defendant. See Brown v. State, 719 So. 2d 882 (Fla. 1998); Johnson v. State, 842 So. 2d 228 (Fla. 1st DCA 2003). If there is a stipulation, the court should not also give the definition of "sexual predator" or "convicted."

2. (Defendant) **established or maintained a permanent, temporary, or transient residence in** (name of county) **County, Florida.**

3. (Defendant) **indicated to an office of the sheriff of** (name of county) **County [his] [her] intent to leave this state on** (date of intended departure) **and establish a permanent, temporary, or transient residence in another state or jurisdiction or intent to travel to another country.**

4. (Defendant) **later decided to remain in this state.**

5. Within 48 hours after the date of [his] [her] originally intended departure from this state, (defendant) **knowingly failed to report to an office of the sheriff of** (name of county) **County that [he] [she] instead decided to remain in this state.**

Give if the defendant meets his or her burden of production. See Barnes v. State, 108 So. 3d 700 (Fla. 1st DCA 2013).

It is a defense to the crime of Failure to Comply with Registration Requirements as a Sexual Predator that (defendant) **attempted to comply with the requirements but was misinformed or otherwise prevented from complying by the office of the sheriff.**

There is no statute for the defense of being misinformed or otherwise prevented from registering, and the case law is silent as to (1) which party bears the burden of persuasion of the affirmative defense and (2) the standard for the burden of persuasion. Under the common law, defendants had both the burden of production and the burden of persuasion on an affirmative defense by a preponderance of the evidence.

The Florida Supreme Court has often decided, however, that once a defendant meets the burden of production on an affirmative defense, the burden of persuasion is on the State to disprove the affirmative defense beyond a reasonable doubt (e.g., self-defense and consent to enter in a burglary prosecution). In the absence of case law, trial judges must resolve the issue via a special instruction. See the opinion in Dixon v. United States, 548 U.S. 1 (2006), for further guidance.

If burden of persuasion is on the defendant:

If you find that (defendant) **proved** (insert appropriate burden of persuasion) **that the office of the sheriff misinformed [him] [her] or otherwise prevented [him [her] from complying with the registration requirements, you should find [him] [her] not guilty. If the defendant did not prove** (insert appropriate burden of persuasion) **that the office of the sheriff misinformed [him] [her] or otherwise prevented [him] [her] from complying, you should find [him] [her] guilty if all the elements of the charge have been proven beyond a reasonable doubt.**

Or, if the burden of disproving the affirmative defense is on the State under the beyond a reasonable standard:

If you find that the State proved beyond a reasonable doubt that the office of the sheriff did not misinform (defendant) **or did not otherwise prevent [him] [her] from complying with the registration requirements**, **you should find [him] [her] guilty, if all of the elements of the charge have also been proven beyond a reasonable doubt. However, if you have a reasonable doubt on the issue of whether the office of the sheriff misinformed** (defendant) **or otherwise prevented [him] [her] from complying with the registration requirements, you should find [him] [her] not guilty.**

Definitions. See instruction 11.15(l) for the applicable definitions.

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comment

This instruction was adopted in 2008 [983 So.2d 531] and amended in 2012 [85 So. 3d 1090], 2014 [148 So. 3d 1204], and on June 27, 2025.

11.15(k) FAILURE BY A SEXUAL PREDATOR TO COMPLY WITH REGISTRATION REQUIREMENTS (FAILURE TO REGISTER QUARTERLY)

§ 775.21(8)(a), Fla. Stat.

To prove the crime of Failure by a Sexual Predator to Comply with Registration Requirements, the State must prove the following three elements beyond a reasonable doubt:

Give 1a or 1b as applicable.

1. (Defendant)

a. is a sexual predator.

a. has agreed or stipulated that [he] [she] has been convicted as a sexual predator; therefore, you should consider the sexual predator status element as proven by agreement of the parties.

If the defendant offers to stipulate, the court must accept the offer after conducting an on-the-record colloquy with the defendant. See Brown v. State, 719 So. 2d 882 (Fla. 1998); Johnson v. State, 842 So. 2d 228 (Fla. 1st DCA 2003). If there is a stipulation, the court should not also give the definition of "sexual predator" or "convicted."

2. (Defendant) **[established] [maintained] a permanent, temporary, or transient residence in** (name of county) **County, Florida.**

Give 3a, 3b, or 3c as applicable.

3. (Defendant)

a. knowingly failed to reregister by reporting in person during [his] [her] birthday month in (year) **to an office of the sheriff in the county in which [he] [she] resides or is otherwise located.**

b. knowingly failed to reregister by reporting in person during every third month following [his] [her] (year) **birthday month to an office of the sheriff in the county in which [he] [she] resides or is otherwise located.**

c. knowingly failed to provide an office of the sheriff of (name of county) **County with a change to [his] [her] [**(name the single unprovided registration item charged, as worded in the statute)**] [any one or more of the following items: [his] [her]**

(name the unprovided registration items charged, as worded in the statute)**].**

Read only if the defendant is charged with failing to provide a physical residential address.

The defendant shall provide a physical residential address. A post office box shall not be provided in lieu of a physical residential address.

Give if the defendant meets his or her burden of production. See Barnes v. State, 108 So. 3d 700 (Fla. 1st DCA 2013).

It is a defense to the crime of Failure to Comply with Registration Requirements as a Sexual Predator that (defendant) **attempted to comply with the requirements but was misinformed or otherwise prevented from complying by the office of the sheriff.**

There is no statute for the defense of being misinformed or otherwise prevented from registering, and the case law is silent as to (1) which party bears the burden of persuasion of the affirmative defense and (2) the standard for the burden of persuasion. Under the common law, defendants had both the burden of production and the burden of persuasion on an affirmative defense by a preponderance of the evidence.

The Florida Supreme Court has often decided, however, that once a defendant meets the burden of production on an affirmative defense, the burden of persuasion is on the State to disprove the affirmative defense beyond a reasonable doubt (e.g., self-defense and consent to enter in a burglary prosecution). In the absence of case law, trial judges must resolve the issue via a special instruction. See the opinion in Dixon v. United States, 548 U.S. 1 (2006), for further guidance.

If burden of persuasion is on the defendant:

If you find that (defendant) **proved** (insert appropriate burden of persuasion) **that the office of the sheriff misinformed [him] [her] or otherwise prevented [him] [her] from complying with the registration requirements, you should find [him] [her] not guilty. If the defendant did not prove** (insert appropriate burden of persuasion) **that the office of the sheriff misinformed [him] [her] or otherwise prevented [him] [her] from complying, you should find [him] [her] guilty if all the elements of the charge have been proven beyond a reasonable doubt.**

Or, if the burden of disproving the affirmative defense is on the State under the beyond a reasonable standard:

If you find that the State proved beyond a reasonable doubt that the office of the sheriff did not misinform (defendant) **or did not otherwise prevent [him] [her] from complying with the registration requirements**, **you should find [him] [her] guilty, if all of the elements of the charge have also been proven beyond a reasonable doubt. However, if you have a reasonable doubt on the issue of whether the office of the sheriff misinformed** (defendant) **or otherwise prevented [him] [her] from complying with the registration requirements, you should find [him] [her] not guilty.**

Definitions. See instruction 11.15(l) for the applicable definitions.

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comment

This instruction was adopted in 2008 [983 So. 2d 531] and amended in 2012 [85 So. 3d 1090], 2013 [113 So. 3d 754], and 2014.

11.15(*l*) SEXUAL PREDATOR DEFINITIONS

§ 775.21(2) and (4), Fla. Stat.

"Sexual predator" means a person who:

1. **has been designated a sexual predator, in a written order of a Florida court, on or after October 1, 1993; and**

2. **has not received a pardon for the offense(s) necessary for the designation as a sexual predator; and**

3. **the written order designating the defendant a sexual predator has not been set aside in any judicial proceeding.**

"Change in status at an institution of higher education" means the commencement or termination of enrollment, including, but not limited to, traditional classroom setting or online courses, or employment, whether for compensation or as a volunteer, at an institution of higher education or a change in location of enrollment or employment, whether for compensation or as a volunteer, at an institution of higher education.

"Community" means any county where the sexual predator lives or otherwise establishes or maintains a permanent, temporary, or transient residence.

"Convicted" means there has been a determination of guilt as a result of a trial or the entry of a plea of guilty or nolo contendere, regardless of whether adjudication is withheld. *(Note to Judge: For military, federal, and out of state convictions, see § 775.21(2)(e), Fla. Stat.)*

"Electronic mail address" means a destination, commonly expressed as a string of characters, to which electronic mail may be sent or delivered.

"Institution of higher education" means a career center, community college, college, state university, or independent postsecondary institution.

"Internet identifier" means any designation, moniker, screen name, username, or other name used for self-identification to send or receive social Internet communication. "Internet identifier" does not include a date of birth, social security number, personal identification number (PIN), or password.

"Social Internet communication" means any communication through a commercial social networking website or application software. The term does not include any of the following:

1. **Communication for which the primary purpose is the facilitation of commercial transactions involving goods or services;**

2. **Communication on an Internet website for which the primary purpose of the website is the dissemination of news; or**

3. **Communication with a governmental entity.**

"Commercial social networking website" means a commercially operated Internet website that allows users to create web pages or profiles that provide information about themselves and are available publicly or to other users and that offers a mechanism for communication with other users, such as a forum, chat room, electronic mail, or instant messenger.

"Application software" means any computer program designed to run on a mobile device such as a smartphone or tablet computer, that allows users to create web pages or profiles that provide information about themselves and are available publicly or to other users, and that offers a mechanism for communication with other users through a forum, a chatroom, electronic mail, or an instant messenger.

"Physical residential address" does not include a post office box but may be a location that has no specific street address.

"Permanent residence" means a place where the person abides, lodges, or resides for 3 or more consecutive days that is the person's home or other place where the person primarily lives. The first day that a person abides, lodges, or resides at a place is excluded and each subsequent day is counted. A day includes any part of a calendar day.

"Professional license" means the document of authorization or certification issued by an agency of this state for a regulatory purpose, or by any similar agency in another jurisdiction for a regulatory purpose, to a person to engage in an occupation or to carry out a trade or business.

"Temporary residence" means a place where the person abides, lodges, or resides including, but not limited to, vacation, business, or personal travel destinations in or out of this state, for 3 or more days in the aggregate during any calendar year that is not the person's permanent or transient residence. For a person whose permanent residence is not in this state, the term also includes a place where the person is employed, practices a vocation, or is enrolled as a student for any period of time in

this state. The term includes an "in-state travel residence," which means a temporary residence in this state established by a person who already has an existing permanent, temporary, or transient residence in this state. The first day that a person abides, lodges, or resides at a place is excluded and each subsequent day is counted. A day includes any part of a calendar day.

"Transient residence" means a place or county where a person lives, remains, or is located for the purpose of abiding, lodging, or residing for 3 or more days in the aggregate during a calendar year that is not the person's permanent or temporary residence. The term includes, but is not limited to, a place where the person sleeps or seeks shelter and a location that has no specific street address. The first day that a person abides, lodges, or resides at a place is excluded and each subsequent day is counted. A day includes any part of a calendar day.

"Vehicles owned" means any motor vehicle which is registered, co-registered, leased, titled, or rented by a sexual predator or sexual offender; a rented vehicle that a sexual predator or sexual offender is authorized to drive; or a vehicle for which a sexual predator or sexual offender is insured as a driver. The term also includes any motor vehicle which is registered, co-registered, leased, titled, or rented by a person or persons residing at a sexual predator's or sexual offender's permanent residence for 3 or more consecutive days.

Many of these terms have their own statutory definition which should be defined if applicable.

"Motor vehicle" means an automobile, motorcycle, truck, trailer, semitrailer, truck tractor and semitrailer combination, or any other vehicle operated on the roads of this state, used to transport persons or property, and propelled by power other than muscular power [but the term does not include traction engines, road rollers, motorized scooters, micromobility devices, personal delivery devices, mobile carriers, special mobile equipment, vehicles that run only upon a track, bicycles, electric bicycles, swamp buggies, or mopeds].

["Motor vehicle" includes a recreational vehicle-type unit primarily designed as temporary living quarters for recreational, camping, or travel use, which either has its own motive power or is mounted on or drawn by another vehicle.] *There are additional definitions for recreational vehicle-type units in § 320.01(1)(b), Fla. Stat. that may need to be given.*

Comments

Other definitions may be found in § 775.21(2), Fla. Stat.

This instruction was adopted in 2008 [983 So. 2d 531] and amended in 2012 [85 So. 3d 1090], 2013 [113 So. 3d 754], 2016 [195 So. 3d 1088], 2018 [249 So. 3d 554], 2018 [260 So. 3d 1024], on October 2, 2020, on June 27, 2025, and on March 20, 2026.

11.15(m) FAILURE BY A SEXUAL PREDATOR TO COMPLY WITH REGISTRATION REQUIREMENTS (FAILURE TO REPORT EVERY 30 DAYS FOR TRANSIENT RESIDENTS)

§§ 775.21(6)(g)2.b. and 775.21(6)(g)4., Fla. Stat.

Give this if the charge is failure to report every 30 days after registering with information regarding a transient residence.

To prove the crime of Failure by a Sexual Predator to Comply with Registration Requirements, the State must prove the following three elements beyond a reasonable doubt:

Give 1a or 1b as applicable.

1. (Defendant)

a. is a sexual predator.

b. has agreed or stipulated that [he] [she] has been convicted as a sexual predator; therefore, you should consider the sexual predator status element as proven by agreement of the parties.

If the defendant offers to stipulate, the court must accept the offer after conducting an on-the-record colloquy with the defendant. See Brown v. State, 719 So. 2d 882 (Fla. 1998); Johnson v. State, 842 So. 2d 228 (Fla. 1st DCA 2003). If there is a stipulation, the court should not also give the definition of "sexual predator" or "convicted."

2. (Defendant) **established a transient residence in** (name of county) **County, Florida.**

3. (Defendant) **knowingly failed to report the address and location where [he] [she] maintained a transient residence, in person, to the office of the sheriff in the county in which [he] [she] maintained a transient residence, every 30 days after [he] [she] initially reported to the sheriff that [he] [she] had established a transient residence.**

Read only if the defendant is charged with failing to provide a physical residential address.

The defendant shall provide a physical residential address. A post office box shall not be provided in lieu of a physical residential address.

Give if the defendant meets his or her burden of production. See Barnes v. State, 108 So. 3d 700 (Fla. 1st DCA 2013).

It is a defense to the crime of Failure to Comply with Registration Requirements as a Sexual Predator that (defendant) **attempted to comply with the requirements but was misinformed or otherwise prevented from complying by the office of the sheriff.**

There is no statute for the defense of being misinformed or otherwise prevented from registering, and the case law is silent as to (1) which party bears the burden of persuasion of the affirmative defense and (2) the standard for the burden of persuasion. Under the common law, defendants had both the burden of production and the burden of persuasion on an affirmative defense by a preponderance of the evidence.

The Florida Supreme Court has often decided, however, that once a defendant meets the burden of production on an affirmative defense, the burden of persuasion is on the State to disprove the affirmative defense beyond a reasonable doubt (e.g., self-defense and consent to enter in a burglary prosecution). In the absence of case law, trial judges must resolve the issue via a special instruction. See the opinion in Dixon v. United States, 548 U.S. 1 (2006), for further guidance.

If burden of persuasion is on the defendant:

If you find that (defendant) **proved** (insert appropriate burden of persuasion) **that the office of the sheriff misinformed [him] [her] or otherwise prevented [him] [her] from complying with the registration requirements, you should find [him] [her] not guilty. If the defendant did not prove** (insert appropriate burden of persuasion) **that the office of the sheriff misinformed [him] [her] or otherwise prevented [him] [her] from complying, you should find [him] [her] guilty if all the elements of the charge have been proven beyond a reasonable doubt.**

Or, if the burden of disproving the affirmative defense is on the State under the beyond a reasonable standard:

If you find that the State proved beyond a reasonable doubt that the office of the sheriff did not misinform (defendant) **or did not otherwise prevent [him] [her] from complying with the registration requirements**, **you should find [him] [her] guilty, if all of the elements of the charge have also been proven beyond a reasonable doubt. However, if you have a reasonable doubt on the issue of whether the office of the sheriff misinformed** (defendant) **or otherwise prevented [him] [her] from complying with the registration requirements, you should find [him] [her] not guilty.**

Definitions. See instruction 11.15(l) for the applicable definitions.

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comment

This instruction was adopted in 2016.

11.15(n) FAILURE BY A SEXUAL PREDATOR TO COMPLY WITH REGISTRATION REQUIREMENTS (FAILURE TO REPORT CHANGE IN VEHICLE OWNED)

§ 775.21(6)(a)(1)d., Fla. Stat.

To prove the crime of Failure by a Sexual Predator to Comply with Registration Requirements, the State must prove the following three elements beyond a reasonable doubt:

Give 1a or 1b as applicable.

1. (Defendant)

a. is a sexual predator.

b. has agreed or stipulated that [he] [she] has been convicted as a sexual predator; therefore, you should consider the sexual predator status element as proven by agreement of the parties.

If the defendant offers to stipulate, the court must accept the offer after conducting an on-the-record colloquy with the defendant. See Brown v. State, 719 So. 2d 882 (Fla. 1998); Johnson v. State, 842 So. 2d 228 (Fla. 1st DCA 2003). If there is a stipulation, the court should not give the definition of "sexual predator" or "convicted."

2. (Defendant) [**established] [maintained] a [permanent] [temporary] [transient] residence in** (name of county) **County, Florida.**

Give as applicable.

3. (Defendant)

a. knowingly failed to report either to the Department of Law Enforcement through its online system or in person to the office of the sheriff of (name of county) **County of any change in a vehicle owned within 48 hours after the change.**

b. was under the supervision of the Department of [Corrections] [Juvenile Justice] and knowingly failed to report in person to the office of the sheriff of (name of county) **County of any change in a vehicle owned within 48 hours after the change.**

Give if the defendant meets his or her burden of production. See Barnes v. State, 108 So. 3d 700 (Fla. 1st DCA 2013).

It is a defense to the crime of Failure by a Sexual Offender to Comply with Registration Requirements that (defendant) **attempted to comply with the requirements but was misinformed or otherwise prevented from complying by the [office of the sheriff] [Department of Law Enforcement].**

There is no statute for the defense of being misinformed or otherwise prevented from registering, and the case law is silent as to (1) which party bears the burden of persuasion of the affirmative defense and (2) the standard for the burden of persuasion. Under the common law, defendants had both the burden of production and the burden of persuasion on an affirmative defense by a preponderance of the evidence. In the absence of case law, trial judges must resolve the issue via a special instruction. See the opinion in Dixon v. United States, 548 U.S. 1 (2006), for further guidance.

If burden of persuasion is on the defendant:

If you find that (defendant) **proved** (insert appropriate burden of persuasion) **that the [office of the sheriff] [Department of Law Enforcement] misinformed [him] [her] or otherwise prevented [him] [her] from complying with the registration requirements, you should find [him] [her] not guilty. If the defendant did not prove** (insert appropriate burden of persuasion) **that the [office of the sheriff] [Department of Law Enforcement misinformed [him] [her] or otherwise prevented [him] [her] from complying, you should find [him] [her] guilty if all the elements of the charge have been proven beyond a reasonable doubt.**

Or, if the burden of disproving the affirmative defense is on the State under the beyond a reasonable standard:

If you find that the State proved beyond a reasonable doubt that the [office of the sheriff] [Department of Law Enforcement] did not misinform (defendant) **or otherwise prevent [him] [her] from complying with the registration requirements**, **you should find [him] [her] guilty, if all of the elements of the charge have also been proven beyond a reasonable doubt. However, if you have a reasonable doubt on the issue of whether the [office of the sheriff] [Department of Law Enforcement] misinformed** (defendant) **or otherwise prevented [him] [her] from complying with the registration requirements, you should find [him] [her] not guilty.**

Definitions. See instruction 11.15(l) for the applicable definitions.

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comment

This instruction was adopted on March 20, 2026.

11.16 DANGEROUS SEXUAL FELONY OFFENDER

§ 794.0115, Fla. Stat.

(For crimes committed on or after July 1, 2003.)

If you find (defendant) **guilty of** (felony, as identified by section 794.0115(2), Fla. Stat.) **you must then determine whether the State has further proved beyond a reasonable doubt:**

1. (Defendant) **was 18 years of age or older at the time of the commission of the offense.**

and

Give as applicable.

2. (Defendant)

a. caused serious personal injury to (victim) **as a result of the commission of the offense.**

b. used or threatened to use a deadly weapon during the commission of the offense.

c. victimized more than one person during the course of the criminal episode applicable to the offense.

Definitions. Give as applicable.

"Serious personal injury" means great bodily harm or pain, permanent disability, or permanent disfigurement.

A "deadly weapon" is any object that will likely cause death or great bodily harm if used or threatened to be used in the ordinary and usual manner contemplated by its design and construction.

Give if applicable.

An object not designed to inflict bodily harm may nonetheless be a "deadly weapon" if it was used or threatened to be used in a manner likely to cause death or great bodily harm.

"Great bodily harm" means great as distinguished from slight, trivial, minor, or moderate harm, and as such does not include mere bruises.

Comments

A special instruction will be necessary in cases where the deadly weapon was an animal or a substance or something that is not commonly referred to as an "object."

This instruction was adopted in 2008 [980 So. 2d 1054] and amended on April 3, 2020.

11.16(a) DANGEROUS SEXUAL FELONY OFFENDER

§ 794.0115, Fla. Stat.

(For crimes committed on or after July 1, 2003.)

(For use when defendant has been found guilty of s. 794.0115(2)(d) or (e), Fla. Stat.).

Having found (defendant) **guilty of** (felony, as identified by section 794.0115(2), Fla. Stat., that defendant has been found guilty of committing) **you must now determine whether the State has proven beyond a reasonable doubt whether** (defendant)**:**

1. (Defendant) **was 18 years of age or older at the time of the commission of the offense**

and

Give 2a or 2b as applicable.

2. (Defendant)

a. committed the offense while under the jurisdiction of a court for a felony offense under the laws of this state, for an offense that is a felony in another jurisdiction, or for an offense that would be a felony if that offense were committed in this state.

b. had been convicted of (felony, as identified by section 794.0115(2)(e), Fla. Stat.) **and the date of the offense in the prior conviction was before the commission of this offense.**

Comment

This instruction was adopted in 2008 [980 So. 2d 1054] and 2013.

11.17 UNLAWFUL RESIDENCY BY A SEX OFFENDER

§ 775.215(2) & (3), Fla. Stat.

To prove the crime of Unlawful Residency by a Sex Offender, the State must prove the following four elements beyond a reasonable doubt:

1. (Defendant) **was convicted of**

Give a or b as applicable.

a. Florida Statute [794.011] [800.04] [827.071 [847.0135(5)] [847.0145]

b. a crime in another jurisdiction other than the State of Florida that is similar to Florida Statute [794.011] [800.04] [827.071] [847.0135(5)] [847.0145]

2. The victim of that crime was less than 16 years of age when the crime was committed.

3. *Give as applicable.*

a. The date that the crime occurred for the defendant's conviction of Florida Statute [794.011] [800.04] [827.071] [847.0135(5)] [847.0145] was on or after October 1, 2004, but before July 1, 2026.

b. The date that the crime occurred for the defendant's conviction in another jurisdiction that is similar to Florida Statute [794.011] [800.04] [827.071] [847.0135(5) [847.0145] was on or after May 26, 2010, but before July 1, 2026.

c. The date that the crime occurred for the defendant's conviction of Florida Statute [794.011] [800.04] [827.071] [847.0135(5)] [847.0145] was on or after July 1, 2026.

d. The date that the crime occurred for the defendant's conviction in another jurisdiction that is similar to Florida Statute [794.011] [800.04] [827.071] [847.0135(5) [847.0145] was on or after July 1, 2026.

Give as applicable. The alternative of "public swimming pool" became effective on July 1, 2026

4. **a.** **After the conviction,** (defendant) **resided within 1,000 feet of a [school] [child care facility] [park] [playground] [public swimming pool].**

b. **After the conviction and on or after July 1, 2026,** (defendant) **changed his permanent residence to reside within 1,000 feet of a [school] [child care facility] [park] [playground] [public swimming pool].**

As of September 2026, it was undetermined whether residence before establishment or removal from the requirement to register prior to the alleged residence violation is an affirmative defense or an element. If an affirmative defense, the defendant must meet his or her burden of production. The trial court will then have to decide which party bears the burden of persuasion and what the burden of persuasion should be (preponderance, clear and convincing, beyond a reasonable doubt).

It is not a crime for (defendant) **to have lived within 1,000 feet of a [school] [child care facility] [park] [playground] [public swimming pool], if you find that** (defendant) **resided there before the [school] [child care facility] [park] [playground] [public swimming pool] was established.** (*Insert appropriate burden of persuasion allocated to appropriate party*).

It is not a crime for (defendant) **to have lived within 1,000 feet of a [school] [child care facility] [park] [playground] [public swimming pool], if you find that prior to the alleged residence violation,** (defendant) **had been removed from the requirement to register as a sexual offender or a sexual predator.** (*Insert appropriate burden of persuasion allocated to appropriate party*).

Give if applicable and provide a special verdict. See Fla. Stat. 775.215(2)(b).

If you find the defendant guilty of Unlawful Residency by a Sex Offender, you must then determine in your verdict whether the State has proven beyond a reasonable doubt that the conviction for Fla. Stat. [794.011] [800.04] [827.071] [847.0135(5)] [847.0145] [was classified as a felony of the [first degree or higher] [second or third degree].

Give if applicable and provide a special verdict. See Fla. Stat. 775.215(3)(b).

If you find the defendant guilty of Unlawful Residency by a Sex Offender, you must then determine in your verdict whether the State has proven beyond a reasonable doubt that the conviction in the other jurisdiction for the crime that was similar to Fla. Stat. [794.011] [800.04]

[827.071] [847.0135(5)] [847.0145] resulted in a penalty that is substantially similar to a felony of the [first degree or higher] [second or third degree].

§402.302 Fla. Stat. Further instruction may be required if § 402.3025, Fla. Stat., "child care personnel," or chapter 435 are at issue.

"Child care facility" includes any child care center or child care arrangement which provides child care for more than five children unrelated to the operator and which receives a payment, fee, or grant for any of the children receiving care, wherever operated, and whether or not operated for profit.

[The following are not included:

(a) Public schools and nonpublic schools and their integral programs, except as provided in Florida Statute 402.3025;

(b) Summer camps having children in full-time residence;

(c) Summer day camps;

(d) Bible schools normally conducted during vacation periods; and

(e) Operators of transient establishments, as defined in chapter 509, which provide child care services solely for the guests of their establishment or resort, provided that all child care personnel of the establishment are screened according to the level 2 screening requirements of chapter 435.]

"Park" means all public and private property specifically designated as being used for recreational purposes and where children regularly congregate.

"Permanent residence" means a place where the person abides, lodges, or resides for 3 or more consecutive days which is the person's home or other place where the person primarily lives. For the purpose of calculating a permanent residence, the first day that a person abides, lodges, or resides at a place is excluded and each subsequent day is counted. A day includes any part of a calendar day.

"Playground" means a designated independent area in the community or neighborhood that is designated solely for children and has one or more play structures.

"Public swimming pool" means a structure that is located either indoors or outdoors and used for recreational bathing or swimming by humans. The term includes a conventional pool, spa-type pool, wading pool, special purpose pool, spray pool, splash pad, or other water recreation attraction, to which admission may be gained with or without payment of a fee, regardless of whether entry to the swimming pool is limited by a gate or other method of controlling access. The term includes swimming pools operated by or serving subdivisions, apartments, condominiums, mobile home parks, or townhouses, or any pool operated by a governmental entity which is held open to the public. The term does not include a swimming pool at a private single-family residence, hotel, motel, or recreational vehicle park, or a swimming pool where the operator prohibits the use of such pool by persons younger than 18 years of age.

§1003.01 Fla. Stat. Further statutory definitions will be needed if the bracketed types of schools are at issue.

"School" means an organization of students, ranging from elementary through secondary or high school, for instructional purposes, or other public school level authorized under the rules of the State Board of Education.

[A "school" includes a private school that is a nonpublic school as defined in § 1002.01(2).]

["School" includes [a voluntary prekindergarten education program as described in § 402.3025(1)] [a public school as described in § 402.3025(1)] [the Florida School for the Deaf and Blind] [the Florida Virtual School as established under §. 1002.37]. ["School" does not include facilities used exclusively for the education of adults.]

"Life felony" is a crime which may be punished by a term of imprisonment for life or by imprisonment for a term of years not exceeding life imprisonment and a fine not exceeding $15,000.00.

"Felony of the first degree" is a crime which may be punished by a term of imprisonment not exceeding 30 years or, when specifically provided by statute, by imprisonment of a term of years not exceeding life imprisonment and a fine not exceeding $10,000.

"Felony of the second degree" is a crime which may be punished by a term of imprisonment not exceeding 15 years and a fine not exceeding $10,000.

"Felony of the third degree is a crime which may be punished by a term of imprisonment not exceeding 5 years and a fine not exceeding $5,000.

"Convicted" means there has been a determination of guilt as a result of a trial or the entry of a plea of guilty or nolo contendere, regardless of whether adjudication was withheld.

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comments

§ 794.011 Fla. Stat. is Sexual Battery. § 800.04 Fla. Stat. is Lewd or Lascivious Conduct. § 827.071 Fla. Stat. is Sexual Performance by a Child. § 847.0135(5) Fla. Stat. is Lewd or Lascivious Exhibition Using a Computer. § 847.0145 Fla. Stat. is Selling or Buying a Minor for Sexual Depiction.

This instruction was adopted in 2012 [95 So. 3d 868] and was amended on October 9, 2026.

11.17(a) SOLICITING A [CHILD] [PERSON BELIEVED BY THE DEFENDANT TO BE A CHILD] FOR UNLAWFUL SEXUAL CONDUCT USING COMPUTER SERVICES OR DEVICES

§ 847.0135(3)(a), Fla. Stat.

To prove the crime of Soliciting a [Child] [Person Believed by the Defendant to be a Child] for Unlawful Sexual Conduct Using Computer Services or Devices, the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **knowingly used a[n] [computer on-line service] [Internet service] [local bulletin board service] [device capable of electronic data storage or transmission] to contact** (victim**).**

2. (Victim) **was a child or a person believed by the defendant to be a child.**

3. **During that contact,** (defendant) **[seduced] [solicited] [lured] [enticed] [attempted to [seduce] [solicit] [lure] [entice]]** (victim) **to [commit** (any illegal act as charged in the indictment or information under chapter 794, 800, or 827)**] [or] [engage in** (other unlawful sexual conduct with a child or with a person believed by the defendant to be a child)**].**

The mere fact that an undercover operative or law enforcement officer was involved in the detection and investigation of this offense shall not constitute a defense from prosecution.

Enhanced penalty. Give if applicable.

If you find (defendant) **guilty of Soliciting a Child for Unlawful Sexual Conduct Using Computer Services or Devices, you must also determine whether the State proved beyond a reasonable doubt that during the contact,** (defendant) **misrepresented [his] [her] age to [**(victim)**] [the person believed by the defendant to be a child].**

Definitions.

A "child" means any person, whose identity is known or unknown, younger than 18 years of age.

Give the following definitions if applicable. Additional definitions can be added as applicable depending on the nature of the alleged illegal conduct. See § 847.001, Fla. Stat.

"Sexual conduct" means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual or simulated lewd exhibition of the genitals; actual physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed. [A mother's breastfeeding of her baby does not under any circumstance constitute "sexual conduct."]

"Simulated" means the explicit depiction of sexual conduct which creates the appearance of such conduct and which exhibits any uncovered portion of the breasts, genitals, or buttocks.

"Sadomasochistic abuse" means flagellation or torture by or upon a person or animal, or the condition of being fettered, bound, or otherwise physically restrained, for the purpose of deriving sexual satisfaction, or satisfaction brought about as a result of sadistic violence, from inflicting harm upon another or receiving such harm oneself.

"Sexual battery" means oral, anal, or female genital penetration by, or union with, the sexual organ of another or the anal or female genital penetration of another by any other object[; however, sexual battery does not include an act done for a bona fide medical purpose. "Bona fide" means genuine].

Phillips v. State, 238 So. 3d 308 (Fla. 4th DCA 2018).

"Union" means contact.

Lakey v. State, 113 So. 3d 90 (Fla. 5th DCA 2013).

"An object" includes a finger.

"Deviate sexual intercourse" means sexual conduct between persons not married to each other consisting of contact between the penis and the anus, the mouth and the penis, or the mouth and the vulva.

"Sexual bestiality" means any sexual act, actual or simulated, between a person and an animal involving the sex organ of the one and the mouth, anus, or female genitals of the other.

"Female genitals" includes the labia minora, labia majora, clitoris, vulva, hymen, and vagina.

Give if applicable. § 775.0862, Fla. Stat.

Enhancement for sexual offense against student by school authority figure.

If you find that (defendant) **committed the crime of Soliciting a [Child] [Person Believed by the Defendant to be a Child] for Unlawful Sexual Conduct Using Computer Services or Devices, you must also determine whether the State has proved beyond a reasonable doubt that** (defendant) **was an authority figure at a school and** (victim) **was a student at the same school.**

"Authority figure" means a person 18 years of age or older who is employed by, volunteering at, or under contract with a school.

"School" means an organization of students for instructional purposes on an elementary, middle or junior high school, secondary or high school, [or other public school level authorized under the rules of the State Board of Education]. The term "school" does not include facilities dedicated exclusively to the education of adults. *If needed, insert appropriate definitions from § 775.0862(1)(b), Fla. Stat. for "private school" or "voluntary prekindergarten education program" or "early learning program" or "public school as described in s. 402.3025(1)" or "the Florida School for the Deaf and the Blind" or the "Florida Virtual School" or the "K-8 Virtual School."*

"Student" means a person younger than 18 years of age who is enrolled at a school.

Lesser Included Offense

SOLICITING A [CHILD] [PERSON BELIEVED BY THE DEFENDANT TO BE A CHILD] FOR UNLAWFUL SEXUAL CONDUCT USING COMPUTER SERVICES OR DEVICES — 847.0135(3)(a)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Unlawful use of two-way communications device	934.215	29.26
	Written Solicitation of Certain Minors to Commit a Lewd or Lascivious Act	794.053	11.7(b)

Comments

As of February 2024, it was unclear whether acts done for bona fide medical purposes or a mother's breastfeeding of her baby should be treated as

affirmative defenses or as elements that the State must disprove. If treated as an affirmative defense, the judge must then determine who has the burden of persuasion and what that burden is (preponderance, clear and convincing, or beyond a reasonable doubt).

This instruction was adopted in 2009 [6 So. 3d 574] and amended in 2013 [122 So. 3d 263], 2015 [163 So. 3d 478], 2017 [228 So. 3d 87], on December 21, 2022, and on March 8, 2024.

11.17(b) SOLICITING A PARENT, LEGAL GUARDIAN, OR CUSTODIAN OF A CHILD FOR UNLAWFUL SEXUAL CONDUCT USING COMPUTER SERVICES OR DEVICES

§ 847.0135(3)(b), Fla. Stat.

To prove the crime of Soliciting a Parent, Legal Guardian, or Custodian of a Child for Unlawful Sexual Conduct Using Computer Services or Devices, the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) **knowingly used a[n] [computer on-line service] [Internet service] [local bulletin board service] [device capable of electronic data storage or transmission] to contact a [parent of a child] [legal guardian of a child] [custodian of a child] [person the defendant believed to be a [parent] [legal guardian] [custodian of] a child].**

2. During that contact, (defendant) **[solicited] [lured] [enticed] [attempted to [solicit] [lure] [entice]] a [parent of a child] [legal guardian of a child] [custodian of a child] [person believed by the defendant to be a [parent] [legal guardian] [custodian of] a child] to consent to the participation of the child in (any illegal act as charged in the indictment or information under chapter 794, 800, 827, or other unlawful sexual conduct).**

The mere fact that an undercover operative or law enforcement officer was involved in the detection and investigation of this offense shall not constitute a defense from prosecution.

Enhanced penalty. Give if applicable.

If you find (defendant) guilty of Soliciting a Parent of a Child for Unlawful Sexual Conduct Using Computer Services or Devices, you must also determine whether the State proved beyond a reasonable doubt that during the contact, (defendant) misrepresented [his] [her] age to the [parent] [legal guardian] [custodian] [person believed by the defendant to be a [parent] [legal guardian] [custodian]].

Definitions.

A "child" means any person, whose identity is known or unknown, younger than 18 years of age.

Give the following definitions if applicable. Additional definitions can be added as applicable depending on the nature of the alleged illegal conduct. See § 847.001, Fla. Stat.

"Sexual conduct" means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual or simulated lewd exhibition of the genitals; actual physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed. [A mother's breastfeeding of her baby does not under any circumstance constitute "sexual conduct."]

"Simulated" means the explicit depiction of sexual conduct which creates the appearance of such conduct and which exhibits any uncovered portion of the breasts, genitals, or buttocks.

"Sadomasochistic abuse" means flagellation or torture by or upon a person or animal, or the condition of being fettered, bound, or otherwise physically restrained, for the purpose of deriving sexual satisfaction, or satisfaction brought about as a result of sadistic violence, from inflicting harm upon another or receiving such harm oneself.

"Sexual battery" means oral, anal, or female genital penetration by, or union with, the sexual organ of another or the anal or female genital penetration of another by any other object[; however, sexual battery does not include an act done for a bona fide medical purpose. "Bona fide" means genuine].

Phillips v. State, 238 So. 3d 308 (Fla. 4th DCA 2018).

"Union" means contact.

Lakey v. State, 113 So. 3d 90 (Fla. 5th DCA 2013).

"An object" includes a finger.

"Deviate sexual intercourse" means sexual conduct between persons not married to each other consisting of contact between the penis and the anus, the mouth and the penis, or the mouth and the vulva.

"Sexual bestiality" means any sexual act, actual or simulated, between a person and an animal involving the sex organ of the one and the mouth, anus, or female genitals of the other.

"Female genitals" includes the labia minora, labia majora, clitoris, vulva, hymen, and vagina.

Give if applicable. § 775.0862, Fla. Stat.

Enhancement for sexual offense against student by school authority figure.

If you find that (defendant) **committed the crime of Soliciting a Parent of a Child for Unlawful Sexual Conduct Using Computer Services or Devices, you must also determine whether the State has proved beyond a reasonable doubt that (defendant) was an authority figure at a school and** (victim) **was a student at the same school.**

"Authority figure" means a person 18 years of age or older who is employed by, volunteering at, or under contract with a school.

"School" means an organization of students for instructional purposes on an elementary, middle or junior high school, secondary or high school, [or other public school level authorized under the rules of the State Board of Education]. The term "school" does not include facilities dedicated exclusively to the education of adults. *If needed, insert appropriate definitions from § 775.0862(1)(b), Fla. Stat. for "private school" or "voluntary prekindergarten education program" or "early learning program" or "public school as described in s. 402.3025(1)" or "the Florida School for the Deaf and the Blind" or the "Florida Virtual School" or the "K-8 Virtual School."*

"Student" means a person younger than 18 years of age who is enrolled at a school.

Lesser Included Offense

SOLICITING A PARENT, LEGAL GUARDIAN, OR CUSTODIAN OF A CHILD FOR UNLAWFUL SEXUAL CONDUCT USING COMPUTER SERVICES OR DEVICES — 847.0135(3)(b)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Unlawful use of two-way communications device	934.215	29.26

Comments

As of November 2022, it was unclear whether acts done for bona fide medical purposes or a mother's breastfeeding of her baby should be treated as affirmative defenses or as elements that the State must disprove. If treated as

an affirmative defense, the judge must then determine who has the burden of persuasion and what that burden is (preponderance, clear and convincing, or beyond a reasonable doubt).

This instruction was adopted in 2009 [6 So. 3d 574] and amended in 2013 [122 So. 3d 263], 2015 [163 So. 3d 478], 2017 [228 So. 3d 87], and December 21, 2022.

11.17(c) TRAVELING TO MEET A MINOR

§ 847.0135(4)(a), Fla. Stat.

To prove the crime of Traveling to Meet a Minor, the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) **used a[n] [computer on-line service] [Internet service] [local bulletin board service] [device capable of electronic data storage or transmission] to [seduce] [solicit] [lure] [entice] [attempt to [seduce] [solicit] [lure] [entice]] a [child] [person believed by the defendant to be a child] to engage in [**(insert illegal act in chapter 794, 800, or 827 as alleged in the charging instrument)**] [unlawful sexual conduct].**

2. (Defendant) **then [traveled] [attempted to travel] [caused another to travel] [attempted to cause another to travel] [within this state] [to this state] [from this state] for the purpose of [**(insert violation of chapter 794, 800, or 827 as alleged in the charging instrument)**] [unlawful sexual conduct] with a [child] [person believed by the defendant to be a child].**

The mere fact that an undercover operative or law enforcement officer was involved in the detection and investigation of this offense shall not constitute a defense from prosecution.

Definitions.

A "child" means any person, whose identity is known or unknown, younger than 18 years of age.

Give the following definitions if applicable. Additional definitions can be added as applicable depending on the nature of the alleged illegal conduct. See § 847.001, Fla. Stat.

"Sexual conduct" means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual or simulated lewd exhibition of the genitals; actual physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed. [A mother's breastfeeding of her baby does not under any circumstance constitute "sexual conduct."]

"Simulated" means the explicit depiction of sexual conduct which creates the appearance of such conduct and which exhibits any uncovered portion of the breasts, genitals, or buttocks.

"Sadomasochistic abuse" means flagellation or torture by or upon a person or animal, or the condition of being fettered, bound, or otherwise physically restrained, for the purpose of deriving sexual satisfaction, or satisfaction brought about as a result of sadistic violence, from inflicting harm upon another or receiving such harm oneself.

"Sexual battery" means oral, anal, or female genital penetration by, or union with, the sexual organ of another or the anal or female genital penetration of another by any other object[; however, sexual battery does not include an act done for a bona fide medical purpose. "Bona fide" means genuine].

Phillips v. State, 238 So. 3d 308 (Fla. 4th DCA 2018).

"Union" means contact.

Lakey v. State, 113 So. 3d 90 (Fla. 5th DCA 2013).

"An object" includes a finger.

"Deviate sexual intercourse" means sexual conduct between persons not married to each other consisting of contact between the penis and the anus, the mouth and the penis, or the mouth and the vulva.

"Sexual bestiality" means any sexual act, actual or simulated, between a person and an animal involving the sex organ of the one and the mouth, anus, or female genitals of the other.

"Female genitals" includes the labia minora, labia majora, clitoris, vulva, hymen, and vagina.

Give if applicable. § 775.0862, Fla. Stat.

Enhancement for sexual offense against student by school authority figure.

If you find that (defendant) **committed the crime of Traveling to Meet a Minor, you must also determine whether the State has proved beyond a reasonable doubt that** (defendant) **was an authority figure at a school and** (victim) **was a student at the same school.**

"Authority figure" means a person 18 years of age or older who is employed by, volunteering at, or under contract with a school.

"School" means an organization of students for instructional purposes on an elementary, middle or junior high school, secondary or high school, [or other public school level authorized under the rules of the State Board of Education]. The term "school" does not include facilities dedicated exclusively to the education of adults. *If needed, insert appropriate definitions from § 775.0862(1)(b), Fla. Stat. for "private school" or "voluntary prekindergarten education program" or "early learning program" or "public school as described in s. 402.3025(1)" or "the Florida School for the Deaf and the Blind" or the "Florida Virtual School" or the "K-8 Virtual School."*

"Student" means a person younger than 18 years of age who is enrolled at a school.

Lesser Included Offenses

TRAVELING TO MEET A MINOR — 847.0135(4)(a)			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
Soliciting a [Child] [Person Believed by the Defendant to be a Child] for Unlawful Sexual Conduct Using Computer Services or Devices		847.0135(3)(a)	11.17(a)
	Unlawful use of two-way communications device	934.215	29.26
	Written Solicitation of Certain Minors to Commit a Lewd or Lascivious Act	794.053	11.7(b)

Comments

As of February 2024, it was unclear whether acts done for bona fide medical purposes or a mother's breastfeeding of her baby should be treated as affirmative defenses or as elements that the State must disprove. If treated as an affirmative defense, the judge must then determine who has the burden of persuasion and what that burden is (preponderance, clear and convincing, or beyond a reasonable doubt).

This instruction was adopted in 2009 [6 So. 3d 574] and amended in 2013 [122 So. 3d 263], 2016 [195 So. 3d 356], 2017 [228 So. 3d 87], December 21, 2022, and on March 8, 2024.

11.17(d) TRAVELING TO MEET A MINOR FACILITATED BY PARENT, LEGAL GUARDIAN, OR CUSTODIAN

§ 847.0135(4)(b), Fla. Stat.

To prove the crime of Traveling to Meet a Minor Facilitated by Parent, Legal Guardian, or Custodian, the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) **used a[n] [computer on-line service] [Internet service] [local bulletin board service] [device capable of electronic data storage or transmission] to [solicit] [lure] [entice] [attempt to [solicit] [lure] [entice]] a [parent] [legal guardian] [custodian] [person believed by the defendant to be a [parent] [legal guardian] [custodian]] of a child to consent for the [child] [person believed by the defendant to be a child] to participate in [**(insert violation of chapter 794, 800, or 827 as alleged in the charging instrument)**] [sexual conduct].**

2. (Defendant) **then [traveled] [attempted to travel] [caused another to travel] [attempted to cause another to travel] [within this state] [to this state] [from this state] for the purpose of engaging in any illegal act described in [**(insert violation of chapter 794, 800, or 827 as alleged in the charging instrument)**] [other unlawful sexual conduct] with a child or a person believed by the defendant to be a child.**

The mere fact that an undercover operative or law enforcement officer was involved in the detection and investigation of this offense shall not constitute a defense from prosecution.

Definitions.

A "child" means any person, whose identity is known or unknown, younger than 18 years of age.

Give the following definitions if applicable. Additional definitions can be added as applicable depending on the nature of the alleged illegal conduct. See § 847.001, Fla. Stat.

"Sexual conduct" means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual or simulated lewd exhibition of the genitals; actual physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulates that sexual

battery is being or will be committed. [A mother's breastfeeding of her baby does not under any circumstance constitute "sexual conduct."]

"Simulated" means the explicit depiction of sexual conduct which creates the appearance of such conduct and which exhibits any uncovered portion of the breasts, genitals, or buttocks.

"Sadomasochistic abuse" means flagellation or torture by or upon a person or animal, or the condition of being fettered, bound, or otherwise physically restrained, for the purpose of deriving sexual satisfaction, or satisfaction brought about as a result of sadistic violence, from inflicting harm upon another or receiving such harm oneself.

"Sexual battery" means oral, anal, or female genital penetration by, or union with, the sexual organ of another or the anal or female genital penetration of another by any other object[; however, sexual battery does not include an act done for a bona fide medical purpose. "Bona fide" means genuine].

Phillips v. State, 238 So. 3d 308 (Fla. 4th DCA 2018).

"Union" means contact.

Lakey v. State, 113 So. 3d 90 (Fla. 5th DCA 2013).

"An object" includes a finger.

"Deviate sexual intercourse" means sexual conduct between persons not married to each other consisting of contact between the penis and the anus, the mouth and the penis, or the mouth and the vulva.

"Sexual bestiality" means any sexual act, actual or simulated, between a person and an animal involving the sex organ of the one and the mouth, anus, or female genitals of the other.

"Female genitals" includes the labia minora, labia majora, clitoris, vulva, hymen, and vagina.

Give if applicable. § 775.0862, Fla. Stat.

Enhancement for sexual offense against student by school authority figure.

If you find that (defendant) **committed the crime of Traveling to Meet a Minor Facilitated by Parent, Legal Guardian, or Custodian, you must also determine whether the State has proved beyond a reasonable**

doubt that (defendant) **was an authority figure at a school and** (victim) **was a student at the same school.**

"Authority figure" means a person 18 years of age or older who is employed by, volunteering at, or under contract with a school.

"School" means an organization of students for instructional purposes on an elementary, middle or junior high school, secondary or high school, [or other public school level authorized under the rules of the State Board of Education]. The term "school" does not include facilities dedicated exclusively to the education of adults. *If needed, insert appropriate definitions from § 775.0862(1)(b), Fla. Stat., for "private school" or "voluntary prekindergarten education program" or "early learning program" or "public school as described in s. 402.3025(1)" or "the Florida School for the Deaf and the Blind" or the "Florida Virtual School" or the "K-8 Virtual School."*

"Student" means a person younger than 18 years of age who is enrolled at a school.

Lesser Included Offenses

TRAVELING TO MEET A MINOR FACILITATED BY PARENT, LEGAL GUARDIAN, OR CUSTODIAN — 847.0135(4)(b)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Soliciting a Parent of a Child for Unlawful Sexual Conduct Using Computer Services or Devices		847.0135(3)(b)	11.17(b)
	Unlawful use of two-way communications device	934.215	29.26

Comments

As of November 2022, it was unclear whether acts done for bona fide medical purposes or a mother's breastfeeding of her baby should be treated as affirmative defenses or as elements that the State must disprove. If treated as an affirmative defense, the judge must then determine who has the burden of persuasion and what that burden is (preponderance, clear and convincing, or beyond a reasonable doubt).

This instruction was adopted in 2009 [6 So. 3d 574] and amended in 2013 [122 So. 3d 263], 2016 [195 So. 3d 356], 2017 [228 So. 3d 87], and December 21, 2022.

11.18 SEXUAL MISCONDUCT BY A PSYCHOTHERAPIST

§ 491.0112, Fla. Stat**.

To prove the crime of Sexual Misconduct by a Psychotherapist, the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **committed sexual misconduct with** (victim)**.**

2. At the time, (defendant) **was a psychotherapist.**

Give 3a or 3b as applicable.

3. a. At the time, (victim) **was a client of** (defendant)**.**

b. (Victim) **was a former client of** (defendant) **and the professional relationship was terminated primarily for the purpose of engaging in sexual contact.**

§ 491.0112(3), Fla. Stat.

It is not a defense that (victim) **consented to any act that constitutes sexual misconduct.**

"Sexual misconduct" means the oral, anal, or female genital penetration of another by, or contact with, the sexual organ of another or the anal or female genital penetration of another by any object.**

Give if applicable. Lakey v. State, 113 So. 3d 90 (Fla. 5th DCA 2013).

"An object" includes a finger.

"Female genitals" includes the labia minora, labia majora, clitoris, vulva, hymen, and vagina.**

"Psychotherapist" means any person licensed in Florida pursuant to Chapter 458 (medicine), Chapter 459 (osteopathic medicine), Part I of Chapter 464 (nursing), Chapter 490 (psychology), or Chapter 491 (clinical counseling or psychotherapy services); or any other person who provides or purports to provide treatment, diagnosis, assessment, evaluation, or counseling of mental or emotional illness, symptom, or condition.

"Client" means a person to whom the services of a psychotherapist are provided.

Give if applicable. § 491.0112(2), Fla. Stat.

If you find the defendant guilty of Sexual Misconduct by a Psychotherapist, you must then determine whether the State has proven beyond a reasonable doubt that the crime was committed by means of therapeutic deception.

"Therapeutic deception" means a representation to the client that sexual contact by the psychotherapist is consistent with or part of the treatment of the client.

Lesser Included Offenses

SEXUAL MISCONDUCT BY A PSYCHOTHERAPIST — 491.0112			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
None			
	Unnatural and lascivious act*	800.02*	11.8*
	Attempt	777.04(1)	5.1

Comments

A second or subsequent offense bumps this crime up to a second-degree felony. As of November 2022, it was unclear whether the existence of a prior is an element or a recidivist factor to be proven to the trial judge under a preponderance of the evidence standard at sentencing. Generally, it would be improper to allow the jury to hear about a prior. Therefore, if the information or indictment contains an allegation of one or more priors, do not read that allegation and do not send the information or indictment into the jury room. If the defendant is found guilty and if the prior is treated as an element, the historical fact of a prior should be determined by the jury beyond a reasonable doubt in a bifurcated proceeding. *State v. Harbaugh*, 754 So. 2d 691 (Fla. 2000).

*The courts do not require the State to allege the defendant's act was "unnatural" or "against the laws of nature" for § 800.02, Fla. Stat., to be given as a lesser-included offense. If the sexual activity involved penile-vaginal sexual intercourse (or contact), § 800.02, Fla. Stat. should *not* be given as a lesser-included offense. However, if the sexual activity involved something other than penile-vaginal sexual intercourse (or contact), § 800.02, Fla. Stat. should be given as a lesser-included offense. *See State v. Knighton*, 235 So. 3d 312 (Fla. 2018).

**Effective October 1, 2022, the Legislature changed "vagina" to "female genitals" in sex crimes-related statutes. Judges should ensure the jury instructions contain correct statutory terms, which will depend on the date

alleged in the charging document. *Flores v. State,* 391 So. 3d 481 (Fla. 4th DCA 2024) is an example of an appellate court finding fundamental error when the trial judge expanded the definition of "vaginal penetration" by instructing on "female genital penetration."

This instruction was adopted in 2014 [146 So. 3d 1110] and amended in 2018 [257 So. 3d 370], and December 21, 2022.

11.19 SEXUAL MISCONDUCT BETWEEN DETENTION FACILITY EMPLOYEES AND INMATES

§ 951.221(1), Fla. Stat.

To prove the crime of Sexual Misconduct Between Detention Facility Employees and Inmates, the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **was an employee of a [county or municipal detention facility] [private detention facility under contract with a county commission].**

2. **While an employee,** (defendant) **engaged in sexual misconduct with** (inmate)**.**

3. **At the time,** (inmate) **was an [inmate] [offender supervised by the facility].**

§ 951.221(1), Fla. Stat. Consent is not a defense.

The consent of an [inmate] [offender] to any act of sexual misconduct is not a defense to the crime of Sexual Misconduct.

Definitions.

§ 951.221(1), Fla. Stat. and § 944.35(3)(b)1, Fla. Stat.

"Sexual Misconduct" means the oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object, but does not include an act done for a bona fide medical purpose or an internal search conducted in the lawful performance of the employee's duty.

Give as applicable.

"Union" means contact.

§ 951.23(1)(a), Fla. Stat.

"County Detention Facility" means a county jail, a county stockade, a county work camp, a county residential probation center, and any other place except a municipal detention facility used by a county or county officer for the detention of persons charged with or convicted of either felony or misdemeanor.

§ 951.23(1)(b), Fla. Stat.

"County Residential Probation Center" means a county-operated facility housing offenders serving misdemeanor sentences or first-time felony sentences.

§ 951.23(1)(d), Fla. Stat.

"Municipal Detention Facility" means a city jail, a city stockade, a city prison camp, and any other place except a county detention facility used by a municipality or municipal officer for the detention of persons charged with or convicted of a violation of municipal laws or ordinances.

Lesser Included Offenses

SEXUAL MISCONDUCT BETWEEN DETENTION FACILITY EMPLOYEES AND INMATES — 951.221(1)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Battery	784.03	8.3
	Attempt	777.04(1)	5.1
	Assault	784.011	8.1

Comment

This instruction was adopted in 2014.

11.20 TRANSMISSION OF CHILD SEXUAL ABUSE MATERIAL BY ELECTRONIC DEVICE OR EQUIPMENT

§ 847.0137(2) and (3), Fla. Stat.*

To prove the crime of Transmission of Child Sexual Abuse Material by Electronic Device or Equipment, the State must prove the following two elements beyond a reasonable doubt:

Give 1a or 1b as applicable.

§ 847.0137(2), Fla. Stat.

1. a. (Defendant)**, when in the State of Florida, transmitted child sexual abuse material to another person.**

§ 847.0137(3), Fla. Stat.

b. (Defendant)**, when not in the State of Florida, transmitted child sexual abuse material to any person who was in the State of Florida.**

2. (Defendant) **knew or reasonably should have known that what [he] [she] transmitted was child sexual abuse material.**

Give if applicable.

If you find (defendant) **guilty of Transmission of Child Sexual Abuse Material by Electronic Device or Equipment, you must also determine whether the State proved beyond a reasonable doubt that** (defendant) **was 18 years of age or older at the time of the crime.**

§ 847.0137(1), Fla. Stat.

"Transmit" means the act of sending and causing to be delivered, including the act of providing access for receiving and causing to be delivered, any image, information, or data over or through any medium, including the internet or an interconnected network, by use of any electronic equipment or device. The term also includes the act of providing access to any image, information, or data in cloud storage by sharing, publishing, or otherwise making available a link, access credential, or other similar means by which another person may access, view, or obtain such image, information, or data.

"Access credential" means any password, username, token, unique link, uniform resource locator (URL), hyperlink, or other data that enables a user to access a digital file or other data in cloud storage.

"Cloud storage" means any remote, networked, or third-party provided storage service that enables a user to store, host, or share a digital file or other data and to access such a digital file or other data via the Internet or other network, whether by direct file transfer, access credential, link, or other similar means.

"Link" means any uniform resource locater (URL), hyperlink, short link, shareable link, magnet link, or other string, token, or data that, when used, directs or grants a user access to a digital file or other data that is stored remotely, including in cloud storage

§ 847.001, Fla. Stat. Give if applicable.

"Child sexual abuse material" means:

(a) any image depicting a minor engaged in sexual conduct or

(b) any image that has been created, altered, adapted, or modified by electronic, mechanical, or other means, to portray an identifiable minor engage in sexual conduct.

"Minor" means any person younger than 18 years of age.

"Identifiable minor" means a person:

(a) who was a minor at the time the image was created, altered, adapted, or modified, or whose image as a minor was used in the creating, altering, adapting, or modifying of the image; and

(b) who is recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic, such as a unique birthmark, or other recognizable feature.

The term may not be construed to require proof of the actual identity of the identifiable minor.

"Sexual conduct" means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual or simulated lewd exhibition of the genitals; actual physical contact with a person's clothed or unclosed genitals, pubic area, buttocks, or, if such person is a female, breast with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed. [A mother's breastfeeding of her baby does not under any circumstance constitute "sexual conduct."]

"Simulated" means the explicit depiction of conduct described in the definition of "sexual conduct" which creates the appearance of such conduct and which exhibits any uncovered portion of the breasts, genitals, or buttocks.

"Deviate sexual intercourse" means sexual conduct between persons not married to each other consisting of contact between the penis and the anus, the mouth and the penis, or the mouth and the vulva.

"Sexual bestiality" means any sexual act, actual or simulated, between a person and an animal involving the sex organ of the one and the mouth, anus, or female genitals of the other.

"Sadomasochistic abuse" means flagellation or torture by or upon a person or animal, or the condition of being fettered, bound, or otherwise physically restrained, for the purpose of deriving sexual satisfaction, or satisfaction brought about as a result of sadistic violence, from inflicting harm on another or receiving such harm oneself.

"Sexual Battery" means oral, anal, or female genital* penetration by, or union with, the sexual organ of another or the anal or female genital penetration of another by any other object[; however, "sexual battery" does not include an act done for a bona fide medical purpose. "Bona fide" means genuine].

"Female genitals*" includes the labia minora, labia majora, clitoris, vulva, hymen, and vagina.

Phillips v. State, 238 So. 3d 308 (Fla. 4th DCA 2018).

"Union" means contact.

Lakey v. State, 113 So. 3d 90 (Fla. 5th DCA 2013).

"An object" includes a finger.

Give if applicable. § 775.0862, Fla. Stat.

Enhancement for sexual offense against student by school authority figure.

If you find that (defendant) **committed the crime of Transmission of Child Sexual Abuse Material by Electronic Device or Equipment, you must also determine whether the State has proved beyond a reasonable doubt that** (defendant) **was an authority figure at a school and** (victim) **was a student at the same school.**

"Authority figure" means a person 18 years of age or older who is employed by, volunteering at, or under contract with a school.

"School" means an organization of students for instructional purposes on an elementary, middle or junior high school, secondary or high school, [or other public school level authorized under the rules of the State Board of Education]. The term "school" does not include facilities dedicated exclusively to the education of adults. *If needed, insert appropriate definitions from § 775.0862(1)(b), Fla. Stat. for "private school" or "voluntary prekindergarten education program" or "early learning program" or "public school as described in s. 402.3025(1)" or "the Florida School for the Deaf and the Blind" or the "Florida Virtual School" or the "K-8 Virtual School."*

"Student" means a person younger than 18 years of age who is enrolled at a school.

Lesser Included Offense

TRANSMISSION OF CHILD SEXUAL ABUSE MATERIAL BY ELECTRONIC DEVICE OR EQUIPMENT – 847.0137(2) AND (3)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempt	777.04(1)	5.1

Comments

*Effective October 1, 2022, the Legislature changed "vagina" to "female genitals" in sex crimes-related statutes. Judges should ensure the jury instructions contain correct statutory terms, which will depend on the date alleged in the charging document. *Flores v. State,* 391 So. 3d 481 (Fla. 4th DCA 2024) is an example of an appellate court finding fundamental error when the trial judge expanded the definition of "vaginal penetration" by instructing on "female genital penetration."

Before July 1, 2026, (in Chapter 2026-20, Laws of Florida), the statute contained the term "child pornography," not "child sexual abuse material." Also, a minimum mandatory sentence of 5 years in prison was created for offenders 18 years of age or older, the definition of "transmit" was supplemented, and definitions for "access credential," "cloud storage," and "link" were added. Trial judges should review the date alleged in the charging document to determine which phrase and definitions should be used in this instruction.

As of September 2026, it was unclear whether acts done for bona fide medical purposes or a mother's breastfeeding of her baby should be treated as

affirmative defenses or as elements that the State must disprove. If treated as an affirmative defense, the judge must then determine who has the burden of persuasion and what that burden is (preponderance, clear and convincing, or beyond a reasonable doubt).

Under § 847.0137(2) and (3), Fla. Stat., a court is not required to impose the minimum mandatory sentence of 5 years in prison for a defendant who was 18 years of age or older at the time of the crime if the judge makes certain factual findings. As of September 2026, there was no case law that held the Sixth Amendment requires any jury finding regarding those facts, and it is unclear whether any such jury finding is required because those facts may lead to a decrease in the sentence, not an increase.

This instruction was adopted in 2015 [163 So. 3d 478] and amended on December 21, 2022, and on October 9, 2026.

11.21 TRANSMISSION OF MATERIAL HARMFUL TO MINORS BY ELECTRONIC DEVICE OR EQUIPMENT

§ 847.0138(2), Fla. Stat.*

To prove the crime of Transmission of Material Harmful to Minors by Electronic Device or Equipment, the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **knowingly sent an image, information, or data that [he] [she] knew or believed to be "harmful to minors."**

2. (Defendant) **sent the image, information, or data to a specific individual who was either actually known by [him] [her] to be a minor or believed by [him] [her] to be a minor.**

3. (Defendant) **sent the image, information, or data via electronic mail.**

Give if applicable.

A mother's breastfeeding of her baby is not under any circumstance "harmful to minors."

Definitions. Give as applicable. § 847.001, Fla. Stat.

An image, information, or data that is "harmful to minors" means any reproduction, imitation, characterization, description, exhibition, presentation, or representation, of whatever kind or form, depicting nudity, sexual conduct, or sexual excitement when it:

a. **Predominately appeals to a prurient, shameful, or morbid interest;**

b. **Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material or conduct for minors; and**

c. **Taken as a whole, is without serious literary, artistic, political, or scientific value for minors.**

A "prurient interest" in sex is a shameful or morbid interest in sex, nudity, or excretion. Material does not appeal to a prurient interest if the average person today can view the material candidly, openly, and with a normal interest in sex.

"Morbid interest" means diseased, dwelling on the gruesome, or sick.

"Minor" means any person, whose identity is known or unknown, younger than 18 years of age.

"Nudity" means the showing of the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering; or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple; or the depiction of covered male genitals in a discernibly turgid state. [A mother's breastfeeding of her baby does not under any circumstance constitute "nudity," irrespective of whether or not the nipple is covered during or incidental to feeding.]

"Sexual conduct" means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual or simulated lewd exhibition of the genitals; actual physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed. [A mother's breastfeeding of her baby does not under any circumstance constitute "sexual conduct."]

"Simulated" means the explicit depiction of conduct described in the definition of "sexual conduct" which creates the appearance of such conduct and which exhibits any uncovered portion of the breasts, genitals, or buttocks.

"Deviate sexual intercourse" means sexual conduct between persons not married to each other consisting of contact between the penis and the anus, the mouth and the penis, or the mouth and the vulva.

"Sexual bestiality" means any sexual act, actual or simulated, between a person and an animal involving the sex organ of the one and the mouth, anus, or female genitals of the other.

"Sadomasochistic abuse" means flagellation or torture by or upon a person or animal, or the condition of being fettered, bound, or otherwise physically restrained, for the purpose of deriving sexual satisfaction, or satisfaction brought about as a result of sadistic violence, from inflicting harm on another or receiving such harm oneself.

"Sexual Battery" means oral, anal, or female genital* penetration by, or union with, the sexual organ of another or the anal or female genital

penetration of another by any other object[; however, "sexual battery" does not include an act done for a bona fide medical purpose. "Bona fide" means genuine].

"Female genitals*" includes the labia minora, labia majora, clitoris, vulva, hymen, and vagina.

Phillips v. State, 238 So. 3d 308 (Fla. 4th DCA 2018).

"Union" means contact.

Lakey v. State, 113 So. 3d 90 (Fla. 5th DCA 2013).

"An object" includes a finger.

"Sexual excitement" means the condition of the human male or female genitals when in a state of sexual stimulation or arousal.

Give if applicable. § 775.0862, Fla. Stat.

Reclassification for sexual offense against student by school authority figure.

If you find that (defendant) **committed the crime of Transmission of Material Harmful to Minors by Electronic Device or Equipment, you must also determine whether the State has proved beyond a reasonable doubt that** (defendant) **was an authority figure at a school and** (victim) **was a student at the same school.**

"Authority figure" means a person 18 years of age or older who is employed by, volunteering at, or under contract with a school.

"School" means an organization of students for instructional purposes on an elementary, middle or junior high school, secondary or high school, [or other public school level authorized under the rules of the State Board of Education]. The term "school" does not include facilities dedicated exclusively to the education of adults. *If needed, insert appropriate definitions from § 775.0862(1)(b), Fla. Stat. for "private school" or "voluntary prekindergarten education program" or "early learning program" or "public school as described in s. 402.3025(1)" or "the Florida School for the Deaf and the Blind" or the "Florida Virtual School" or the "K-8 Virtual School."*

"Student" means a person younger than 18 years of age who is enrolled at a school.

Lesser Included Offenses

TRANSMISSION OF MATERIAL HARMFUL TO MINORS BY ELECTRONIC DEVICE OR EQUIPMENT — 847.0138(2)			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
Unlawful Use of a Two-way Communication Device		934.215	29.26
	Attempt	777.04(1)	5.1

Comments

*Effective October 1, 2022, the Legislature changed "vagina" to "female genitals" in sex crimes-related statutes. Judges should ensure the jury instructions contain correct statutory terms, which will depend on the date alleged in the charging document. *Flores v. State,* 391 So. 3d 481 (Fla. 4th DCA 2024) is an example of an appellate court finding fundamental error when the trial judge expanded the definition of "vaginal penetration" by instructing on "female genital penetration."

§ 847.0138, Fla. Stat., does not define "electronic mail." The courts have determined "electronic mail" includes a text message sent from a cell phone and instant messaging. *See Allen v. State*, 82 So. 3d 118 (Fla. 4th DCA 2012); *Duclos-Lasnier v. State*, 192 So. 3d 1234 (Fla. 2d DCA 2016). "Electronic mail" does not, however, include subscription-based transmissions such as list servers. *See* § 847.0138, Fla. Stat. A trial court may wish to provide the jury with a special instruction defining "electronic mail."

As of November 2022, it was unclear whether acts done for bona fide medical purposes or a mother's breastfeeding of her baby should be treated as affirmative defenses or as elements that the State must disprove. If treated as an affirmative defense, the judge must then determine who has the burden of persuasion and what that burden is (preponderance, clear and convincing, or beyond a reasonable doubt).

This instruction was adopted in 2015 [163 So. 3d 478] and amended in 2018 [257 So. 3d 370], 2020 [290 So. 3d 864], on January 29, 2021, and on December 21, 2022.

11.22 GIVING OBSCENE MATERIAL TO A MINOR

§ 847.0133, Fla. Stat.*

To prove the crime of Giving Obscene Material to a Minor, the State must prove the following element beyond a reasonable doubt:

(Defendant) **knowingly [sold] [rented] [loaned] [gave away] [distributed] [transmitted] [showed] obscene material to a person under the age of 18 years.**

Give if applicable. § 847.001, Fla. Stat.

A mother's breastfeeding of her baby is not under any circumstance "obscene."

§ 847.012(1), Fla. Stat.

"Knowingly" means having the general knowledge of, reason to know, or a belief or ground for belief which warrants further inspection or inquiry of both:

a. The character and content of any material described in this section which is reasonably susceptible of examination by the defendant; and

b. The age of the minor.

§ 847.0133(1), Fla. Stat.

"Obscene Material" means any obscene book, magazine, periodical, pamphlet, newspaper, comic book, story paper, written or printed story or article, writing paper, card, picture, drawing, photograph, motion picture film, figure, image, videotape, videocassette, phonograph record, or wire or tape or other recording, or any written, printed, or recorded matter of any such character which may or may not require mechanical or other means to be transmuted into auditory, visual or sensory representations of such character, or any article or instrument for obscene use, or purporting to be for obscene use or purpose.

§ 847.001, Fla. Stat.

"Obscene" means the status of material which:

a. The average person, applying contemporary community standards, would find, taken as a whole, appeals to the prurient interest;

b. Depicts or describes, in a patently offensive way, sexual conduct; and

c. Taken as a whole, lacks serious literary, artistic, political, or scientific value.

"Sexual conduct" means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual or simulated lewd exhibition of the genitals; actual physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed.

"Deviate sexual intercourse" means sexual conduct between persons not married to each other consisting of contact between the penis and the anus, the mouth and the penis, or the mouth and the vulva.

"Sadomasochistic abuse" means flagellation or torture by or upon a person or animal, or the condition of being fettered, bound, or otherwise physically restrained, for the purpose of deriving sexual satisfaction, or satisfaction brought about as a result of sadistic violence, from inflicting harm on another or receiving such harm oneself.

"Sexual battery" means oral, anal, or female genital* penetration by, or union with, the sexual organ of another or the anal or female genital penetration of another by any other object[; however, "sexual battery" does not include an act done for a bona fide medical purpose. "Bona fide" means genuine].

Phillips v. State, 238 So. 3d 308 (Fla. 4th DCA 2018).

"Union" means contact.

Lakey v. State, 113 So. 3d 90 (Fla. 5th DCA 2013).

The definition of "an object" includes a finger.

"Female genitals*" includes the labia minora, labia majora, clitoris, vulva, hymen, and vagina.

"Sexual bestiality" means any sexual act, actual or simulated, between a person and an animal involving the sex organ of the one and the mouth, anus, or female genitals of the other.

"Simulated" means the explicit depiction of sexual conduct which creates the appearance of such conduct and which exhibits any uncovered portion of the breasts, genitals, or buttocks.

Lesser Included Offense

GIVING OBSCENE MATERIAL TO A MINOR — 847.0133			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
None			
	Attempt	777.04(1)	5.1

Comments

*Effective October 1, 2022, the Legislature changed "vagina" to "female genitals" in sex crimes-related statutes. Judges should ensure the jury instructions contain correct statutory terms, which will depend on the date alleged in the charging document. *Flores v. State,* 391 So. 3d 481 (Fla. 4th DCA 2024) is an example of an appellate court finding fundamental error when the trial judge expanded the definition of "vaginal penetration" by instructing on "female genital penetration."

As of November 2022, it was unclear whether acts done for bona fide medical purposes or a mother's breastfeeding of her baby should be treated as affirmative defenses or as elements that the State must disprove. If treated as an affirmative defense, the judge must then determine who has the burden of persuasion and what that burden is (preponderance, clear and convincing, or beyond a reasonable doubt).

This instruction was adopted in 2016 [199 So. 3d 234] and amended on December 21, 2022.

11.23 [PROMOTION] [POSSESSION WITH INTENT TO PROMOTE] AN ALTERED SEXUAL DEPICTION

§ 836.13(4), Fla. Stat.

To prove the crime of [Promotion] [Possession with Intent to Promote] an Altered Sexual Depiction, the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **[willfully and maliciously promoted] [possessed with the intent to maliciously promote] an altered sexual depiction of an identifiable person.**

2. (Defendant) **did so without the consent of the identifiable person(s) depicted.**

3. **At the time of the [promoting] [possession],** (defendant) **knew or reasonably should have known the visual depiction was an altered sexual depiction.**

["Willfully" means knowingly, intentionally, and purposely.]

As of February 2026, the courts had not determined whether this statute requires actual malice or legal malice. The explanation of the two can be found in Seese v. State, 955 So. 2d 1145 (Fla. 4th DCA 2007). In the absence of clarification, trial judges must choose one of the following:

"Maliciously" means intentionally and without any lawful justification.

"Maliciously" means with ill will, hatred, spite, or an evil intent.

To prove (defendant) **"possessed an altered sexual depiction of an identifiable person," the State must prove beyond a reasonable doubt that [he] [she] a) knew of the existence of the altered sexual depiction of an identifiable person b) intentionally exercised control over it.**

Control can be exercised over an altered sexual depiction of an identifiable person whether it is carried on a person, near a person, or in a completely separate location. Mere proximity to an altered sexual depiction of an identifiable person 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 the altered sexual depiction of an identifiable person or the present ability to direct its control by another.**

Possession of an altered sexual depiction of an identifiable person may be sole or joint, that is, two or more persons may possess it.

"Promoted" means to issue, sell, give, provide, lend, mail, deliver, transfer, transmit, transmute, publish, distribute, circulate, disseminate, present, exhibit, send, post, share, advertise, or offer or agree to do the same.

"Altered Sexual Depiction" means any visual depiction that, as a result of any type of digital, electronic, mechanical, or other modification, alteration, or adaptation, depicts a realistic version of an identifiable person: (1) with the nude body parts of another person as the nude body parts of the identifiable person; (2) with computer-generated nude body parts as the nude body parts of the identifiable person; or (3) engaging in sexual conduct in which the identifiable person did not engage.

"Visual Depiction" includes, but is not limited to, a photograph, picture, image, motion picture, film, video, or other visual representation.

"Identifiable person" means that a person is recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic, such as a unique birthmark, or other recognizable feature.

"Nude Body Parts" means the human male or female genitals, pubic area, or buttocks with less than fully opaque covering; or the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple; or the depiction of covered male genitals in a discernibly turgid state. [The term "nude body parts does not under any circumstances include a mother's breastfeeding her baby.]

Many of these terms have their own definition. Give those definitions as appropriate. § 847.001, Fla. Stat.

"Sexual conduct" means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual or simulated lewd exhibition of the genitals; actual physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed. [A mother's breastfeeding of her baby does not under any circumstance constitute "sexual conduct."]

Give if appropriate.

The presence of a disclaimer within an altered sexual depiction which notifies a viewer that the person or persons depicted did not consent to, or participate in, the creation or promotion of the material, or that the person or persons depicted did not actually perform the actions portrayed, is not a defense to the crime of Promotion of an Altered Sexual Depiction.

Lesser Included Offense

[PROMOTION] [POSSESSION WITH INTENT TO PROMOTE] OF AN ALTERED SEXUAL DEPICTION — 836.13(4)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempt	777.04(1)	5.1

Comments

§ 836.13(9), Fla. Stat., contains exemptions from the criminal penalties in this statute. Those exemptions may be treated as affirmative defenses. Regardless of whether the defense would need to prove the exemption applies or the State would need to prove the exemption does not apply, a special instruction will be necessary if the exemption is at issue.

As of February 2026, it was unclear whether acts done for bona fide medical purposes or a mother's breastfeeding of her baby should be treated as affirmative defenses or as elements that the State must disprove. If treated as an affirmative defense, the judge must then determine who has the burden of persuasion and what that burden is (preponderance, clear and convincing, or beyond a reasonable doubt).

This instruction was adopted on December 21, 2022, and amended on March 20, 2026.

11.23(a) SOLICITATION OF AN ALTERED SEXUAL DEPICTION

§ 836.13(3), Fla. Stat.

To prove the crime of Solicitation of an Altered Sexual Depiction, the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **solicited an altered sexual depiction of an identifiable person.**

2. (Defendant) **did so without the consent of the identifiable person.**

3. **At the time of the solicitation,** (defendant) **knew or reasonably should have known that the visual depiction was an altered sexual depiction.**

"Solicit" means to try to obtain

"Altered Sexual Depiction" means any visual depiction that, as a result of any type of digital, electronic, mechanical, or other modification, alteration, or adaptation, depicts a realistic version of an identifiable person: (1) with the nude body parts of another person as the nude body parts of the identifiable person; (2) with computer-generated nude body parts as the nude body parts of the identifiable person; or (3) engaging in sexual conduct in which the identifiable person did not engage.

"Visual Depiction" includes, but is not limited to, a photograph, picture, image, motion picture, film, video, or other visual representation.

"Identifiable person" means that a person is recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic, such as a unique birthmark, or other recognizable feature.

"Nude Body Parts" means the human male or female genitals, pubic area, or buttocks with less than fully opaque covering; or the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple; or the depiction of covered male genitals in a discernibly turgid state. [The term "nude body parts" does not under any circumstances include a mother's breastfeeding her baby.]

Many of these terms have their own definition. Give those definitions as appropriate. § 847.001, Fla. Stat.

"Sexual conduct" means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or

sadomasochistic abuse; actual or simulated lewd exhibition of the genitals; actual physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed. [A mother's breastfeeding of her baby does not under any circumstance constitute "sexual conduct."]

Give if appropriate.

The presence of a disclaimer within an altered sexual depiction which notifies a viewer that the person or persons depicted did not consent to, or participate in, the generation or promotion of the material, or that the person or persons depicted did not actually perform the actions portrayed, is not a defense to the crime.

Lesser Included Offense

SOLICITATION OF AN ALTERED SEXUAL DEPICTION — 836.13(3)			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
None			
	Attempt	777.04(1)	5.1

Comments

§ 836.13(9), Fla. Stat., contains exemptions from the criminal penalties in this statute. Those exemptions may be treated as affirmative defenses. Regardless of whether the defense would need to prove the exemption applies or the State would need to prove the exemption does not apply, a special instruction will be necessary if the exemption is at issue.

As of February 2026, it was unclear whether acts done for bona fide medical purposes or a mother's breastfeeding of her baby should be treated as affirmative defenses or as elements that the State must disprove. If treated as an affirmative defense, the judge must then determine who has the burden of persuasion and what that burden is (preponderance, clear and convincing, or beyond a reasonable doubt).

This instruction was adopted on March 20, 2026.

11.23(b) GENERATION OF AN ALTERED SEXUAL DEPICTION

§ 836.13(2), Fla. Stat.

To prove the crime of Generation of an Altered Sexual Depiction, the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) **willfully generated an altered sexual depiction of an identifiable person.**

2. (Defendant) **did so without the consent of the identifiable person(s) depicted.**

"Willfully" means knowingly, intentionally, and purposely.

"Generate" means to create, alter, adapt, or modify any image by electronic, mechanical, or other computer generated means to portray an identifiable person or to offer or agree to do the same.

"Altered Sexual Depiction" means any visual depiction that as a result of any type of digital, electronic, mechanical, or other modification, alteration, or adaptation, depicts a realistic version of an identifiable person: (1) with the nude body parts of another person as the nude body parts of the identifiable person; (2) with computer-generated nude body parts as the nude body parts of the identifiable person; or (3) engaging in sexual conduct in which the identifiable person did not engage.

"Visual Depiction" includes, but is not limited to, a photograph, picture, image, motion picture, film, video, or other visual representation.

"Identifiable person" means that a person is recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic, such as a unique birthmark, or other recognizable feature.

"Nude Body Parts" means the human male or female genitals, pubic area, or buttocks with less than fully opaque covering; or the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple; or the depiction of covered male genitals in a discernibly turgid state. [The term "nude body parts" does not under any circumstances include a mother's breastfeeding her baby.]

Many of these terms have their own definition. Give those definitions as appropriate. § 847.001, Fla. Stat.

"Sexual conduct" means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or

sadomasochistic abuse; actual or simulated lewd exhibition of the genitals; actual physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed. [A mother's breastfeeding of her baby does not under any circumstance constitute "sexual conduct."]

Give if appropriate.

The presence of a disclaimer within an altered sexual depiction which notifies a viewer that the person or persons depicted did not consent to, or participate in, the generation or promotion of the material, or that the person or persons depicted did not actually perform the actions portrayed, is not a defense to the crime.

Lesser Included Offense

GENERATION OF AN ALTERED SEXUAL DEPICTION — 836.13(2)			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
None			
	Attempt	777.04(1)	5.1

Comments

§ 836.13(9), Fla. Stat., contains exemptions from the criminal penalties in this statute. Those exemptions may be treated as affirmative defenses. Regardless of whether the defense would need to prove the exemption applies or the State would need to prove the exemption does not apply, a special instruction will be necessary if the exemption is at issue.

As of February 2026, it was unclear whether acts done for bona fide medical purposes or a mother's breastfeeding of her baby should be treated as affirmative defenses or as elements that the State must disprove. If treated as an affirmative defense, the judge must then determine who has the burden of persuasion and what that burden is (preponderance, clear and convincing, or beyond a reasonable doubt).

This instruction was adopted on March 20, 2026.

11.24 THEFT OF A SEXUALLY EXPLICIT IMAGE WITH INTENT TO PROMOTE

§ 836.14(2), Fla. Stat.

To prove the crime of Theft of a Sexually Explicit Image with Intent to Promote, the State must prove the following three elements beyond a reasonable doubt. The first two elements are a definition of Theft.

1. (Defendant) **knowingly and unlawfully obtained or endeavored to obtain a sexually explicit image, the property of** (victim)**.**

2. (Defendant) **did so with the intent to either temporarily or permanently deprive** (victim) **of [his] [her] right to the image or to appropriate the image to [his] [her] own use or to the use of any person not entitled to it.**

3. **At the time** (defendant) **committed the Theft, [he] [she] had the intent to promote the sexually explicit image.**

"Sexually explicit image" means any image depicting an identifiable person portraying nudity or engaged in sexual conduct.

"Identifiable person" means that a person is recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic, such as a unique birthmark, or other recognizable feature. It is not necessary for the State to prove the identity of the person depicted in the image.

"Nudity" means the showing of the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering; or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple; or the depiction of covered male genitals in a discernibly turgid state. [A mother's breastfeeding of her baby does not under any circumstance constitute "nudity," irrespective of whether or not the nipple is covered during or incidental to feeding.]

Many of these terms have their own definition. Give those definitions as appropriate. § 847.001, Fla. Stat.

"Sexual Conduct" means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual or simulated lewd exhibition of the genitals; actual physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast with the intent to arouse or gratify the sexual desire of either party; or any act

or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed.

"Promote" means to issue, sell, give, provide, lend, mail, deliver, transfer, transmit, transmute, publish, distribute, circulate, disseminate, present, exhibit, send, post, share, advertise, or offer or agree to do the same.

Lesser Included Offense

THEFT OF A SEXUALLY EXPLICIT IMAGE WITH INTENT TO PROMOTE — 836.14(2)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Petit Theft	812.014(3)(a)	14.1
	Attempt	777.04(1)	5.1

Comments

§ 836.14(7), Fla. Stat., contains certain exemptions from the criminal penalties in this statute. It is likely those exemptions would be treated as an affirmative defense. Regardless of whether the defense would need to prove the exemption applies or the State would need to prove the exemption does not apply, a special instruction will be necessary if the exemption is at issue.

As of November 2022, it was unclear whether acts done for bona fide medical purposes or a mother's breastfeeding of her baby should be treated as affirmative defenses or as elements that the State must disprove. If treated as an affirmative defense, the judge must then determine who has the burden of persuasion and what that burden is (preponderance, clear and convincing, or beyond a reasonable doubt).

This instruction was adopted on December 21, 2022.

11.25 UNAUTHORIZED POSSESSION OF A SEXUALLY EXPLICIT IMAGE WITH THE INTENT TO PROMOTE

§ 836.14(3), Fla. Stat.

To prove the crime of Unauthorized Possession of a Sexually Explicit Image with the Intent to Promote, the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **willfully possessed a sexually explicit image**

2. **At the time,** (defendant) **intended to promote the sexually explicit image for pecuniary or other financial gain.**

3. **At the time,** (defendant) **knew or should have known the sexually explicit image had been obtained by theft.**

"Willfully" means knowingly, intentionally, and purposely.

To prove (defendant) **"possessed a sexually explicit image," the State must prove beyond a reasonable doubt that [he] [she] a) knew of the existence of the sexually explicit image and b) intentionally exercised control over that image.**

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

Joint possession. Give if applicable.

Possession of a sexually explicit image may be sole or joint, that is, two or more persons may possess an image.

"Sexually explicit image" means any image depicting an identifiable person portraying nudity or engaged in sexual conduct.

"Identifiable person" means a person is recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic, such as a unique birthmark, or other recognizable feature.

"Nudity" means the showing of the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering; or the showing of the female breast with less than a fully opaque covering of any

portion thereof below the top of the nipple; or the depiction of covered male genitals in a discernibly turgid state. [A mother's breastfeeding of her baby does not under any circumstance constitute "nudity," irrespective of whether or not the nipple is covered during or incidental to feeding.]

Many of these terms have their own definition. Give those definitions as appropriate. § 847.001, Fla. Stat.

"Sexual Conduct" means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual or simulated lewd exhibition of the genitals; actual physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed.

"Promote" means to issue, sell, give, provide, lend, mail, deliver, transfer, transmit, transmute, publish, distribute, circulate, disseminate, present, exhibit, send, post, share, advertise, or offer or agree to do the same.

"Pecuniary Gain" means the receipt of, or the anticipation of receipt of, anything of value, whether monetary or in goods or services. The term pecuniary gain includes both monetary and barter transactions.

"Theft" is committed when a person knowingly obtains or uses, or endeavors to obtain or use, the property of another with the intent to, either temporarily or permanently deprive the other person of a right to, or benefit from, the property or to appropriate the property of another to his own use or to the use of any person not entitled to the use of the property.

Lesser Included Offense

UNAUTHORIZED POSSESSION OF A SEXUALLY EXPLICIT IMAGE WITH THE INTENT TO PROMOTE — 836.14(3)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Petit Theft	812.014(3)(a)	14.1
	Attempt	777.04(1)	5.1

Comments

§ 836.14(7), Fla. Stat., contains certain exemptions from the criminal penalties in this statute. It is likely those exemptions would be treated as an affirmative defense. Regardless of whether the defense would need to prove the exemption applies or the State would need to prove the exemption does not apply, a special instruction will be necessary if the exemption is at issue.

As of November 2022, it was unclear whether acts done for bona fide medical purposes or a mother's breastfeeding of her baby should be treated as affirmative defenses or as elements that the State must disprove. If treated as an affirmative defense, the judge must then determine who has the burden of persuasion and what that burden is (preponderance, clear and convincing, or beyond a reasonable doubt).

This instruction was adopted on December 21, 2022.

11.26 UNAUTHORIZED PROMOTION OF A SEXUALLY EXPLICIT IMAGE

§ 836.14(4), Fla. Stat.

To prove the crime of Unauthorized Promotion of a Sexually Explicit Image, the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **willfully promoted a sexually explicit image through the use of [print media] [or] [an Internet website or other electronic means].**

2. (Defendant) **promoted the sexually explicit image without the consent of the person(s) depicted in the image**

3. (Defendant) **did so for the purpose of pecuniary or other financial gain.**

Definitions.

"Willfully" means knowingly, intentionally, and purposely.

"Promoted" means to issue, sell, give, provide, lend, mail, deliver, transfer, transmit, transmute, publish, distribute, circulate, disseminate, present, exhibit, send, post, share, advertise, or offer or agree to do the same.

"Sexually explicit image" means any image depicting an identifiable person portraying nudity or engaged in sexual conduct.

"Identifiable person" means a person is recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic, such as a unique birthmark, or other recognizable feature. It is not necessary for the State to prove the identity of the person depicted in the image.

"Nudity" means the showing of the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering; or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple; or the depiction of covered male genitals in a discernibly turgid state. [A mother's breastfeeding of her baby does not under any circumstance constitute "nudity," irrespective of whether or not the nipple is covered during or incidental to feeding.]

Many of these terms have their own definition. Give those definitions as appropriate. § 847.001, Fla. Stat.

"Sexual Conduct" means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual or simulated lewd exhibition of the genitals; actual physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed.

"Pecuniary Gain" means the receipt of, or the anticipation of receipt of, anything of value, whether monetary or in goods or services. Thus, the term pecuniary gain includes both monetary and barter transactions.

Lesser Included Offense

UNAUTHORIZED PROMOTION OF A SEXUALLY EXPLICIT IMAGE—836.14(4)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempt	777.04(1)	5.1

Comments

§ 836.14(7), Fla. Stat., contains certain exemptions from the criminal penalties in this statute. It is likely those exemptions would be treated as an affirmative defense. Regardless of whether the defense would need to prove the exemption applies or the State would need to prove the exemption does not apply, a special instruction will be necessary if the exemption is at issue.

As of November 2022, it was unclear whether acts done for bona fide medical purposes or a mother's breastfeeding of her baby should be treated as affirmative defenses or as elements that the State must disprove. If treated as an affirmative defense, the judge must then determine who has the burden of persuasion and what that burden is (preponderance, clear and convincing, or beyond a reasonable doubt).

This instruction was adopted on December 21, 2022.

11.27 SEXUAL MISCONDUCT BY A[N] [INSERT APPROPRIATE POSITION OF THE DEFENDANT] UPON AN [INMATE] [OFFENDER]

§ 944.35(3)(b)2., Fla. Stat.*

To prove the crime of Sexual Misconduct by a[n] (insert appropriate position of the defendant) **upon an [Inmate] [Offender], the State must prove the following three elements beyond a reasonable doubt:**

1. (Defendant) **engaged in sexual misconduct with** (victim).

2 At the time, (defendant) **was a[n]** (insert appropriate position of the defendant)**.**

3. At the time, (victim) **was an [inmate] [offender supervised in the community by the Florida Department of Corrections].**

§ 944.35, Fla. Stat.

"Sexual misconduct" means the oral, anal, or female genital* penetration by, or union with, the sexual organ of another or the anal or female genital penetration of another by any other object. "Female genitals" includes the labia minora, labia majora, clitoris, vulva, hymen, and vagina.

Lakey v. State, 113 So. 3d 90 (Fla. 5th DCA 2013).

"An object" includes a finger.

Phillips v. State, 238 So. 3d 308 (Fla. 4th DCA 2018).

"Union" means contact.

§ 944.35, Fla. Stat.

The consent of the [inmate] [offender] to any act of sexual misconduct is not a defense.

Give the following instructions only if applicable.

"Sexual misconduct" does not include an act done for a bona fide medical purpose. "Bona fide" means genuine.

"Sexual misconduct" does not include an act done for an internal search conducted in the lawful performance of the employee's duty.

§ 944.710, Fla. Stat.

"Volunteer" means a person registered with the Florida Department of Corrections or a contractor-operated correctional facility who is engaged in specific voluntary service activities on an ongoing or continual basis.

§ 944.710, Fla. Stat.

"Contractor-operated correctional facility" means any facility, that is not operated by the Florida Department of Corrections, for the incarceration of adults or juveniles who have been sentenced by a court and committed to the custody of the Department of Corrections.

§ 944.35, Fla. Stat.

The provisions of this statute do not apply to a[n] (insert appropriate position of the defendant) **who engages in sexual misconduct and is legally married to an [inmate] [offender under the [Department's] [facility's] supervision], or to any** (insert appropriate position of the defendant) **who has no knowledge, and would have no reason to believe, that the person with whom the employee has engaged in sexual misconduct is an [inmate] [offender] under the [Department's] [facility's] supervision.**

Lesser Included Offenses

SEXUAL MISCONDUCT BY A[N] [INSERT APPROPRIATE POSTION OF THE DEFENDANT] — 944.35(3)(b)2.

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Battery	784.03	8.3
	Attempt	777.04(1)	5.1

Comments

*Effective October 1, 2022, the Legislature changed "vagina" to "female genitals" in sex crimes-related statutes. Judges should ensure the jury instructions contain correct statutory terms, which will depend on the date alleged in the charging document. *Flores v. State,* -- So. 3d -- (Fla. 4th DCA 2024) is an example of an appellate court finding fundamental error when the trial judge expanded the definition of "vaginal penetration" by instructing on "female genital penetration."

As of August 2024, it was unclear whether acts done for bona fide medical purposes, internal searches conducted in the lawful performance an employee's duty, or the provisions in § 944.35(3)(b)4., Fla. Stat., should be treated as affirmative defenses or as elements that the State must disprove. If

treated as an affirmative defense, the judge must then determine who has the burden of persuasion and what that burden is (preponderance of the evidence, clear and convincing, or beyond a reasonable doubt).

This instruction was adopted on April 25, 2023, and amended on March 8, 2024, and on September 20, 2024.

11.28 SEXUAL MISCONDUCT ON A PATIENT BY AN EMPLOYEE OF THE DEPARTMENT OF CHILDREN AND FAMILIES

§ 394.4593(2), Fla. Stat.

To prove the crime of Sexual Misconduct on a Patient by an Employee of the Department of Children and Families, the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **engaged in sexual misconduct with (victim).**

2. **At the time,** (victim) **was a patient [in the custody of the Department of Children and Families] [residing in a [receiving] [treatment] facility].**

3. **At the time,** (defendant) **was an employee of the Department of Children and Families.**

§394.4593, Fla. Stat.

"Employee" means any paid staff member, volunteer, or intern of the Department of Children and Families; or any person under contract with the Department of Children and Families; or any person providing care or support to a client on behalf of the Department of Children and Families or its providers.

§394.455, Fla. Stat.

"Patient" means any person, with or without a co-occurring substance abuse disorder, who is held or accepted for mental health treatment by the Department of Children and Families.

§ 394.4593, Fla. Stat.

"Sexual misconduct" means any sexual activity between an employee and a patient, regardless of the consent of the patient.

§ 394.4593(1), Fla. Stat.

Some of these terms have their own statutory definitions which should be given if applicable.

"Sexual activity" means:

1. **Fondling the genital area, groin, inner thighs, buttocks or breasts of a person;**

2. **The oral, anal or vaginal penetration by or union with the sexual organ of another or the anal or vaginal penetration of another by any other object;**

3. **Intentionally touching in a lewd or lascivious manner the breasts, genitals, the genital area, or buttocks, or the clothing covering them, of a person, or forcing or enticing a person to touch the perpetrator;**

4. **Intentionally masturbating in the presence of another person;**

5. **Intentionally exposing the genitals in a lewd or lascivious manner in the presence of another person; or**

6. **Intentionally committing any other sexual act that does not involve actual physical or sexual contact with the victim, including, but not limited to, sadomasochistic abuse, sexual bestiality, or the simulation of any act involving sexual activity in the presence of a victim.**

Give only if applicable.

Lakey v. State, 113 So. 3d 90 (Fla. 5th DCA 2013).

"An object" includes a finger.

Phillips v. State, 238 So. 3d 308 (Fla. 4th DCA 2018).

"Union" means contact.

§ 394.4593, Fla. Stat.

The consent of the patient to sexual activity is not a defense.

§ 394.455, Fla. Stat.

"Receiving facility" means a public or private facility or hospital designated by the Department of Children and Families to receive and hold or refer, as appropriate, involuntary patients under emergency conditions for mental health or substance abuse evaluation and to provide treatment or transportation to the appropriate service provider. The term does not include a county jail.

§ 394.455, Fla. Stat.

"Treatment facility" means a state-owned, state-operated, or state-supported hospital, center, or clinic designated by the Department of

Children and Families for extended treatment and hospitalization, beyond that provided for by a receiving facility, of persons who have a mental illness, including facilities of the United States Government, and any private facility designated by the department when rendering such services to a person pursuant to the provisions of this part. Patients treated in facilities of the United States Government shall be solely those whose care is the responsibility of the United States Department of Veterans Affairs.

Lesser Included Offenses

SEXUAL MISCONDUCT ON A PATIENT BY AN EMPLOYEE OF THE DEPARTMENT OF CHILDREN AND FAMILIES — 394.4593(2)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Sexual battery	794.011	Chapter 11
	Unlawful sexual activity with certain minors	794.03	11.7
	Lewd or Lascivious crimes	Chapter 800	Chapter 11
	Attempt	777.04(1)	5.1

Comments

A patient who is not being held or accepted for mental health treatment is not within the purview of this statute. Substance abuse services or treatment, without co-occurring treatment for a mental health disorder, does not constitute mental health treatment. *See Deloatch v. State*, 360 So. 3d 1165 (Fla. 4th DCA 2023).

It is a not a violation of § 394.4593, Fla. Stat., if the DCF employee were legally married to the patient or had no reason to believe that the person with whom the employee engaged in sexual misconduct was in the custody of the DCF or was residing in a receiving or treatment facility. Furthermore, acts done for a bona fide medical purpose, or an internal search conducted in the lawful performance of duty by an employee are exempted from criminal liability under the statute. As of April 2024, it was undetermined whether any of these circumstances should be treated as an affirmative defense or as an element that the State must disprove. If treated as an affirmative defense, the judge must determine who has the burden of persuasion and what that burden is (preponderance, clear and convincing, or beyond a reasonable doubt).

This instruction was adopted on May 21, 2024.

11.29 FAILURE OF AN EMPLOYEE OF THE DEPARTMENT OF CHILDREN AND FAMILIES TO COMPLY WITH SEXUAL MISCONDUCT REPORTING REQUIREMENTS

§ 394.4593(2), Fla. Stat.

To prove the crime of Sexual Misconduct on a Patient by an Employee of the Department of Children and Families, the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **engaged in sexual misconduct with (victim).**

2. **At the time,** (victim) **was a patient [in the custody of the Department of Children and Families] [residing in a [receiving] [treatment] facility].**

3. **At the time,** (defendant) **was an employee of the Department of Children and Families.**

§394.4593, Fla. Stat.

"Employee" means any paid staff member, volunteer, or intern of the Department of Children and Families; or any person under contract with the Department of Children and Families; or any person providing care or support to a client on behalf of the Department of Children and Families or its providers.

§394.455, Fla. Stat.

"Patient" means any person, with or without a co-occurring substance abuse disorder, who is held or accepted for mental health treatment by the Department of Children and Families.

§ 394.4593, Fla. Stat.

"Sexual misconduct" means any sexual activity between an employee and a patient, regardless of the consent of the patient.

§ 394.4593(1), Fla. Stat.

Some of these terms have their own statutory definitions which should be given if applicable.

"Sexual activity" means:

1. **Fondling the genital area, groin, inner thighs, buttocks or breasts of a person;**

2. The oral, anal or vaginal penetration by or union with the sexual organ of another or the anal or vaginal penetration of another by any other object;

3. Intentionally touching in a lewd or lascivious manner the breasts, genitals, the genital area, or buttocks, or the clothing covering them, of a person, or forcing or enticing a person to touch the perpetrator;

4. Intentionally masturbating in the presence of another person;

5. Intentionally exposing the genitals in a lewd or lascivious manner in the presence of another person; or

6. Intentionally committing any other sexual act that does not involve actual physical or sexual contact with the victim, including, but not limited to, sadomasochistic abuse, sexual bestiality, or the simulation of any act involving sexual activity in the presence of a victim.

Give only if applicable.

Lakey v. State, 113 So. 3d 90 (Fla. 5th DCA 2013).

"An object" includes a finger.

Phillips v. State, 238 So. 3d 308 (Fla. 4th DCA 2018).

"Union" means contact.

§ 394.4593, Fla. Stat.

The consent of the patient to sexual activity is not a defense.

§ 394.455, Fla. Stat.

"Receiving facility" means a public or private facility or hospital designated by the Department of Children and Families to receive and hold or refer, as appropriate, involuntary patients under emergency conditions for mental health or substance abuse evaluation and to provide treatment or transportation to the appropriate service provider. The term does not include a county jail.

§ 394.455, Fla. Stat.

"Treatment facility" means a state-owned, state-operated, or state-supported hospital, center, or clinic designated by the Department of Children and Families for extended treatment and hospitalization, beyond that provided for by a receiving facility, of persons who have a mental illness, including facilities of the United States Government, and any private facility designated by the department when rendering such services to a person pursuant to the provisions of this part. Patients treated in facilities of the United States Government shall be solely those whose care is the responsibility of the United States Department of Veterans Affairs.

Lesser Included Offenses

SEXUAL MISCONDUCT ON A PATIENT BY AN EMPLOYEE OF THE DEPARTMENT OF CHILDREN AND FAMILIES — 394.4593(2)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Sexual battery	794.011	Chapter 11 instructions
	Unlawful sexual activity with certain minors	794.03	11.7
	Lewd or Lascivious crimes	Chapter 800	Chapter 11 instructions
	Attempt	777.04(1)	5.1

Comments

A patient who is not being held or accepted for mental health treatment is not within the purview of this statute. Substance abuse services or treatment, without co-occurring treatment for a mental health disorder, does not constitute mental health treatment. *See Deloatch v. State*, 360 So. 3d 1165 (Fla. 4th DCA 2023).

It is a not a violation of § 394.4593, Fla. Stat., if the DCF employee were legally married to the patient or had no reason to believe that the person with whom the employee engaged in sexual misconduct was in the custody of the DCF or was residing in a receiving or treatment facility. Furthermore, acts done for a bona fide medical purpose, or an internal search conducted in the lawful performance of duty by an employee are exempted from criminal liability under the statute. As of April 2024, it was undetermined whether any of these circumstances should be treated as an affirmative defense or as an element that the State must disprove. If treated as an affirmative defense, the judge must determine who has the burden of persuasion and what that burden is (preponderance, clear and convincing, or beyond a reasonable doubt).

This instruction was adopted on May 21, 2024.

11.30 HARMFUL COMMUNICATION TO A MINOR

§ 847.01385, Fla. Stat.

To prove the crime of Harmful Communication to a Minor, the State must prove the following five elements beyond a reasonable doubt:

1. (Defendant) **engaged in a pattern of communication to** (victim)

2. **The communication included explicit and detailed verbal descriptions or narrative accounts of sexual activity, sexual conduct, or sexual excitement.**

3. **The communication was harmful to minors.**

4. **At the time,** (defendant) **was 18 years of age or older.**

5. **At the time,** (victim) **was less than 18 years of age.**

A communication "harmful to minors" is defined as any reproduction, imitation, characterization, description, exhibition, presentation, or representation, of whatever kind or form, depicting nudity, sexual conduct, or sexual excitement that:

a. **predominantly appealed to a prurient, shameful, or morbid interest; and**

b. **was patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material or conduct for minors; and**

c. **taken as a whole, was without serious literary, artistic, political, or scientific value for minors.**

"Communication" means any verbal or written communication.

"Sexual activity" means the oral, anal, or female genital penetration by, or union with, the sexual organ of another or the anal or female genital penetration of another by any other object.

"Sexual conduct" means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual or simulated lewd exhibition of the genitals; actual physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast with the intent to arouse or gratify the sexual desire of either party; or any act or conduct

which constitutes sexual battery or simulates that sexual battery is being or will be committed.

"Sexual excitement" means the condition of the human male or female genitals when in a state of sexual stimulation or arousal.

"Sadomasochistic abuse" means flagellation or torture by or upon a person or animal, or the condition of being fettered, bound, or otherwise physically restrained, for the purpose of deriving sexual satisfaction, or satisfaction brought about as a result of sadistic violence, from inflicting harm on another or receiving such harm oneself.

"Deviate sexual intercourse" means sexual conduct between persons not married to each other consisting of contact between the penis and the anus, the mouth and the penis, or the mouth and the vulva.

"Sexual battery" means oral, anal, or female genital* penetration by, or union with, the sexual organ of another or the anal or female genital penetration of another by any other object.

Phillips v. State, 238 So. 3d 308 (Fla. 4th DCA 2018).

"Union" means contact.

Lakey v. State, 113 So. 3d 90 (Fla. 5th DCA 2013).

The definition of "an object" includes a finger.

"Female genitals*" includes the labia minora, labia majora, clitoris, vulva, hymen, and vagina.

"Sexual bestiality" means any sexual act, actual or simulated, between a person and an animal involving the sex organ of the one and the mouth, anus, or female genitals of the other.

"Simulated" means the explicit depiction of sexual conduct which creates the appearance of such conduct and which exhibits any uncovered portion of the breasts, genitals, or buttocks.

The defendant's ignorance of (victim's) age, (victim's) misrepresentation of [his] [her] age, or the defendant's bona fide belief of (victim's) age is not a defense to the crime charged. "Bona fide" means genuine.

Lesser Included Offenses

There are a host of crimes in Chapter 847 related to distributing obscene materials to a minor. The parties should carefully review all Chapter 847 crimes to determine the appropriate lesser included offense.

Comments

As of June 2025, it was unclear whether acts done for *bona fide* medical purposes or a mother's breastfeeding of her baby should be treated as affirmative defenses or as elements that the State must disprove. If treated as an affirmative defense, the judge must then determine who has the burden of persuasion and what that burden is (preponderance of the evidence, clear and convincing, or beyond a reasonable doubt).

This instruction was adopted on June 27, 2025.

11.31 LEWD OR LASCIVIOUS IMAGES

§ 800.045(3), Fla. Stat.

To prove the crime of Lewd or Lascivious Images, the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **knowingly [solicited] [possessed] [controlled] [and intentionally viewed] a[n] [photograph] [motion picture] [exhibition] [show] [representation] [image] [data] [computer depiction] [presentation].**

2. **The [photograph] [motion picture] [exhibition] [show] [representation] [image] [data] [computer depiction] [presentation] contained, in whole or in part, a lewd or lascivious image**

3. **At the time,** (defendant) **knew that the [photograph] [motion picture] [exhibition] [show] [representation] [image] [data] [computer depiction] [presentation] contained a lewd or lascivious image.**

The words "lewd" and "lascivious" mean the same thing: a wicked, lustful, unchaste, licentious, or sensual intent on the part of the person doing an act.

"Lewd or lascivious image" means any image depicting a lewd or lascivious exhibition or that has been created, altered, adapted, or modified by electronic, mechanical, or other means to portray a lewd or lascivious exhibition committed in the presence of an identifiable minor.

"Lewd or lascivious exhibition" means a person intentionally masturbated, intentionally exposed the genitals in a lewd or lascivious manner; or intentionally committed any other sexual act that did not involve actual physical or sexual contact with the victim, including, but not limited to, sadomasochistic abuse, sexual bestiality, or the simulation of any act involving sexual activity in the presence of a victim who was less than 16 years of age. [A lewd or lascivious exhibition does not include a mother's breastfeeding of her baby.]

"Identifiable minor" means a person, less than 16 years of age at the time the image was created, altered, adapted, or modified, or whose image as a person less than 16 years of age was used in the creating, altering, adapting, or modifying of an image, who is recognizable as an actual person by the person's face, likeness, or other distinguishing

characteristic, such as a unique birthmark, or other recognizable feature. However, no proof of the actual identity of the minor is required.

"Intentionally view" means to deliberately, purposefully, and voluntarily view. Proof of intentional viewing requires establishing more than a single image, motion picture, exhibition, show, image, data, computer depiction, representation, or other presentation over any period of time.

To prove (defendant) **"possessed a[n] [photograph] [motion picture] [exhibition] [show] [representation] [image] [data] [computer depiction] [presentation]," the State must prove beyond a reasonable doubt that [he] [she] a) knew of the existence of the item; and b) intentionally exercised control over it.**

Control can be exercised over an item whether it is carried on a person, near a person, or in a completely separate location. Mere proximity to an item 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 the item or the present ability to direct its control by another.

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

"Sadomasochistic abuse" means (insert definition from § 847.001, Fla. Stat. or § 827.071, Fla. Stat., which are similar but not identical)**.**

"Sexual bestiality" means (insert definition from § 847.001, Fla. Stat. or § 827.071, Fla. Stat., which are similar but not identical)**.**

Lesser Included Offense

LEWD OR LASCIVIOUS IMAGES — 800.045(3)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempt	777.04(1)	5.1

Comments

The statute exempts from criminal liability any material solicited, possessed, controlled, or intentionally viewed as part of a law enforcement investigation.

As of February 2026, it was unclear whether a mother's breastfeeding of her baby should be treated as an affirmative defense or as an element that the State must disprove.

This instruction was adopted on March 20, 2026.

11.32 POSSESSION OF A LEWD OR LASCIVIOUS IMAGE WITH INTENT TO PROMOTE

§ 800.045(2), Fla. Stat.

To prove the crime of Possession of a Lewd or Lascivious Image with Intent to Promote, the State must prove the following four elements beyond a reasonable doubt:

1. (Defendant) **possessed a[n] [photograph] [motion picture] [exhibition] [show] [representation] [presentation].**

2. **The [photograph] [motion picture] [exhibition] [show] [representation] [presentation] contained, in whole or in part, a lewd or lascivious image.**

3. **At the time of possession,** (defendant) **knew the [photograph] [motion picture] [exhibition] [show] [representation] [presentation] contained a lewd or lascivious image.**

4. **At the time of possession,** (defendant) **intended to promote the [photograph] [motion picture] [exhibition] [show] [representation] [presentation].**

To prove (defendant) **"possessed a[n] [photograph] [motion picture] [exhibition] [show] [representation] [presentation]," the State must prove beyond a reasonable doubt that [he] [she] a) knew of the existence of the item; and b) intentionally exercised control over it.**

Control can be exercised over an item whether it is carried on a person, near a person, or in a completely separate location. Mere proximity to an item 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 the item or the present ability to direct its control by another.

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

The words "lewd" and "lascivious" mean the same thing: a wicked, lustful, unchaste, licentious, or sensual intent on the part of the person doing an act.

"Lewd or lascivious image" means any image depicting a lewd or lascivious exhibition or that has been created, altered, adapted, or modified by electronic, mechanical, or other means to portray a lewd or lascivious exhibition committed in the presence of an identifiable minor.

"Lewd or lascivious exhibition" means a person intentionally masturbated, intentionally exposed the genitals in a lewd or lascivious manner; or intentionally committed any other sexual act that did not involve actual physical or sexual contact with the victim, including, but not limited to, sadomasochistic abuse, sexual bestiality, or the simulation of any act involving sexual activity in the presence of a victim who was less than 16 years of age. [A lewd or lascivious exhibition does not include a mother's breastfeeding of her baby.]

"Identifiable minor" means a person, less than 16 years of age at the time the image was created, altered, adapted, or modified, or whose image as a person less than 16 years of age was used in the creating, altering, adapting, or modifying of an image, who is recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic, such as a unique birthmark, or other recognizable feature. However, no proof of the actual identity of the minor is required.

"Promote" means to procure, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmit, transmute, publish, distribute, circulate, disseminate, present, exhibit, send, post, share, or advertise or to offer or agree to do the same.

You may, but are not required to, infer that (defendant) **had the intent to promote the [photograph] [motion picture] [exhibition] [show] [representation] [presentation] if you find [he] [she] possessed three more copies of the [photographs] [motion pictures] [representations] [or] [presentations].**

"Sadomasochistic abuse" means (insert definition from § 847.001, Fla. Stat. or § 827.071, Fla. Stat., which are similar but not identical)**.**

"Sexual bestiality" means (insert definition from § 847.001, Fla. Stat. or § 827.071, Fla. Stat., which are similar but not identical)**.**

Lesser Included Offense

POSSESSION OF A LEWD OR LASCIVOUS IMAGE WITH INTENT TO PROMOTE — 800.045(2)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempt	777.04(1)	5.1

Comment

This instruction was adopted on March 20, 2026.

CHAPTER 12 — ARSON AND CRIMINAL MISCHIEF

12.1 ARSON — FIRST DEGREE

§ 806.01(1), Fla. Stat.

To prove the crime of Arson, the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) **[willfully and unlawfully] [while engaged in the commission of [a felony] [**(felony alleged)**]] caused a[n] [fire] [explosion].**

Give 2a if § 806.01(1)(a), Fla. Stat. is charged.

2. a. A dwelling, whether occupied or not, [or the contents of the dwelling,] was damaged by the [fire] [explosion].

Give 2b if § 806.01(1)(b), Fla. Stat. is charged.

b. A structure, where persons would normally be present at the time of the [fire] [explosion], [or the contents of a structure where persons would normally be present at the time of the [fire] [explosion]], was damaged by the [fire] [explosion].

Give 2c if § 806.01(1)(c), Fla. Stat. is charged.

c. A structure, that (defendant) knew or had reasonable grounds to believe would be occupied by a human being at the time of the [fire] [explosion], was damaged by the [fire] [explosion].

Knighten v. State, 568 So. 2d 1001 (Fla. 2d DCA 1990) and N.K.D. v. State, 799 So. 2d 428 (Fla. 1st DCA 2001).

In order to convict the defendant of Arson, it is not necessary for the State to prove [he] [she] intended to damage the [dwelling] [structure].

Give if applicable.

The Court instructs you that (name of felony) **is a felony.**

Definitions. Give as applicable.

Patterson v. State, 512 So. 2d 1109 (Fla. 1st DCA 1987).

"Willfully" means intentionally, knowingly, and purposely.

Berry v. State, 566 So. 2d 22 (Fla. 1st DCA 1990).

"Unlawfully" means without a legitimate, lawful purpose.

§ 810.011(2), Fla. Stat. Dubose v. State, 210 So. 3d 641 (Fla. 2017).

"Dwelling" means a building [or conveyance] of any kind, whether such building [or conveyance] is temporary or permanent, mobile or immobile, which has a roof over it and is designed to be occupied by people lodging therein at night, together with the enclosed space of ground and outbuildings immediately surrounding it. [The enclosure need not be continuous as it may have an ungated opening for entering and exiting.] For purposes of arson, a "dwelling" includes an attached porch or attached garage.

§ 806.01(3), Fla. Stat.

"Structure" means any building of any kind, any enclosed area with a roof over it, any real property and appurtenances, any tent or other portable building, and any vehicle, vessel, watercraft, or aircraft.

If the defendant is charged with causing a fire or explosion while committing a felony, define the felony that the defendant was allegedly committing.

Lesser Included Offenses

ARSON — 806.01(1)			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
None			
	Arson – second degree	806.01(2)	12.2
	Attempt	777.04(1)	5.1
	Criminal mischief	806.13	12.4

Comments

A special instruction is necessary in cases where the dwelling is vacant and the homeowner does not intend to return. *See Mitchell v. State*, 734 So. 2d 1067 (Fla. 1st DCA 1999).

This instruction was adopted in 1981 and was amended in 1992 [603 So. 2d 1175], 2014 [146 So. 3d 1110], and 2018.

12.2 ARSON — SECOND DEGREE

§ 806.01(2), Fla. Stat.

To prove the crime of Arson — Second Degree, the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) **[willfully and unlawfully] [while engaged in the commission of a [felony] [**(felony alleged)**]] caused a[n] [explosion] [fire].**

2. A structure, owned by the defendant or another, was damaged by the [explosion] [fire].

Give if applicable.

The court instructs you that (name of felony) **is a felony.**

Knighten v. State, 568 So. 2d 1001 (Fla. 2d DCA 1990) and N.K.D. v. State, 799 So. 2d 428 (Fla. 1st DCA 2001).

In order to convict the defendant of Arson, it is not necessary for the State to prove [he] [she] intended to damage the structure.

Definitions.

Patterson v. State, 512 So. 2d 1109 (Fla. 1st DCA 1987).

"Willfully" means intentionally, knowingly, and purposely.

Berry v. State, 566 So. 2d 22 (Fla. 1st DCA 1990).

"Unlawfully" means without a legitimate, lawful purpose.

§ 806.01(3) Fla. Stat.

"Structure" means any building of any kind, any enclosed area with a roof over it, any real property and appurtenances, any tent or other portable building, and any vehicle, vessel, watercraft, or aircraft.

If the defendant is charged with causing a fire or explosion while committing a felony, define the felony that the defendant was allegedly committing.

Lesser Included Offenses

ARSON — 806.01(2)			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
None			
	Attempt	777.04(1)	5.1
	Criminal mischief	806.13	12.4

Comment

This instruction was adopted in 1981 and amended in 1992 and 2014.

12.3 ARSON — FIRE BOMB

§ 806.111, Fla. Stat.

To prove the crime of (crime charged)**, the State must prove the following two elements beyond a reasonable doubt:**

1. (Defendant)

[manufactured]

[possessed]

[gave to (person alleged)**]**

[loaned to (person alleged)**]**

[offered for sale to (person alleged)**]**

[sold to (person alleged)**]**

[transferred to (person alleged)**]**

[transported]

[disposed of]

[offered to (person alleged)**]**

a fire bomb.

2. At the time, (defendant) **intended that the fire bomb would be willfully and unlawfully used to damage by [fire] [explosion] any structure or property.**

Definitions

§ 806.111(2)(b), Fla. Stat.

A "fire bomb" is a container containing flammable liquid, or combustible liquid, or any incendiary chemical mixture or compound, having a wick or similar device capable of being ignited or other means capable of causing ignition; but no device commercially manufactured primarily for the purpose of illumination, heating, or cooking shall be deemed to be such a fire bomb.

§ 806.01(3), Fla. Stat.

"**Structure" means:**

Any building of any kind.

Any enclosed area with a roof over it.

Any real property and its appurtenances.

Any tent or other portable building.

Any vehicle.

Any vessel.

Any watercraft.

Any aircraft.

Lesser Included Offenses

ARSON — FIREBOMB — 806.111			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
None			
	Attempt	777.04(1)	5.1

Comment

This instruction was adopted in 1981 and amended in 1989.

12.4 CRIMINAL MISCHIEF

§ 806.13(1)-(2), Fla. Stat.

To prove the crime of Criminal Mischief, the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **injured or damaged [real] [personal] property.**

2. The property injured or damaged belonged to (person alleged)**.**

3. The injury or damage was done willfully and maliciously.

Give if applicable.

Among the means by which property can be injured or damaged under the law is the placement of graffiti on it or other acts of vandalism to it.

Definitions.

"Willfully" means intentionally, knowingly, and purposely.

"Maliciously" means wrongfully, intentionally, without legal justification or excuse, and with the knowledge that injury or damage will or may be caused to another person or the property of another person.

Degrees. Give as applicable.

If you find the defendant guilty of criminal mischief, you must determine whether the State proved beyond a reasonable doubt that:

a. [the damage to the property was $1,000 or greater.] [by reason of the damage, there was an interruption or impairment of a business operation or public communication, transportation, supply of water, gas or power, or other public service which cost $1,000 or more in labor and supplies to restore.]

b. [the damage to the property was greater than $200 but less than $1,000.]

c. [the damage to the property was $200 or less.]

d. [the property damaged was a church, synagogue, mosque, or other place of worship or any religious article contained therein].

e. [the defendant has previously been convicted of criminal mischief].

§ 806.13(5) (a), Fla. Stat.

The amounts of value of damage to property owned by separate persons, if the property was damaged during one scheme or course of conduct, may be aggregated in determining the total value.

Lesser Included Offenses

CRIMINAL MISCHIEF — 806.13(1)(b)1

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempt	777.04(1)	5.1

CRIMINAL MISCHIEF — 806.13(1)(b)2

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Criminal mischief		806.13(1)(b)1	12.4
	Attempt	777.04(1)	5.1

CRIMINAL MISCHIEF — 806.13(1)(b)3

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Criminal mischief		806.13(1)(b)1	12.4
Criminal mischief		806.13(1)(b)2	12.4
	Attempt	777.04(1)	5.1

Comment

It is error to inform the jury of a prior criminal mischief conviction. Therefore, if the information or indictment contains an allegation of one or more prior criminal mischief convictions, do not read the allegation and do not send the information or indictment into the jury room. If the defendant is found guilty of criminal mischief, the historical fact of a previous criminal mischief conviction shall be determined beyond a reasonable doubt in a bifurcated proceeding. *State v. Harbaugh*, 754 So. 2d 691 (Fla. 2000).

This instruction was adopted in 1981 and amended in 1992 and 2010.

12.4(a) CRIMINAL MISCHIEF – [MEMORIAL] [HISTORIC PROPERTY]

§ 806.13(3), Fla. Stat.

To prove the crime of Criminal Mischief – [Memorial] [Historic Property], the State must prove the following four elements beyond a reasonable doubt:

1. (Defendant) **defaced, injured, or damaged [a memorial] [historic property].**

2. **The [memorial] [historic property] was defaced, injured, or damaged without the consent of the owner.**

3. **The defacement, injury, or damage was done willfully and maliciously.**

4. **The damage to the [memorial] [historic property] was greater than $200.**

Definitions.

"Willfully" means intentionally, knowingly, and purposely.

"Maliciously" means wrongfully, intentionally, without legal justification or excuse, and with the knowledge that injury or damage will or may be caused to the property of another person.

Give as applicable. § 806.135(1), Fla. Stat.

"Memorial" means a plaque, statue, marker, flag, banner, cenotaph, religious symbol, painting, seal, tombstone, structure name, or display that is constructed and located with the intent of being permanently displayed or perpetually maintained; is dedicated to a historical person, an entity, an event, or a series of events; and honors or recounts the military service of any past or present United States Armed Forces military personnel, or the past or present public service of a resident of the geographical area comprising the state or the United States.

"Historic Property" means any building, structure, site, or object that has been officially designated as a historic building, historic structure, historic site, or historic object through a federal, state, or local designation program.

Lesser Included Offenses

CRIMINAL MISCHIEF [MEMORIAL] [HISTORIC PROPERTY] — 806.13(3)			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
Criminal Mischief		806.13(1)(b)1	12.4
	Criminal Mischief	806.13(1)(b)3	12.4
	Criminal Mischief	806.13(1)(b)2	12.4
	Attempt	777.04(1)	5.1

Comment

This instruction was adopted on December 15, 2021.

12.4(b) [DESTROYING OR DEMOLISHING] [OR] [PULLING DOWN] [A MEMORIAL] [HISTORIC PROPERTY]

§ 806.135(2), Fla. Stat.

To prove the crime of [Destroying or Demolishing] [or] [Pulling Down] [a Memorial] [Historic Property], the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) [**destroyed or demolished] [or] [pulled down] [a memorial] [historic property].**

2. **The [destruction or demolishment] [or] [pulling down] of the [memorial] [historic property] was done willfully and maliciously.**

Definitions.

"Willfully" means intentionally, knowingly, and purposely.

"Maliciously" means wrongfully, intentionally, without legal justification or excuse, and with the knowledge that injury or damage will or may be caused to the property of another person.

Give as applicable. § 806.135(1), Fla. Stat.

"Memorial" means a plaque, statue, marker, flag, banner, cenotaph, religious symbol, painting, seal, tombstone, structure name, or display that is constructed and located with the intent of being permanently displayed or perpetually maintained; is dedicated to a historical person, an entity, an event, or a series of events; and honors or recounts the military service of any past or present United States Armed Forces military personnel, or the past or present public service of a resident of the geographical area comprising the state or the United States.

"Historic Property" means any building, structure, site or object that has been officially designated as a historic building, historic structure, historic site, or historic object through a federal, state, or local designation program.

Affirmative defense. Give only if defendant meets his or her burden of production that he or she was authorized by the owner to destroy, demolish, or pull down the memorial or historic property. As of November 2021, there was no case law that decided who has the burden of persuasion for the affirmative defense and what that burden is (e.g., preponderance, clear and convincing, or beyond a reasonable doubt). In the absence of case law, trial judges will have to draft a special instruction on that issue.

It is a defense to the crime of [Destroying or Demolishing] [or] [Pulling Down] [a Memorial] [Historic Property] if (defendant) **was authorized by the owner to [destroy or demolish] [or] [pull down] the [memorial] [historic property].**

Lesser Included Offenses

[DESTROYING OR DEMOLISHING] [OR] [PULLING DOWN] [A MEMORIAL] [HISTORIC PROPERTY] — 806.135(2)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Criminal Mischief*		806.13(1)(b)1	12.4
	Criminal Mischief	806.13(1)(b)3	12.4
	Criminal Mischief	806.13(1)(b)2	12.4
	Attempt	777.04(1)	5.1

Comments

*If the memorial or historic property were destroyed or demolished, the Criminal Mischief in § 806.13(1)(b)1., Fla. Stat., would be a necessary lesser-included offense. However, a memorial or historic property could conceivably be pulled down without being damaged. In such a circumstance, the Criminal Mischief in § 806.13(1)(b)1., Fla. Stat., would not be a Category One lesser-included offense because that crime requires damage to the property.

This instruction was adopted on December 15, 2021.

12.4(c) CRIMINAL MISCHIEF – [DISPLAYING] [OR] [PROJECTING] AN IMAGE ONTO A BUILDING, STRUCTURE, OR OTHER PROPERTY WITHOUT WRITTEN CONSENT [WITH A CREDIBLE THREAT]

§ 806.13(6), Fla. Stat.

To prove the crime of Criminal Mischief, the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) **used any medium to knowingly and intentionally [display] [or] [project] an image onto a building, structure, or other property.**

2. **The [display] [or] [projection] was without the written consent of the owner of the building, structure, or other property.**

"Image" means a visual representation or likeness of a person or object, including text, graphics, logos, other artwork, or any combination thereof.

§ 806.01, Fla. Stat.

"Structure" means any building of any kind, any enclosed area with a roof over it, any real property and appurtenances thereto, any tent or other portable building, and any vehicle, vessel, watercraft, or aircraft.

Give only if the felony in § 806.13(6)(b), Fla. Stat. is charged.

If you find the defendant guilty of Criminal Mischief, you must further determine if the State proved beyond a reasonable doubt that the image [displayed] [or] [projected] onto the building, structure, or other property contained a credible threat.

"Credible Threat" means a verbal or nonverbal threat, or a combination of the two, including threats delivered by electronic communication or implied by a pattern of conduct, which places the person who is the target of the threat in reasonable fear for his or her safety or the safety of his or her family members or individuals closely associated with the person, and which is made with the apparent ability to carry out the threat to cause such harm. It is not necessary to prove that the person making the threat had the intent to actually carry out the threat; however, the State is required to prove the defendant was aware that a reasonable person who viewed the image could regard the image as a serious expression of an intent to commit an act of violence.

Lesser Included Offenses*

CRIMINAL MISCHIEF – [DISPLAYING] [OR] [PROJECTING] AN IMAGE ONTO A BUILDING, STRUCTURE, OR OTHER PROPERTY WITHOUT WRITTEN CONSENT WITH A CREDIBLE THREAT — 806.13(6)(b)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Criminal Mischief [Displaying] [or] [Projecting] an image, without a credible threat		806.13(6)(a)	12.4(c)
	Attempt	777.04(1)	5.1

Comments

*When the third-degree felony in § 806.13(6)(b), Fla. Stat., is charged, most judges will likely require the jurors to answer an interrogatory on the verdict form about whether the defendant displayed or projected a credible threat. If so, there would be no lesser included crime of the first-degree misdemeanor in § 806.13(6)(a), Fla. Stat.

This instruction was adopted on September 8, 2023.

12.4(d) CRIMINAL MISCHIEF

§ 806.13(4), Fla. Stat.

To prove the crime of Criminal Mischief, the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **intentionally damaged** [**a residential dwelling] [commercial real property] belonging to** (person alleged)**.**

2. (Defendant) **did so while [he] [she] unlawfully [occupied] [trespassed upon] [or] [detained] the [residential dwelling] [commercial real property].**

3. The damage was $1,000 or more.

Give as applicable.

§ 810.011(2), Fla. Stat. Dubose v. State, 210 So. 3d 641 (Fla. 2017).

"Residential dwelling" means a building [or conveyance] of any kind, whether such building [or conveyance] is temporary or permanent, mobile or immobile, which has a roof over it and is designed to be occupied by people lodging therein at night, together with the enclosed space of ground and outbuildings immediately surrounding it. [The enclosure need not be continuous as it may have an ungated opening for entering and exiting.] For purposes of Criminal Mischief, a "dwelling" includes an attached porch or attached garage.

As of August 2025, there was no statutory definition of "commercial real property."

"Commercial real property" means real property used for business purposes. "Real property" means land, buildings, fixtures, and all other improvements to land. "Improvements" mean any building, structure, construction, demolition, excavation, solid-waste removal, landscaping, or any part thereof existing, built, erected, placed, made, or done on land or other real property for its permanent benefit.

Give only if applicable.

Among the means by which property can be damaged under Florida law is the placement of graffiti on it or other acts of vandalism to it.

§ 810.08, Fla. Stat.

"Trespass" means that a person, without being authorized, licensed, or invited, willfully enters or remains in any structure [or conveyance], or, having been authorized, licensed, or invited, is warned by the owner or lessee of the premises, or by a person authorized by the owner or lessee, to depart and refuses to do so

§ 82.01, Fla. Stat.

To "unlawfully detain" [a residential dwelling] [commercial real property] means to possess the [dwelling] [commercial real property], even if the possession is temporary or applies only to a portion of the property, without the consent of a person entitled to possession of the property or after the withdrawal of consent by such person.

Lesser Included Offenses

CRIMINAL MISCHIEF — 806.13(4)			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
Trespass in a Structure (or Conveyance)		810.08	13.3
	Criminal Mischief*	806.13(1)-(2)	12.4
	Attempt	777.04(1)	5.1

Comments

*For § 806.13(1)-(2), Fla. Stat., to be a lesser included crime, the charging document would need to allege the defendant's damage was done not just intentionally, but also willfully and maliciously.

This instruction was adopted on February 21, 2025, and amended on September 12, 2025.

12.5 BURNING TO DEFRAUD INSURER

§ 817.233, Fla. Stat.

To prove the crime of Burning to Defraud an Insurer, the State must prove the following four elements beyond a reasonable doubt:

1. (Defendant)

[set fire to]

[burned]

[attempted to set fire to]

[attempted to burn]

[caused to be burned]

[aided, counseled, or procured the burning of]

(building, structure, or personal property alleged).

2. The property belonged to (person alleged)**.**

3. The property was insured against loss or damage by fire.

4. (Defendant) **acted willfully and with a fully-formed, conscious intent to injure or defraud the insurer of the property.**

Definition

"Willfully" means intentionally, knowingly, and purposely.

Lesser Included Offenses

BURNING TO DEFRAUD INSURER — 817.233			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
None			
	Attempt	777.04(1)	5.1

Comment

This instruction was adopted in 1981.

12.6 OFFENSES AGAINST COMPUTER USERS

§ 815.06(1), (2)(c), Fla. Stat.

To prove the crime of Offense against Computer Users, the State must prove the following element beyond a reasonable doubt:

(Defendant) **willfully, knowingly, and without authorization**

Give 1, 2, 3, 4, or 5 as applicable.

1. **[[accessed] [caused to be accessed] any [computer] [computer system] [computer network].]**

2. **[[disrupted] [denied] [caused the denial of] computer system services to an authorized user of such computer system services, which, in whole or part, is [owned by] [under contract to] [operated [for] [on behalf of] [in conjunction with]] another.]**

3. **[[destroyed] [took] [injured] [damaged] equipment or supplies [used] [intended to be used] in a [computer] [computer system] [computer network].]**

4. **[[destroyed] [injured] [damaged] any [computer] [computer system] [computer network].]**

5. **[introduced any computer contaminant into any [computer] [computer system] [computer network].]**

Enhanced Penalty.

If you find the defendant guilty of the crime of Offense Against Computer Users you must then determine, beyond a reasonable doubt, whether the offense endangered human life.

Give if applicable.

This offense does not apply to any person who accesses [his] [her] employer's computer system, computer network, computer program, or computer data when acting within the scope of [his] [her] lawful employment.

Definitions.

"Access" means to approach, instruct, communicate with, store data in, retrieve data from, or otherwise make use of any resources of a computer, computer system, or computer network.

"Computer" means an internally programmed, automatic device that performs data processing.

"Computer contaminant" means any set of computer instructions designed to modify, damage, destroy, record, or transmit information within a computer, computer system, or computer network without the intent or permission of the owner of the information. The term includes, but is not limited to, a group of computer instructions commonly called viruses or worms which are self-replicating or self-propagating and which are designed to contaminate other computer programs or computer data; consume computer resources; modify, destroy, record, or transmit data; or in some other fashion usurp the normal operation of the computer, computer system, or computer network.

"Computer network" means any system that provides communications between one or more computer systems and its input or output devices, including, but not limited to, display terminals and printers that are connected by telecommunication facilities.

"Computer program or computer software" means a set of instructions or statements and related data which, when executed in actual or modified form, cause a computer, computer system, or computer network to perform specified functions.

"Computer services" include, but are not limited to, computer time; data processing or storage functions; or other uses of a computer, computer system, or computer network.

"Computer system" means a device or collection of devices, including support devices, one or more of which contain computer programs, electronic instructions, or input data and output data, and which perform functions, including, but not limited to, logic, arithmetic, data storage, retrieval, communication, or control. The term does not include calculators that are not programmable and that are not capable of being used in conjunction with external files.

"Data" means a representation of information, knowledge, facts, concepts, computer software, computer programs, or instructions. Data may be in any form, in storage media or stored in the memory of the computer, or in transit or presented on a display device.

"Knowingly" means with full knowledge and intentionally.

"Willfully" means intentionally and purposely.

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comment

This instruction was adopted in 2010.

12.7 OFFENSES AGAINST COMPUTER USERS

§ 815.06(2)(b), Fla. Stat.

To prove the crime of Offense Against Computer Users, the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) **willfully, knowingly, and without authorization**

Give a, b, c, d, or e as applicable.

a. [[accessed] [caused to be accessed] any [computer] [computer system] [computer network].]

b. [[disrupted] [denied] [caused the denial of] computer system services to an authorized user of such computer system services, which, in whole or part, is [owned by] [under contract to] [operated for] [on behalf of] [in conjunction with] another.]

c. [[destroyed] [took] [injured] [damaged] equipment or supplies [used] [intended to be used] in a [computer] [computer system] [computer network].]

d. [[destroyed] [injured] [damaged] any [computer] [computer system] [computer network].]

e. [introduced any computer contaminant into any [computer] [computer system] [computer network].]

2. (Defendant)

Give a, b, or c as applicable.

a. [damaged [a computer] [computer equipment] [computer supplies] [a computer system] [a computer network] and the monetary damage or loss incurred as a result of the violation was $5,000 or greater.]

b. [did so for the purpose of devising or executing any scheme or artifice to defraud or obtain property.]

c. [interrupted or impaired a [governmental operation or public communication] [transportation or supply of water, gas, or other public service].]

Give if applicable.

This offense does not apply to any person who accesses [his] [her] employer's computer system, computer network, computer program, or computer data when acting within the scope of [his] [her] lawful employment.

Definitions.

"Access" means to approach, instruct, communicate with, store data in, retrieve data from, or otherwise make use of any resources of a computer, computer system, or computer network.

"Computer" means an internally programmed, automatic device that performs data processing.

"Computer contaminant" means any set of computer instructions designed to modify, damage, destroy, record, or transmit information within a computer, computer system, or computer network without the intent or permission of the owner of the information. The term includes, but is not limited to, a group of computer instructions commonly called viruses or worms which are self-replicating or self-propagating and which are designed to contaminate other computer programs or computer data; consume computer resources; modify, destroy, record, or transmit data; or in some other fashion usurp the normal operation of the computer, computer system, or computer network.

"Computer network" means any system that provides communications between one or more computer systems and its input or output devices, including, but not limited to, display terminals and printers that are connected by telecommunication facilities.

"Computer program or computer software" means a set of instructions or statements and related data which, when executed in actual or modified form, cause a computer, computer system, or computer network to perform specified functions.

"Computer services" include, but are not limited to, computer time; data processing or storage functions; or other uses of a computer, computer system, or computer network.

"Computer system" means a device or collection of devices, including support devices, one or more of which contain computer programs, electronic instructions, or input data and output data, and which perform functions, including, but not limited to, logic, arithmetic, data storage, retrieval, communication, or control. The term does not

include calculators that are not programmable and that are not capable of being used in conjunction with external files.

"Data" means a representation of information, knowledge, facts, concepts, computer software, computer programs, or instructions. Data may be in any form, in storage media or stored in the memory of the computer, or in transit or presented on a display device.

"Knowingly" means with full knowledge and intentionally.

"Property" means anything of value as defined in s. 815.03(11) and includes, but is not limited to, financial instruments, information, including electronically produced data and computer software and programs in either machine-readable or human-readable form, and any other tangible or intangible item of value.

"Willfully" means intentionally and purposely.

Lesser Included Offenses

OFFENSES AGAINST COMPUTER USERS – 815.06(2)(b)			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
Offenses Against Computer Users		815.06(1)	
	Attempt	777.04(10	5.1

Comment

This instruction was adopted in 2010.

12.8 OFFENSES AGAINST COMPUTER USERS

§ 815.06(3), Fla. Stat.

To prove the crime of Offense Against Computer Users, the State must prove the following element beyond a reasonable doubt:

(Defendant) **willfully, knowingly, and without authorization modified equipment or supplies [used] [intended to be used] in a [computer] [computer system] [computer network].**

Give if applicable.

This offense does not apply to any person who accesses [his] [her] employer's [computer system] [computer network] [computer program] [computer data] when acting within the scope of [his] [her] lawful employment.

Definitions.

"Access" means to approach, instruct, communicate with, store data in, retrieve data from, or otherwise make use of any resources of a computer, computer system, or computer network.

"Computer" means an internally programmed, automatic device that performs data processing.

"Computer contaminant" means any set of computer instructions designed to modify, damage, destroy, record, or transmit information within a computer, computer system, or computer network without the intent or permission of the owner of the information. The term includes, but is not limited to, a group of computer instructions commonly called viruses or worms which are self-replicating or self-propagating and which are designed to contaminate other computer programs or computer data; consume computer resources; modify, destroy, record, or transmit data; or in some other fashion usurp the normal operation of the computer, computer system, or computer network.

"Computer network" means any system that provides communications between one or more computer systems and its input or output devices, including, but not limited to, display terminals and printers that are connected by telecommunication facilities.

"Computer program or computer software" means a set of instructions or statements and related data which, when executed in

actual or modified form, cause a computer, computer system, or computer network to perform specified functions.

"Computer services" include, but are not limited to, computer time; data processing or storage functions; or other uses of a computer, computer system, or computer network.

"Computer system" means a device or collection of devices, including support devices, one or more of which contain computer programs, electronic instructions, or input data and output data, and which perform functions, including, but not limited to, logic, arithmetic, data storage, retrieval, communication, or control. The term does not include calculators that are not programmable and that are not capable of being used in conjunction with external files.

"Data" means a representation of information, knowledge, facts, concepts, computer software, computer programs, or instructions. Data may be in any form, in storage media or stored in the memory of the computer, or in transit or presented on a display device.

"Knowingly" means with full knowledge and intentionally.

"Willfully" means intentionally and purposely.

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comment

This instruction was adopted in 2010.

12.9 ARSON RESULTING IN INJURY

§ 806.031, Fla. Stat.

To prove the crime of Arson Resulting in Injury, the State must prove the following three elements beyond a reasonable doubt:

Add the following element to the two elements in instruction 12.1 or 12.2, as appropriate, and then read the appropriate definitions.

3. As a result, bodily harm was caused to (victim).

Give if applicable. Fla. Stat. § 806.031(2).

If you find the defendant guilty of Arson Resulting in Injury, you must then determine whether the State has proven beyond a reasonable doubt that the arson resulted in [great bodily harm] [permanent disability] [or] [permanent disfigurement] to (victim)**.**

Lesser Included Offenses

ARSON RESULTING IN [GREAT BODILY HARM] [PERMANENT DISABILITY] [PERMANENT DISFIGUREMENT] — 806.031(2)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Arson Resulting in Injury		806.031(1)	12.9
	Attempt	777.04(1)	5.1

Comment

This instruction was adopted in 2014.

12.10 IMPROPERLY TAMPERING WITH CRITICAL INFRASTRUCTURE

§ 812.141(2), Fla. Stat.

To prove the crime of Improperly Tampering with Critical Infrastructure, the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **improperly tampered with critical infrastructure.**

2. **[He] [She] did so knowingly and intentionally.**

3. **[He] [She] caused [$200 or more of damage to such critical infrastructure] [the interruption or impairment of the function of such critical infrastructure that cost $200 or more in labor and supplies to restore].**

"Improperly tampered" means to cause, or attempt to cause, significant damage to, or a significant interruption or impairment of a function of, critical infrastructure without permission or authority to do so.

"Critical infrastructure" means (insert relevant definition from § 812.141, Fla. Stat.)**.**

Lesser Included Offense

IMPROPERLY INTERFERING WITH CRITICAL INFRASTRUCTURE — 812.141(2)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Criminal Mischief	806.13	12.4

Comment

This instruction was adopted on June 27, 2025.

12.11 UNAUTHORIZED ACCESS TO A CRITICAL INFRASTRUCTURE COMPUTER, COMPUTER SYSTEM, COMPUTER NETWORK, OR ELECTRONIC DEVICE

§ 812.141(5)(a), Fla. Stat.

To prove the crime of Unauthorized Access to a Critical Infrastructure Computer, Computer System, Computer Network, or Electronic Device, the State must prove the following three elements beyond a reasonable doubt:

(Defendant) **willfully and knowingly gained access to a [computer] [computer system] [computer network] [electronic device] that was owned, operated, or used by any critical infrastructure entity.**

(Defendant) **was not authorized to access the [computer] [computer system] [computer network] [electronic device]**

(Defendant) **knew, at the time that [he] [she] gained access, that [he] [she] was not authorized to access the [computer] [computer system] [computer network] [electronic device].**

"Willfully" means knowingly, intentionally, and purposely.

"Critical infrastructure" means (insert relevant definition from § 812.141, Fla. Stat.**).**

§ 815.03, Fla. Stat.

"Access" means to approach, instruct, communicate with, store data in, retrieve data from, or otherwise make use of any resources of a computer, a computer system, a computer network, or an electronic device.

"Computer" means an internally programmed, automatic device that performs data processing.

"Computer network" means a system that provides a medium for communication between one or more computer systems or electronic devices, including communication with an input or output device such as a display terminal, printer, or other electronic equipment that is connected to the computer systems or electronic devices by physical or wireless telecommunication facilities.

"Computer system" means a device or collection of devices, including support devices, one or more of which contain computer programs, electronic instructions, or input data and output data, and

which perform functions, including, but not limited to, logic, arithmetic, data storage, retrieval, communication, or control. The term does not include calculators that are not programmable and that are not capable of being used in conjunction with external files.

"Electronic device" means a device or a portion of a device that is designed for and capable of communicating across a computer network with other computers or devices for the purpose of transmitting, receiving, or storing data, including, but not limited to, a cellular telephone, tablet, or other portable device designed for and capable of communicating with or across a computer network and that is actually used for such purpose.

Lesser Included Offense

UNAUTHORIZED ACCESS TO A CRITICAL INFRASTRUCTURE COMPUTER, COMPUTER SYSTEM, COMPUTER NETWORK, OR ELECTRONIC DEVICE — 812.141(5)(a)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempt	806.13	12.4

Comment

This instruction was adopted on June 27, 2025.

12.12 UNAUTHORIZED DISRUPTION OF A SERVICE DELIVERED BY A CRITICAL INFRASTRUCTURE

§ 812.141(5)(b), Fla. Stat.

To prove the crime of Unauthorized Disruption of a Service Delivered by a Critical Infrastructure the State must prove the following two elements beyond a reasonable doubt:

Give as applicable.

1. (Defendant) **willfully, knowingly, and without authorization,**

a. physically tampered with a(n) [computer] [computer system] [computer network] [electronic device].

b. inserted a computer contaminant into a(n) [computer] [computer system] [computer network] [electronic device].

c. transmitted commands or electronic communications to a(n) [computer] [computer system] [computer network] [electronic device].

2. (Defendant's) **actions caused a disruption in any service delivered by a critical infrastructure.**

"Willfully" means knowingly, intentionally and purposely.

"Critical infrastructure" means (insert relevant definition from § 812.141, Fla. Stat.).

*§ 815.03, Fla. Stat.**

"Computer contaminant" means any set of computer instructions designed to modify, damage, destroy, record, or transmit information within a computer, computer system, or computer network without the intent or permission of the owner of the information. The term includes, but is not limited to, a group of computer instructions, commonly called viruses or worms, which are self-replicating or self-propagating and which are designed to contaminate other computer programs or computer data; consume computer resources; modify, destroy, record, or transmit data; or in some other fashion usurp or interfere with the normal operation of the computer, computer system, or computer network.

"Computer" means an internally programmed, automatic device that performs data processing.

"Computer network" means a system that provides a medium for communication between one or more computer systems or electronic devices, including communication with an input or output device such as a display terminal, printer, or other electronic equipment that is connected to the computer systems or electronic devices by physical or wireless telecommunication facilities.

Computer system" means a device or collection of devices, including support devices, one or more of which contain computer programs, electronic instructions, or input data and output data, and which perform functions, including, but not limited to, logic, arithmetic, data storage, retrieval, communication, or control. The term does not include calculators that are not programmable and that are not capable of being used in conjunction with external files.

"Electronic device" means a device or a portion of a device that is designed for and capable of communicating across a computer network with other computers or devices for the purpose of transmitting, receiving, or storing data, including, but not limited to, a cellular telephone, tablet, or other portable device designed for and capable of communicating with or across a computer network and that is actually used for such purpose.

Lesser Included Offense

UNAUTHORIZED DISRUPTION OF A SERVICE DELIVERED BY CRITICAL INFRASTRUCTURE — 812.141(5)(b)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempt	806.13	12.4

Comments

*As of June 2025, it was undetermined whether the definition of "computer contaminant" in § 815.03, Fla. Stat., should be used in this Chapter 812 crime.

This instruction was adopted on June 27, 2025.

12.13 OPERATION OF A DRONE OVER A CRITICAL INFRASTRUCTURE FACILITY

§ 330.41(4)(a), Fla. Stat.

To prove the crime of Operation of A Drone Over A Critical Infrastructure Facility, the State must prove the following two elements beyond a reasonable doubt:

Give 1a, 1b, or 1c or a combination as applicable.

1. (Defendant) [**knowingly] [or] [willfully]:**

a. operated a drone over a (insert relevant critical infrastructure facility)**.**

b. allowed a drone to make contact [with a (insert relevant critical infrastructure**] [or] [with any person or object on the premises of a** (insert relevant critical infrastructure facility)**].**

c. allowed a drone to come within a distance of a (insert relevant critical infrastructure facility) **that was close enough to interfere with the operations of or cause a disturbance to the** (insert relevant critical infrastructure facility)**.**

2. At the time, (defendant) **knew that the** (insert relevant critical infrastructure facility) **was a** (insert relevant critical infrastructure facility)**.**

["Willfully" means intentionally and purposely.]

The Court instructs you that a (insert relevant critical infrastructure facility) **is deemed to be a critical infrastructure facility under Florida law.**

"**Drone" means a powered, aerial vehicle that:**

1. Does not carry a human operator;

2. Uses aerodynamic forces to provide vehicle lift;

3. Can fly autonomously or be piloted remotely;

4. Can be expendable or recoverable; and

5. Can carry a lethal or nonlethal payload.

Lesser Included Offense

OPERATION OF A DRONE OVER A CRITICAL INFRASTRUCTURE FACILITY— 330.41(4)(a)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempt	777.04	5.1

Comments

There are numerous exceptions to this crime including operation of a drone for a commercial purpose with authorization by and in compliance with FAA regulations. If relevant, a special instruction will be necessary especially because these exceptions may be treated by the courts as affirmative defenses.

This instruction was adopted on March 20, 2026.

12.14 VENDING MACHINE TAMPERING OR DAMAGING

§ 877.08(2), Fla. Stat.

To prove the crime of Vending Machine Tampering or Damaging, the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) **maliciously or mischievously [molested] [opened] [broke] [injured] [damaged] a [coin-operated vending machine] [parking meter].**

   or

   (Defendant) **maliciously or mischievously [inserted any part of [his] [her] body] [any instrument] into a [coin-operated vending machine] [parking meter].**

2. **The [coin-operated vending machine] [parking meter] was the property of** (name of owner)**.**

A "coin-operated vending machine" or "parking meter" is any machine, contrivance, or device that is adapted for use in such a way that, as the result of the insertion of any money, coin or other object, the machine, contrivance, parking meter, or device operates or may be operated and the user becomes entitled to receive any food, drink, telephone or telegraph service, insurance protection, parking privilege or any other personal property, service, protection, right, or privilege of any kind or nature.

Lesser Included Offense

VENDING MACHINE TAMPERING OR DAMAGING — 877.08(2)			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
	Criminal Mischief	806.13(1)(b)1.	12.4

Comments

Prior to April 2026, this instruction was numbered as 29.12.

This instruction was adopted in 1981.

CHAPTER 13 — BURGLARY AND TRESPASS

13.1 BURGLARY

§ 810.02, Fla. Stat.

Give if the information or indictment charges entering with the intent to commit an offense.

To prove the crime of Burglary, the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) **entered a [structure] [conveyance] owned by or in the possession of** (person alleged)**.**

2. **At the time of entering the [structure] [conveyance],** (defendant) **had the intent to commit [**(the crime alleged**)] [an offense other than burglary or trespass] in that [structure] [conveyance].**

The offense intended cannot be trespass or burglary. If requested, the jury should be instructed on the elements of the offense(s) intended.

Affirmative defenses. Give only if defendant meets his or her burden of production that he or she had an invitation or license to enter or that the premises were open to the public. State v. Hicks, 421 So. 2d 510 (Fla. 1982) and State v. Waters, 436 So. 2d 66 (Fla. 1983). Failure to instruct on consent constitutes fundamental error where consent is the sole or primary defense. Faulk v. State, 222 So. 3d 621 (Fla. 1st DCA 2017) and Harrison v. State, 229 So. 3d 830 (Fla. 4th DCA 2017).

It is a defense to the crime of Burglary if [(defendant) **was [licensed] [or] [invited] to enter the [structure] [conveyance]] [the premises were open to the public at the time of the entering]. The State has the burden of proving beyond a reasonable doubt that [**(defendant) **was not [licensed] [or] [invited] to enter the [structure] [conveyance]] [the premises were not open to the public at the time of the entering].**

Trick, fraud, or deceit. Johnson v. State, 921 So. 2d 490, 508 (Fla. 2005).

If the [license] [invitation] to enter was obtained by (defendant's) **trick or fraud or deceit, then the [license] [invitation] to enter was not valid.**

Area closed to the public. Dakes v. State, 545 So. 2d 939 (Fla. 3d DCA 1989).

If (defendant) **entered premises that were open to the public, but then entered an area of the premises that [he] [she] knew or should have known was not open to the public,** (defendant) **committed a Burglary if [he]**

[she] entered that non-public area with the intent to commit [(the crime alleged)**] [an offense other than burglary or trespass] in that non-public area.**

Limited scope of consent. State v. Sawko, 624 So. 2d 751 (Fla. 5th DCA 1993).

If a defendant exceeded the scope of [his] [her] [license] [invitation] with respect to the time of the entering, the place that [he] [she] entered, or the purpose of [his] [her] entering, then the [license] [invitation] was not valid.

Give only if applicable. § 810.07, Fla. Stat.

You may infer that (defendant) **had the intent to commit a crime inside a [structure] [conveyance] if the [entering] [attempted entering] of the [structure] [conveyance] was done stealthily and without the consent of the owner or occupant.**

Give if applicable.

The entry necessary need not be the whole body of the defendant. It is sufficient if the defendant, with the intent to commit a crime, extends any part of [his] [her] body into the [structure] [conveyance].

Give if the information or indictment charges remaining with the intent to commit an offense.

To prove the crime of Burglary, the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) **had permission or consent to enter a [structure] [conveyance] owned by or in the possession of** (person alleged)**.**

2. (Defendant**), after entering the [structure] [conveyance], remained therein**

Give 2a, 2b, 2c, or any combination as applicable.

   a. **surreptitiously and with the intent to commit [**(the crime alleged)**] [an offense other than burglary or trespass] inside the [structure] [conveyance].**

   b. **after permission to remain had been withdrawn and with the intent to commit [**(the crime alleged)**] [an offense other than burglary or trespass] inside the [structure] [conveyance].**

c. to commit or attempt to commit a [forcible felony] [(the forcible felony alleged)**].**

The offense intended cannot be trespass or burglary. Forcible felonies are listed in § 776.08 Fla. Stat. If requested, the jury should be instructed on the elements of the offense(s) or forcible felony/felonies intended.

The intent with which an act is done is an operation of the mind and, therefore, is not always capable of direct and positive proof. It may be established by circumstantial evidence like any other fact in a case.

Even though an unlawful [entering] [remaining in] a [structure] [conveyance] is proved, if the evidence does not establish that it was done with the intent to commit [(the crime alleged)**] [an offense other than burglary or trespass], the defendant must be found not guilty of Burglary.**

Proof of possession of stolen property.

Proof of possession by an accused of property recently stolen by means of a burglary, unless satisfactorily explained, may justify a conviction of Burglary if the circumstances of the burglary and of the possession of the stolen property convince you beyond a reasonable doubt that the defendant committed the burglary.

§ 810.011, Fla. Stat. Dubose v. State, 210 So. 3d 641 (Fla. 2017).

"Structure" means any building of any kind, either temporary or permanent, that has a roof over it, and the enclosed space of ground and outbuildings immediately surrounding that structure. [The enclosure need not be continuous as it may have an ungated opening for entering and exiting.]

§ 810.011, Fla. Stat.

"Conveyance" means any motor vehicle, ship, vessel, railroad vehicle or car, trailer, aircraft or sleeping car; and to enter a conveyance includes taking apart any portion of the conveyance.

Higher Degrees of Burglary. With an assault.

If you find (defendant) **guilty of Burglary, you must also determine if the State has proved beyond a reasonable doubt whether, in the course of committing the Burglary,** (defendant) **assaulted any person. An assault is an intentional and unlawful threat, either by word or act, to do violence to another, at a time when the defendant appeared to have the ability to**

carry out the threat and [his] [her] act created a well-founded fear in the other person that the violence was about to take place.

With a battery.

If you find (defendant) **guilty of Burglary, you must also determine if the State has proved beyond a reasonable doubt whether, in the course of committing the Burglary,** (defendant) **battered any person. A battery is an actual and intentional touching or striking of another person against that person's will or the intentional causing of bodily harm to another person.**

While armed.

If you find (defendant) **guilty of Burglary, you must also determine if the State has proved beyond a reasonable doubt whether, in the course of committing the Burglary,** (defendant) **was armed or armed [himself] [herself] within the [structure] [conveyance] with [explosives] [a dangerous weapon].**

§ 790.001, Fla. Stat., but may need to add exceptions.

"Explosive" means any chemical compound or mixture that has the property of yielding readily to combustion or oxidation upon application of heat, flame, or shock, including but not limited to dynamite, nitroglycerin, trinitrotoluene, or ammonium nitrate when combined with other ingredients to form an explosive mixture, blasting caps, and detonators.

State v. Rodriguez, 402 So. 2d 86 (Fla. 3d DCA 1981).

For an object that was designed and constructed to cause death or great bodily harm if used in its ordinary and usual manner, it is not necessary for the State to prove that the defendant was willing to use the object in furtherance of the burglary for an object to constitute a "dangerous weapon."

Give if applicable.

An object not designed to inflict bodily harm may nonetheless be a "dangerous weapon" if it was [used] [or] [threatened to be used] [or] [intended to be used] in a manner likely to cause death or great bodily harm. "Great bodily harm" means great as distinguished from slight, trivial, minor, or moderate harm, and as such does not include mere bruises.

Give if applicable. Hardee v. State, 534 So. 2d 706 (Fla. 1988).

If you find a firearm to be a "dangerous weapon," then to "arm" oneself during the course of a Burglary includes possessing a firearm, whether loaded with ammunition or not, at any time during the course of committing the Burglary. *Firearm and ammunition are defined in § 790.001, Fla. Stat.*

Structure or conveyance is a dwelling.

If you find (defendant) **guilty of Burglary, you must also determine if the State has proved beyond a reasonable doubt whether the [structure] [conveyance] [entered] [remained in] was a dwelling.**

Dubose v. State, 210 So. 3d 641 (Fla. 2017).

"Dwelling" means a building [or conveyance] of any kind, whether such building [or conveyance] is temporary or permanent, mobile or immobile, which has a roof over it and is designed to be occupied by people lodging therein at night, together with the enclosed space of ground and outbuildings immediately surrounding it. [The enclosure need not be continuous as it may have an ungated opening for entering and exiting.] For purposes of Burglary, a "dwelling" includes an attached porch or attached garage.

Human being in structure or conveyance.

If you find (defendant) **guilty of Burglary, you must also determine if the State has proved beyond a reasonable doubt whether, in the course of committing the Burglary, there was another human being in the [structure] [conveyance], at the time [he] [she] [entered] [remained in] the [structure] [conveyance].**

Offense intended is theft of a controlled substance.

If you find (defendant) **guilty of Burglary, you must also determine whether the State has proved beyond a reasonable doubt that the offense intended to be committed therein was theft of a controlled substance. Pursuant to Florida law,** (*name of controlled substance*) **is a controlled substance. A theft occurs when a person knowingly and unlawfully obtains or uses or endeavors to obtain or use the property of the victim and does so with the intent to, either temporarily or permanently, deprive the victim of his or her right to the property or any benefit from it or to appropriate the property of the victim to his or her own use or to the use of any person not entitled to it.**

Traveling from county of residence into another county with intent to commit a burglary. § 843.22, Fla. Stat.

If you find (defendant) **guilty of [Burglary] [Attempted Burglary] [Solicitation to Commit Burglary] [Conspiracy to Commit Burglary], you must also determine whether the State proved beyond a reasonable doubt that:**

1. (Defendant) **resided in Florida;**

and

2. (Defendant) **travelled any distance with the intent to commit a burglary in a county in Florida other than the Florida county where [he] [she] resided**.

Dwelling or structure with use of motor vehicle or damage.

If you find (defendant) **guilty of Burglary, you must also determine if the State has proved beyond a reasonable doubt whether, in the course of committing the Burglary,** (defendant) **entered a [dwelling] [structure] and**

1. used a motor vehicle as an instrumentality, other than merely as a getaway vehicle, to assist in committing the offense, and thereby damaged the [dwelling] [structure].

or

2. caused damage to the [dwelling] [structure] [property within the [dwelling] [structure]], in excess of $1,000.

Give if applicable. Key v. State, 348 So. 3d 691 (Fla. 1DCA 2022).

The enclosure itself, such as a fence, that surrounds a [dwelling] [structure] is considered part of the [dwelling] [structure].

Authorized emergency vehicle.

If you find (defendant) **guilty of Burglary, you must also determine if the State has proved beyond a reasonable doubt whether the conveyance [entered] [remained in] was an authorized emergency vehicle.**

§ 316.003, Fla. Stat.

An "authorized emergency vehicle" is a vehicle of the fire department (fire patrol), police vehicles, and such ambulances and emergency vehicles of municipal departments, public service corporations operated by private corporations, the Department of Environmental Protection, the Department of Health, the Department of Transportation,

and the Department of Corrections as are designated or authorized by their respective department or the chief of police of an incorporated city or any sheriff of a county.

State of emergency. Also use to increase scoresheet points one level higher. See § 810.02(3)(f), Fla. Stat.

The definitions of structure, dwelling, and conveyance are different for counties where a state of emergency has been declared under chapter 252. See § 810.011(1), (2), and (3), Fla. Stat.

If you find (defendant) **guilty of Burglary, you must also determine if the State has proved beyond a reasonable doubt whether**

1. **the Burglary was committed within a county that was subject to a state of emergency that had been declared by the governor under chapter 252, the "State Emergency Management Act,"**

   and

2. **the perpetration of the Burglary was facilitated by conditions arising from the emergency.**

The term "conditions arising from the emergency" means civil unrest, power outages, curfews, voluntary or mandatory evacuations, or a reduction in the presence of or response time for first responders or homeland security personnel.

§ 810.011(4), Fla. Stat.

An act is committed "in the course of committing" if it occurs in the attempt to commit the offense or in flight after the attempt or commission.

Lesser Included Offenses

It may be better for the jury to make special findings regarding higher degrees of Burglary instead of listing all the necessary lesser-included offenses of the highest form of Burglary charged. *See Sanders v. State*, 944 So. 2d 203 (Fla. 2006) (Pariente, J., concurring).

BURGLARY WITH ASSAULT OR BATTERY OR WHILE ARMED OR WITH USE OF MOTOR VEHICLE OR PROPERTY DAMAGE — 810.02(2)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Burglary		810.02(4)	13.1
	Aggravated battery	784.045	8.4
	Persons Engaged in Criminal Offense Having Firearm	790.07(2)	10.3
	Battery	784.03	8.3
	Aggravated assault	784.021	8.2
	Persons Engaged in Criminal Offense Having Weapon	790.07(1)	10.3
	Assault	784.011	8.1
	Attempt	777.04(1)	5.1
	Burglary	810.02(3)	13.1
	Trespass	810.08(2)(a)	13.3
	Trespass	810.08(2)(b)	13.3
	Trespass	810.08(2)(c)	13.3
	Criminal Mischief	806.13	12.4

BURGLARY OF DWELLING; BURGLARY OF STRUCTURE OR CONVEYANCE WITH HUMAN BEING INSIDE; BURGLARY OF AN AUTHORIZED EMERGENCY VEHICLE* — 810.02(3)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Burglary		810.02(4)	13.1
	Attempt	777.04(1)	5.1
	Trespass	810.08(2)(a)	13.3
	Trespass	810.08(2)(b)	13.3
	Trespass	810.08(2)(c)	13.3

BURGLARY — 810.02(4)			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
None			
	Attempt	777.04(1)	5.1
	Trespass	810.08(2)(a)	13.3
	Trespass	810.08(2)(b)	13.3
	Trespass	810.08(2)(c)	13.3
	Criminal Mischief	806.13	12.4

Comments

As of November 2022, the courts had not determined which definition of "motor vehicle" applies to the burglary statute.

When the compounded offense of burglary with an assault or burglary with a battery is charged, the jury can convict on two lesser-included offenses. *See Gian-Grasso v. State*, 899 So. 2d 392 (Fla. 4th DCA 2005).

A special instruction will be necessary in cases where the dangerous weapon was an animal or a substance or something that is not commonly referred to as an "object."

This instruction was adopted in 1981 and amended in 1985 [477 So. 2d 985], 1997 [697 So. 2d 84], 2003 [850 So. 2d 1272], 2007 [962 So. 2d 310], 2008 [986 So. 2d 563], 2013 [109 So. 3d 721], 2015 [176 So. 3d 938], 2017 [217 So. 3d 965], 2018 [257 So. 3d 925], on April 3, 2020, and on December 21, 2022.

13.2 POSSESSION OF A BURGLARY TOOL

§ 810.06, Fla. Stat.

To prove the crime of Possession of a Burglary Tool, the State must prove the following four elements beyond a reasonable doubt:

1. (Defendant) **possessed a [tool] [machine] [implement].**

2. **At the time of the possession,** (defendant) **intended to commit a burglary or a trespass [or intended that someone else commit a burglary or trespass].**

3. **At the time of the possession,** (defendant) **intended that the [tool] [machine] [implement] would be used to commit that burglary or trespass.**

4. (Defendant) **did some overt act toward committing the burglary or the trespass [or] [The person that** (defendant) **intended to commit the burglary or trespass did some overt act toward committing the burglary or the trespass].**

To prove (defendant) **"possessed a burglary tool," the State must prove beyond a reasonable doubt that [he] [she] a) knew of the existence of the [tool] [machine] [implement] and b) intentionally exercised control over it.**

Give if applicable.

Control can be exercised over a burglary tool whether it is carried on a person, near a person, or in a completely separate location. Mere proximity to a burglary tool 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 the [tool] [machine] [implement] or the present ability to direct its control by another.**

Joint possession. Give if applicable.

Possession of a burglary tool may be sole or joint, that is, two or more persons may possess a burglary tool.

*Give if applicable***.**

Intent to commit (another offense included in the instructions) **does not prove the intent required for this crime. For this crime, the State**

must prove the defendant intended that a burglary or a trespass be committed, not a different crime.

Lesser Included Offenses

No lesser included offenses have been identified for this offense. The crime of Attempted Possession of a Burglary Tool does not exist in Florida. *See State v. Thomas*, 362 So. 2d 1348 (Fla. 1978) (Possession of a Burglary Tool is not committed until the item is in the possession of a person who is using or attempting to use the object as a burglary tool).

Comments

Jurors should also be instructed on the elements of burglary or trespass (instructions #13.3 or #13.4) if one or both of those instructions is not given for another count. For burglary, it may also be appropriate to instruct jurors on the elements of the crime intended to be committed at the time of the entering of the structure/conveyance or while remaining therein.

"Trespass" as used in this statute includes offenses that may not include the word "trespass" in the statutory description. For purposes of this statute, trespass can "encompass any act of unlawful interference with property which is defined by statute as a criminal offense, regardless of whether or not the interference is designated as a 'trespass.'" *Desin v. State*, 414 So. 2d 516, 518 (Fla. 1982). Thus, a special instruction explaining trespass may be necessary.

Common household objects, which may have a useful and lawful purpose, may be classified as "burglary tools" if they are used with intent to commit burglary. However, gloves that are used only to avoid leaving fingerprints are not "burglary tools" since they are not objects that facilitate a burglary. *Green v. State,* 604 So. 2d 471 (1992).

§ 810.06, Fla. Stat., contains "tool, machine, or implement." In a case where a specific tool is charged and it is undisputed that the tool in question is a specific tool such as a screwdriver, it may be appropriate to substitute the case-specific tool.

This instruction was adopted in 1981 and amended in 1989 [543 So.2d 1205], 1995 [665 So.2d 212], 2007 [953 So. 2d 495], and on December 15, 2021.

13.3 TRESPASS—IN STRUCTURE OR CONVEYANCE

§ 810.08, Fla. Stat.

To prove the crime of Trespass in a [Structure] [Conveyance], the State must prove the following three elements beyond a reasonable doubt:

Give a. for trespass and b. for trespass after warning to depart.

a. 1. (Defendant) **willfully entered or remained in a [structure] [conveyance].**

2. **The [structure] [conveyance] was in the lawful possession of** (person alleged).

3. (Defendant's) **entering or remaining in the [structure] [conveyance] was without authorization, license, or invitation by** (person alleged) **or any other person authorized to give that permission.**

b. 1. (Defendant) **had been authorized, licensed, or invited to enter or remain in a [structure] [conveyance].**

2. **[The owner] [The lessee] [A person authorized by the owner or lessee] of the premises warned** (defendant) **to depart.**

3. (Defendant) **refused to depart.**

Authority to enter or remain in a [structure] [conveyance] need not be given in express words. It may be implied from the circumstances. It is lawful to enter or remain in a [structure] [conveyance] of another if, under all the circumstances, a reasonable person would believe that [he] [she] had the permission of the owner, lawful occupant, or any other person authorized to give that permission.

§ 810.08, Fla. Stat.

"Person authorized" means an owner or lessee, or his or her agent, or any law enforcement officer whose department has received written authorization from the owner or lessee, or his or her agent, to communicate an order to depart the property in case of a threat to public safety or welfare.

Rozier v. State, 402 So. 2d 539 (Fla. 5th DCA 1981).

"Willfully" means intentionally, knowingly, and purposely.

§ 810.011, Fla. Stat.; State v. Hamilton, 660 So. 2d 1038 (Fla. 1995); Dubose v. State, 210 So. 3d 641 (Fla. 2017).

"Structure" means any building of any kind, either temporary or permanent, that has a roof over it, and the enclosed space of ground and outbuildings immediately surrounding that structure. [The enclosure need not be continuous as it may have an ungated opening for entering and exiting.]

§ 810.011, Fla. Stat.

"Conveyance" means any motor vehicle, ship, vessel, railroad vehicle or car, trailer, aircraft, or sleeping car; and to enter a conveyance includes taking apart any portion of the conveyance.

While armed.

If you find the defendant guilty of trespass in a [structure] [conveyance], you must then determine whether the State proved beyond a reasonable doubt that the defendant was armed or armed [himself] [herself] with a firearm or other dangerous weapon during the trespass.

Human being in structure or conveyance.

If you find the defendant guilty of [attempted] trespass in a [structure] [conveyance], you must then determine whether the State proved beyond a reasonable doubt that there was a human being in the [structure] [conveyance] at the time of the [attempted] trespass.

§ 790.001, Fla. Stat. Give if applicable.

A "firearm" is any weapon, including a starter gun, which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; any destructive device; or any machine gun. [The term "firearm" does not include an antique firearm unless the antique firearm is used in the commission of a crime.] *See § 790.001, Fla. Stat. for the definitions of antique firearm and destructive device.*

Give if applicable.

A "dangerous weapon" is any object other than a firearm that will likely cause death or great bodily harm if used in the ordinary and usual manner contemplated by its design and construction.

State v. Rodriguez, 402 So. 2d 86 (Fla. 3d DCA 1981). Give if applicable and requested.

For an object that was designed and constructed to cause death or great bodily harm if used in its ordinary and usual manner, it is not necessary for the State to prove that the defendant was willing to use the object in furtherance of the trespass in order for an object to constitute a "dangerous weapon."

Give if applicable.

An object not designed to inflict bodily harm may nonetheless be a "dangerous weapon" if it was [used] [or] [threatened to be used] [or] [intended to be used] in a manner likely to cause death or great bodily harm.

"Great bodily harm" means great as distinguished from slight, trivial, minor, or moderate harm, and as such does not include mere bruises.

Lesser Included Offenses

TRESPASS IN STRUCTURE OR CONVEYANCE — 810.08			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
None			
	Attempt (except refuse to depart)	777.04(1)	5.1

Comments

A special instruction will be necessary in cases where the dangerous weapon was an animal or a substance or something that is not commonly referred to as an "object."

According to § 82.035, Fla. Stat., if a law enforcement receives an affidavit from a person who represents that he or she is entitled to possession of residential property and that someone else is a "transient occupant" in that property, and if the "transient occupant" then fails to surrender possession or occupancy of the property as directed by law enforcement, the "transient occupant" can be prosecuted for violating § 810.08, Fla. Stat. § 82.035(3)(a), Fla. Stat. does not require the state to prove the defendant was properly classified as a "transient occupant" and the defendant's status as a permanent resident is not an affirmative defense. A special instruction will be required for trespass prosecutions based on § 82.035, Fla. Stat.

This instruction was adopted in 1981 and amended in 1985 [477 So. 2d 985], 2012 [87 So. 3d 679], 2018 [257 So. 3d 925], on May 22, 2020, and on April 5, 2021.

13.4 TRESPASS—ON PROPERTY OTHER THAN A STRUCTURE OR CONVEYANCE

§ 810.09(1)(a)1 and 2, Fla. Stat.

To prove the crime of Trespass on Property other than a Structure or Conveyance, the State must prove the following four elements beyond a reasonable doubt:

1. (Defendant) **willfully entered upon or remained in property other than a structure or conveyance.**

2. **The property was [owned by] [in the lawful possession of]** (person alleged).

Give if § 810.09(1)(a)1., Fla. Stat. is charged.

3. **Notice not to enter upon or remain in that property had been given by [[actual communication to the defendant] [[posting] [fencing] [cultivation] of the property in the manner defined in this instruction]].**

Give if § 810.09(1)(a)2, Fla. Stat. is charged.

The property was the unenclosed curtilage of a dwelling and (defendant) **entered or remained with the intent to commit a crime thereon other than trespass.**

4. (Defendant's) **entering upon or remaining in the property was without authorization, license, or invitation from** (person alleged) **or any other person authorized to give that permission.**

Authority to enter upon or remain in property need not be given in express words. It may be implied from the circumstances. It is lawful to enter upon or remain in the property of another if, under all the circumstances, a reasonable person would believe that [he] [she] had the permission of the owner, lawful occupant, or any other person authorized to give that permission.

Give only if applicable. While armed.

If you find the defendant guilty of Trespass on Property Other than a Structure or Conveyance, you must then determine whether the State proved beyond a reasonable doubt that the defendant was armed with a firearm or other dangerous weapon during the Trespass.

§ 790.001, Fla. Stat.

A "firearm" is any weapon [including a starter gun] which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; any destructive device; or any machine gun. [The term "firearm" does not include an antique firearm unless the antique firearm is used in the commission of a crime.] *See § 790.001, Fla. Stat. for the definitions of antique firearm and destructive device.*

A "dangerous weapon" is any object other than a firearm that will likely cause death or great bodily harm if used in the ordinary and usual manner contemplated by its design and construction.

State v. Rodriguez, 402 So. 2d 86 (Fla. 3d DCA 1981).

For an object that was designed and constructed to cause death or great bodily harm if used in its ordinary and usual manner, it is not necessary for the State to prove that the defendant was willing to use the object in furtherance of the trespass for an object to constitute a "dangerous weapon."

An object not designed to inflict bodily harm may nonetheless be a "dangerous weapon" if it was [used] [or] [threatened to be used] [or] [intended to be used] in a manner likely to cause death or great bodily harm.

"Great bodily harm" means harm that is more than slight, trivial, minor, or moderate.

Give only if applicable. § 810.09(2)(k), Fla. Stat.

If you find the defendant guilty of Trespass on Property Other than a Structure or Conveyance, you must also determine whether the State proved the following three elements beyond a reasonable doubt:

1. **The property trespassed upon was an area being maintained or secured by federal, state, or local law enforcement officers.**

2. **The property was legally posted.**

3. **The signs contained substantially the following wording: THIS AREA IS A DESIGNATED RESTRICTED SITE SECURED BY LAW ENFORCEMENT, AND ANYONE WHO TRESPASSES ON THIS PROPERTY COMMITS A FELONY.**

§ 810.011(5), Fla. Stat. There are other ways for property to be legally posted. If those other ways apply, a special instruction, based on § 810.011(5), Fla. Stat., will be necessary.

"Legally posted" means signs placed not more than 500 feet apart along and at each corner of the boundaries of the land. The signs must prominently display the wording in #3 above, in letters of not less than 2 inches in height. The signs must be placed along the boundary line of the posted land in a manner and in such position as to be clearly noticeable from outside the boundary line.

§ 810.011, Fla. Stat.; State v. Hamilton, 660 So. 2d 1038 (Fla. 1995); and DuBose v. State, 210 So. 3d 641 (Fla. 2017).

"Structure" means a building of any kind, either temporary or permanent, which has a roof over it, and the enclosed space of ground and outbuildings immediately surrounding it. [The enclosure need not be continuous as it may have an ungated opening for entering and exiting.]

§ 810.011, Fla. Stat.

"Conveyance" means any motor vehicle, ship, vessel, railroad vehicle or car, trailer, aircraft, or sleeping car; and "to enter a conveyance" includes taking apart any portion of the conveyance.

§ 810.09, Fla. Stat.

"Person authorized" means any owner, his or her agent, or a community association authorized as an agent for the owner, or any law enforcement officer whose department has received written authorization from the owner, his or her agent, or a community association authorized as an agent for the owner, to communicate an order to leave the property in the case of a threat to public safety or welfare.

§ 810.09, Fla. Stat.

"Unenclosed curtilage of a dwelling" means the unenclosed land or grounds, and any outbuildings, that are directly and intimately adjacent to and connected with the dwelling and necessary, convenient, and habitually used in connection with that dwelling.

§ 810.011, Fla. Stat. Dubose v. State, 210 So. 3d 641 (Fla. 2017).

"Dwelling" means a building or conveyance of any kind, including any attached porch, whether such building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it and is designed

to be occupied by people lodging therein at night, and the enclosed space of ground and outbuildings immediately surrounding that dwelling. [The enclosure need not be continuous as it may have an ungated opening for entering and exiting.]

Rozier v. State, 402 So. 2d 539 (Fla. 5th DCA 1981).

"Willfully" means intentionally, knowingly, and purposely.

§ 810.011, Fla. Stat. Give if applicable.

Notice not to enter upon property may be given by posting signs not more than 500 feet apart along and at each corner of the property's boundaries. The signs must prominently state, in letters not less than two inches high, the words "No Trespassing" The signs also must state, with smaller letters being acceptable, the name of the owner or lessee or occupant of the land. The signs must be placed so as to be clearly noticeable from outside the boundary lines and corners of the property. [If the property is enclosed and less than five acres in area, and a dwelling house is located on it, it should be treated as posted land even though no signs have been erected.]

§ 810.011, Fla. Stat. Give if applicable.

Notice not to enter property may be given by cultivation of the property. "Cultivated land" is land that has been cleared of its natural vegetation, and at the time of the trespass was planted with trees, a crop, an orchard or a grove, or was a pasture. [Fallow land, left that way as part of a crop rotation, is also "cultivated land."]

§ 810.011, Fla. Stat. Give if applicable.

Notice not to enter property may be given by fencing the property. "Fenced land" is land that has been enclosed by a fence of substantial construction. The fence may be made from rails, logs, posts and railings, iron, steel, barbed wire or other wire or material. The fence must stand at least three feet high. [If a part of the boundary of a piece of property is formed by water, that part should be treated as legally fenced land.]

Give if applicable.

When every part of property is either posted or cultivated or fenced, the entire property is considered as enclosed and posted land.

Lesser Included Offenses

TRESPASS ON PROPERTY OTHER THAN STRUCTURE OR CONVEYANCE — 810.09(1)(a)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempt	777.04(1)	5.1

Comments

A special instruction will be necessary in cases where the dangerous weapon was an animal or a substance or something that is not commonly referred to as an "object."

As of August 2025, there was no caselaw defining "law enforcement officers" for purposes of § 810.09(2)(k), Fla. Stat.

This instruction was adopted in 1981 and amended in 1985, 2012 [87 So. 3d 679], 2018 [257 So. 3d 925], on May 22, 2020, and on September 5, 2025.

13.5 TRESPASS ON SCHOOL PROPERTY WITH A [FIREARM] [WEAPON]

§ 810.095(1), Fla. Stat.

To prove the crime of Trespass on School Property with a [Firearm] [Weapon], the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **[entered] [remained] on school property.**

Give as applicable.

2. a. (Defendant) **did not have any legitimate business on the school property or any other authorization, license, or invitation to enter upon the school property.**

b. (Defendant) **had been authorized, licensed, or invited to enter the school property but then refused to depart when told to do so by [the principal] [the principal's designee].**

c. (Defendant) **was a student under suspension or expulsion at the time [he] [she] [entered] [remained] on the school property.**

3. At the time (defendant) **was on the school property, [he] [she] brought onto or was in possession of a [firearm] [weapon].**

§ 810.095, Fla. Stat.

"School property" means the grounds or facility of any kindergarten, elementary school, middle school, junior high school, secondary school, career center or postsecondary school, whether public or nonpublic.

§ 790.001, Fla. Stat. Slungshot is defined in § 790.001, Fla. Stat.

"Weapon" means any dirk, knife, metallic knuckles, slungshot, billie, tear gas gun, chemical weapon or device, or other deadly weapon except a firearm or a common pocketknife, plastic knife, or blunt-bladed table knife.

A "deadly weapon" is any object other than a firearm that will likely cause death or great bodily harm if used in the ordinary and usual manner contemplated by its design and construction.

An object not designed to inflict bodily harm may nonetheless be a "deadly weapon" if it was [used] [or] [intended to be used] [or] [threatened to be used] in a manner likely to cause death or great bodily harm.

"Great bodily harm" means great as distinguished from slight, trivial, minor, or moderate harm, and as such does not include mere bruises.

There is a conflict within the district courts about whether an open common pocketknife is a weapon:

Give if applicable. Porter v. State, 798 So. 2d 855 (Fla. 5th DCA 2001); J.R.P. v. State, 979 So. 2d 1178 (Fla. 3d DCA 2008).

However, an open pocketknife could constitute a weapon.

Give if applicable. G.R.N. v. State, 220 So. 3d 1267 (Fla. 4th DCA 2017).

If a common pocketknife is open, it is still considered to be a common pocketknife.

§ 790.001, Fla. Stat.

"Firearm" means any weapon (including a starter gun) which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon, any firearm muffler or firearm silencer; any destructive device; any machine gun. [The term "firearm" does not include an antique firearm unless the antique firearm is used in the commission of a crime.] *See Fla. Stat. § 790.001 for the definition of antique firearm.*

§ 790.001, Fla. Stat.

"Chemical weapon or device" means any weapon of such nature, except a device known as a "self-defense chemical spray." "Self-defense chemical spray" means a device carried solely for purposes of lawful self-defense that is compact in size, designed to be carried on or about the person, and contains not more than two ounces of chemical.

§ 790.001, Fla. Stat.

"Destructive device" means any bomb, grenade, mine, rocket, missile, pipebomb, or similar device containing an explosive, incendiary, or poison gas and includes any frangible container filled with an explosive, incendiary, explosive gas, or expanding gas, which is designed or so constructed as to explode by such filler and is capable of causing

bodily harm or property damage; any combination of parts either designed or intended for use in converting any device into a destructive device and from which a destructive device may be readily assembled; any device declared a destructive device by the Bureau of Alcohol, Tobacco, and Firearms; any type of weapon which will, is designed to, or may readily be converted to expel a projectile by the action of any explosive and which has a barrel with a bore of one-half inch or more in diameter; and ammunition for such destructive devices, but not including shotgun shells or any other ammunition designed for use in a firearm other than a destructive device.

"Destructive device" does not include:

a. A device which is not designed, redesigned, used, or intended for use as a weapon;

b. Any device, although originally designed as a weapon, which is redesigned so that it may be used solely as a signaling, line-throwing, safety, or similar device;

c. Any shotgun other than a short-barreled shotgun; or

d. Any nonautomatic rifle (other than a short-barreled rifle) generally recognized or particularly suitable for use for the hunting of big game.

Possession.

To prove (defendant) **"possessed a [firearm] [weapon]," the State must prove beyond a reasonable doubt that [he] [she]: a) knew of the existence of the [firearm] [weapon], and b) intentionally exercised control over it.**

Give if applicable.

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

Joint possession. Give if applicable.

Possession of a [firearm] [weapon] may be sole or joint, that is, two or more persons may possess a [firearm] [weapon].

Lesser Included Offenses

TRESPASS ON SCHOOL PROPERTY WITH A [FIREARM] [WEAPON] — 810.095(1)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Trespass on School Grounds or Facility After Warning By Principal (if refusal to depart is charged)		810.097(2)	13.5(b)
Trespass Upon School Grounds or Facility (if no legitimate business or student suspended is charged)		810.097(1)	13.5(a)
	Attempt	777.04(1)	5.1
	Trespass in Structure or On Property Other than a Structure (depending on charging document)	810.08 or 810.09	13.3 or 13.4

Comments

A special instruction will be necessary in cases where the deadly weapon was an animal or a substance or something that is not commonly referred to as an "object."

This instruction was adopted in 2013 [122 So. 3d 263] and amended in 2018 [253 So. 3d 1040], and on April 3, 2020.

13.5(a) TRESPASS ON SCHOOL GROUNDS OR FACILITIES

§ 810.097, Fla. Stat.

To prove the crime of Trespass on School Grounds or Facilities, the State must prove the following two elements beyond a reasonable doubt:

Give 1a or 1b or both as applicable.

1. a. (Defendant) **entered or remained on the campus of** (school name)**.**

b. (Defendant) **entered or remained on** (facility name) **owned by** (school name)**.**

Give 2a or 2b or both as applicable.

2. a. (Defendant) **did not have any legitimate business on the campus or any other authorization, license, or invitation to enter or remain upon school property.**

b. (Defendant) **was a student under suspension or expulsion at the time he or she entered or remained on the campus or any other facility owned by a school.**

"School" means the grounds or any facility, including school buses, of any kindergarten, elementary school, middle school, junior high school, or secondary school, whether public or non-public.

"School bus" means any vehicle operated, owned, or contracted by a school district for student transportation.

A clearly posted sign or a verbal warning provided by the school bus operator, the principal, a school district employee, or law enforcement personnel, indicating that unauthorized boarding or remaining on a school bus is prohibited and violators will be prosecuted, constitutes sufficient notice that a person is not authorized to enter or remain on a school bus.

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comment

This instruction was adopted in 2007 [962 So. 2d 310] and amended on September 5, 2025.

13.5(b) TRESPASS ON SCHOOL GROUNDS OR FACILITIES AFTER WARNING

§ 810.097(2), Fla. Stat.

To prove the crime of Trespass on School Grounds or Facilities After Warning, the State must prove the following four elements beyond a reasonable doubt:

1. (Name of person) **was the [principal of** (name of school)**] [the principal's designee for** (name of school)**].**

2. (Name of school in element #1) **was a school.**

3. (Name of person in element #1) **directed the defendant [to leave] [not to enter] the campus or facility of** (name of school in element #1)**.**

4. **After receiving the direction given to [him] [her] by** (name of person in element #1)**,** (defendant) **[entered] [remained**} **on that campus or facility.**

"School" means the grounds or any facility, including school buses, of any kindergarten, elementary school, middle school, junior high school, or secondary school, whether public or non-public.

Give only if applicable.

"School bus" means any vehicle operated, owned, or contracted by a school district for student transportation.

A clearly posted sign or a verbal warning provided by the school bus operator, the principal, a school district employee, or law enforcement personnel, indicating that unauthorized boarding or remaining on a school bus is prohibited and violators will be prosecuted, constitutes sufficient notice that a person is not authorized to enter or remain on a school bus and satisfies the warning requirement in element #3 if the school facility upon which (defendant) **[entered] [remained] was a school bus.**

Lesser Included Offense

TRESPASS ON SCHOOL GROUNDS OR FACILITIES AFTER WARNING — 810.097(2)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Trespass in Conveyance	810.08	13.3

Comment

This instruction was adopted in 2007 962 So. 2d 310] and amended on March 20, 2026.

13.5(c) TRESPASS ON THE CAMPUS OF A [STATE UNIVERSITY] [FLORIDA COLLEGE SYSTEM INSTITUTION] FOR THE PURPOSE OF THREATENING OR INTIMIDATING ANOTHER

§ 810.098, Fla. Stat.

To prove the crime of Trespass on the Campus of a [State University] [Florida College System Institution] for the Purpose of Threatening or Intimidating Another, the State must prove the following four elements beyond a reasonable doubt:

1. (Defendant) **willfully entered the campus of a [state university] [Florida College System institution].**

2. (Defendant) **entered the campus with the purpose to threaten or intimidate [another person] [**(name of person)**].**

3. (Defendant) **was not authorized, licensed, or invited to enter the campus.**

4. (Defendant) **was warned by the [state university] [Florida College System institution] to depart and refused to do so.**

"Willfully" means intentionally, knowingly, and purposely.

"To threaten or intimidate" means to put a reasonable person in fear of harm to his or her person or property.

"State university" includes (insert name of institution in § 1000.21(6), Fla. Stat.) **[and any branch campuses, centers, or other affiliates of the institution].**

"Florida College System institution" includes (insert name of institution in § 1000.21(3), Fla. Stat.) **[and any branch campuses, centers, or other affiliates of the institution].**

Lesser Included Offenses

TRESPASS ON THE CAMPUS OF A [STATE UNIVERSITY] [FLORIDA COLLEGE SYSTEM INSTITUTION] FOR THE PURPOSE OF THREATENING OR INTIMIDATING ANOTHER — 810.098

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Trespass in Structure/Conveyance	810.08	13.3
	Trespass on Property Other than a Structure/Conveyance	810.09	13.4

Comment

This instruction was adopted on September 8, 2023.

13.6 TRESPASS ON DESIGNATED PROPERTY

§ 810.09(2)(d), (e), (f), (g), or (i), Fla. Stat.

To prove the crime of Trespass on [a Construction Site [Less than or Equal to] [Greater than] One Acre in Area] [Commercial Horticulture Property] [an Agricultural Site for Testing or Research] [a Certified Domestic Violence Center] [an Agricultural Chemical Manufacturing Facility], the State must prove the following five elements beyond a reasonable doubt:

1. (Defendant) **willfully entered upon property other than a structure or conveyance.**

2. **The property was [owned by] [in the lawful possession of]** (person alleged)**.**

3. **The property was legally posted.**

4. **The property was [a construction site] [commercial horticulture property] [an agricultural site for testing or research] [a domestic violence center certified under s. 39.905] [an agricultural chemical manufacturing facility].**

5. Defendant) **entered the property without authorization, license, or invitation from** (person alleged) **or any other person authorized to give that permission.**

Rozier v. State, 402 So. 2d 539 (Fla. 5th DCA 1981).

"Willfully" means intentionally, knowingly, and purposely.

§ 810.011(1), Fla. Stat.; State v. Hamilton, 660 So. 2d 1038 (Fla. 1995); and DuBose v. State, 210 So. 3d 641 (Fla. 2017).

"Structure" means a building of any kind, either temporary or permanent, which has a roof over it, and the enclosed space of ground and outbuildings immediately surrounding it. [The enclosure need not be continuous as it may have an ungated opening for entering and exiting.]

§ 810.011(3), Fla. Stat.

"Conveyance" means any motor vehicle, ship, vessel, railroad vehicle or car, trailer, aircraft, or sleeping car; and "to enter a conveyance" includes taking apart any portion of the conveyance.

§ 810.09(3), Fla. Stat.

"Person authorized" means any owner, his or her agent, or a community association authorized as an agent for the owner, or any law enforcement officer whose department has received written authorization from the owner, his or her agent, or a community association authorized as an agent for the owner, to communicate an order to leave the property in the case of a threat to public safety or welfare.

Authority to enter upon property need not be given in express words. It may be implied from the circumstances. It is lawful to enter upon the property of another if, under all the circumstances, a reasonable person would believe that [he] [she] had the permission of the owner, lawful occupant, or any other person authorized to give that permission.

Give as applicable.

§ 810.011(11), Fla. Stat.

"Commercial horticulture property" means any property that is cleared of its natural vegetation and is planted in commercially cultivated horticulture products that are planted, grown, or harvested. The term also includes property that is used for the commercial sale, use, or distribution of horticulture products.

§ 810.011(12), Fla. Stat.

"Agricultural chemicals manufacturing facility" means any facility, and any properties or structures associated with the facility, used for the manufacture, processing, or storage of agricultural chemicals classified in Industry Group 287 contained in the Standard Industrial Classification Manual, 1987, as published by the Office of Management and Budget, Executive Office of the President.

§ 810.011(13), Fla. Stat.

"Construction site" means any property upon which there is construction that is subject to building permit posting requirements.

Give the appropriate designation as alleged in the charging document:

Construction Site less than or equal to 1 acre in area. § 810.09(2)(d)2., Fla. Stat.

"Legally posted" means:

1. **The property was less than or equal to one acre in area.**

2. **The property was identified as a construction site with a sign prominently placed on the property where the construction permits were located.**

3. **The letters on the sign were not less than two inches in height and the sign read in substantially the following manner: THIS AREA IS A DESIGNATED CONSTRUCTION SITE, AND ANYONE WHO TRESPASSES ON THIS PROPERTY COMMITS A FELONY.**

Construction Site greater thqn 1 acre in area. § 810.09(2)(d)1., Fla. Stat.; § 810.011(5)(a), Fla. Stat.; Borrico v. State, 276 So. 3d 458 (Fla. 5th DCA 2019).

"Legally posted" means:

1. **The property was greater than one acre in area;**

2. **The property was identified as a construction site with signs that read in substantially the following manner: THIS AREA IS A DESIGNATED CONSTRUCTION SITE, AND ANYONE WHO TRESPASSES ON THIS PROPERTY COMMITS A FELONY. The lettering for this part of the signs must be no less than 2 inches in height;**

3. **The signs were placed not more than 500 feet apart;**

4. **The signs were located at each corner of the boundaries of the property;**

5. **The signs contained the name of the owner, lessee, or occupant of the property. Smaller lettering is acceptable for this part of the signs; and,**

6. **The signs were placed in a manner and in such position as to be clearly noticeable from outside the boundary line and corners of the property.**

Commercial Horticulture Property § 810.09(2)(e), Fla. Stat.§ 810.011(5)(a), Fla. Stat.; Couch v. State, 326 So. 3d 750 (Fla. 3d DCA 2021).

"Legally posted" means:

1. **The property was identified as a commercial horticulture property with signs that read in substantially the following manner: THIS AREA IS DESIGNATED COMMERCIAL PROPERTY FOR HORTICULTURAL PRODUCTS, AND ANYONE WHO TRESPASSES ON THIS PROPERTY COMMITS A FELONY. The lettering for this part of the signs must be no less than 2 inches in height.**

2. **The signs were placed not more than 500 feet apart.**

3. **The signs were located at each corner of the boundaries of the property.**

4. **The signs contained the name of the owner, lessee, or occupant of the property. Smaller lettering is acceptable for this part of the signs.**

5. **The signs were placed in a manner and in such position as to be clearly noticeable from outside the boundary line and corners of the property.**

Agricultural Site for Testing § 810.09(2)(f), Fla. Stat. § 810.011(5)(a), Fla. Stat.

"Legally posted" means:

1. **The property was identified as an agricultural site for testing with signs that read in substantially the following manner: THIS AREA IS A DESIGNATED AGRICULTUAL SITE FOR TESTING OR RESEARCH PURPOSES, AND ANYONE WHO TRESPASSES ON THIS PROPERTY COMMITS A FELONY. The lettering for this part of the signs must be no less than 2 inches in height.**

2. **The signs were placed not more than 500 feet apart.**

3. **The signs were located at each corner of the boundaries of the property.**

4. **The signs contained the name of the owner, lessee, or occupant of the property. Smaller lettering is acceptable for this part of the signs.**

5. **The signs were placed in a manner and in such position as to be clearly noticeable from outside the boundary line and corners of the property.**

Certified Domestic Violence Center § 810.09(2)(g), Fla. Stat. § 810.011(5)(a), Fla. Stat.

"Legally posted" means:

1. **Signs were located on the property that read in substantially the following manner: THIS AREA IS A DESIGNATED RESTRICTED SITE, AND ANYONE WHO TRESPASSES ON THIS PROPERTY COMMITS A FELONY. The lettering for this part of the signs must be no less than 2 inches in height.**

2. **The signs were placed not more than 500 feet apart.**

3. **The signs were located at each corner of the boundaries of the property.**

4. **The signs contained the name of the owner, lessee, or occupant of the property. Smaller lettering is acceptable for this part of the signs.**

5. **The signs were placed in a manner and in such position as to be clearly noticeable from outside the boundary line and corners of the property.**

Agricultural Chemical Manufacturing Facility § 810.09(2)(i), Fla. Stat. § 810.011(5)(a), Fla. Stat.

"Legally posted" means:

1. **The property was identified as an agricultural chemical manufacturing facility with signs that read in substantially the following manner: THIS AREA IS A DESIGNATED AGRICULTUAL CHEMICALS MANUFACTURE FACILITY, AND ANYONE WHO TRESPASSES ON THIS PROPERTY COMMITS A FELONY. The lettering for this part of the signs must be no less than 2 inches in height.**

2. **The signs were placed not more than 500 feet apart.**

3. **The signs were located at each corner of the boundaries of the property.**

4. **The signs contained the name of the owner, lessee, or occupant of the property. Smaller lettering is acceptable for this part of the signs.**

5. **The signs were placed in a manner and in such position as to be clearly noticeable from outside the boundary line and corners of the property.**

Lesser Included Offenses

TRESPASS ON DESIGNATED PROPERTY — 810.09(2)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Trespass on Property Other than a Structure or Conveyance	810.09	13.4
	Attempt	777.04(1)	5.1

Comment

This instruction was adopted on March 7, 2022.

13.7 RESIDENTIAL PICKETING OR PROTESTING

§ 810.15(2), Fla. Stat.

To prove the crime of Residential Picketing or Protesting, the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) **picketed or protested before or about the dwelling of** (victim)**.**

2. (Defendant) **did so with the intent to harass or disturb** (same victim as in element #1) **in [his] [her] dwelling.**

§ 810.15, Fla. Stat.

"Dwelling" means a building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families.

Lesser Included Offense

RESIDENTIAL PICKETING OR PROTESTING — 810.15(2)			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
None			
	Attempt	777.04(1)	5.1

Comment

This instruction was adopted on December 21, 2022.

13.8 TRESPASS ON CRITICAL INFRASTRUCTURE

§ 812.141(4), Fla. Stat.

To prove the crime of Trespass on Critical Infrastructure, the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **willfully entered upon or remained on critical infrastructure.**

2. **[He] [She] was not authorized, licensed, or invited to do so.**

3. **Notice against entering or remaining on the property had been given [by actual communication to** (defendant)] **[[posting] [fencing] [cultivation] of the property in the manner defined in this instruction].**

"Critical infrastructure" means (insert relevant definition from § 812.141, Fla. Stat.)**.**

"Willfully" means knowingly, intentionally, and purposely.

§ 810.011, Fla. Stat. Give if applicable.

Notice not to enter upon property may be given by posting signs not more than 500 feet apart along and at each corner of the property's boundaries. The signs must prominently state, in letters not less than two inches high, the words "No Trespassing" The signs also must state, with smaller letters being acceptable, the name of the owner or lessee or occupant of the land. The signs must be placed so as to be clearly noticeable from outside the boundary lines and corners of the property. [If the property is enclosed and less than five acres in area, and a dwelling house is located on it, it should be treated as posted land even though no signs have been erected.]

§ 810.011, Fla. Stat. Give if applicable.

Notice not to enter property may be given by cultivation of the property. "Cultivated land" is land that has been cleared of its natural vegetation, and at the time of the trespass was planted with trees, a crop, an orchard or a grove, or was a pasture. [Fallow land, left that way as part of a crop rotation, is also "cultivated land."]

§ 810.011, Fla. Stat. Give if applicable.

Notice not to enter property may be given by fencing the property. "Fenced land" is land that has been enclosed by a fence of substantial

construction. The fence may be made from rails, logs, posts and railings, iron, steel, barbed wire or other wire or material. The fence must stand at least three feet high. [If a part of the boundary of a piece of property is formed by water, that part should be treated as legally fenced land.]

Give if applicable.

When every part of property is either posted or cultivated or fenced, the entire property is considered as enclosed and posted land.

Lesser Included Offense

TRESPASS ON CRITICAL INFRASTRUCTURE — 812.141(4)			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
Trespass		810.08/810.09	13.3/13.4
	Attempt	777.04(1)	5.1

Comment

This instruction was adopted on June 27, 2025.

13.9 TRESPASS WITH LARCENY OF UTILITY SERVICES [§ 812.14 RESERVED]

13.21 IMPAIRING OR IMPEDING TELEPHONE OR POWER TO A DWELLING TO FACILITATE OR FURTHER A BURGLARY

§ 810.061, Fla. Stat.

To prove the crime of Impairing or Impeding Telephone or Power to a Dwelling to Facilitate or Further a Burglary, the State must prove the following two elements beyond a reasonable doubt:

Give as applicable.

1. (Defendant)

a. damaged a [wire] [line] that transmitted [telephone service] [power] to a dwelling.

b. impaired equipment necessary for [telephone] [power] transmission to a dwelling.

c. [impaired] [impeded] [telephone] [power] transmission to a dwelling.

2. (Defendant) **did so for the purpose of facilitating or furthering the [commission] [attempted commission] of a burglary of that dwelling.**

To define a burglary, see instruction 13.1.

To define an attempt, see instruction 5.1.

Definitions.

§ 810.011(2), Fla. Stat. Dubose v. State, 210 So. 3d 641 (Fla. 2017).

"Dwelling" means a building or conveyance of any kind, including any attached porch, whether such building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it and is designed to be occupied by people lodging therein at night, together with the enclosed space of ground and outbuildings immediately surrounding it. [The enclosure need not be continuous as it may have an ungated opening for entering and exiting.] For purposes of this crime, a "dwelling" includes an attached garage.

§ 810.011(3), Fla. Stat. Give if applicable.

"Conveyance" means any motor vehicle, ship, vessel, railroad vehicle or car, trailer, aircraft, or sleeping car; and "to enter a conveyance" includes taking apart any portion of the conveyance.

"Impaired" means to be diminished, damaged, or weakened.

"Impeded" means to slow something down or prevent an activity from making progress at its previous rate.

"Facilitate" means to help or assist, or to make something possible or easier.

Comment

This instruction was adopted in 2007 [953 So. 2d 495] and amended in 2018.

CHAPTER 14 — THEFT AND DEALING IN STOLEN PROPERTY

14.1 THEFT

§ 812.014, Fla. Stat.

To prove the crime of Theft, the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) **knowingly and unlawfully [obtained or used] [endeavored to obtain or to use] the** (property alleged) **of** (victim)**.**

Give 2a or 2b or both as applicable.

2. [He] [She] did so with intent to, either temporarily or permanently,

a. deprive (victim) **of [his] [her] right to the property or any benefit from it.**

[or]

b. appropriate the property of (victim) **to [his] [her] own use or to the use of any person not entitled to it.**

Give as applicable.

If you find the defendant guilty of Theft, you must also determine if the State proved beyond a reasonable doubt that:

a. the value of the property taken was $100,000 or more.

b. the value of the property taken was $20,000 or more but less than $100,000.

c. the value of the property taken was $10,000 or more but less than $20,000.

d. the value of the property taken was $5,000 or more but less than $10,000.

e. the value of the property taken was $750 or more but less than $5,000.

f. the value of the property taken was $100 or more but less than $750.

g. the value of the property taken was less than $100.

h. the property taken was a semitrailer that was deployed by a law enforcement officer.

i. the property taken was cargo valued at $50,000 or more that has entered the stream of commerce from the shipper's loading platform to the consignee's receiving dock.

j. the property taken was cargo valued at less than $50,000 that has entered the stream of commerce from the shipper's loading platform to the consignee's receiving dock.

k. the property taken was emergency medical equipment valued at $300 or more that was taken from [a licensed facility] [an emergency medical aircraft or vehicle].

l. the property taken was law enforcement equipment valued at $300 or more that was taken from an authorized emergency vehicle.

m. (defendant)**, individually or in concert with one or more persons, coordinated the activities of another in committing the theft and the value of the property taken was more than $3,000.**

n. the stolen property was [a will, codicil, or other testamentary instrument] [a firearm] [a motor vehicle] [a commercially farmed animal] [an aquaculture species raised at a certified aquaculture facility] [a fire extinguisher that, at the time of the taking, was installed in a building for the purpose of fire prevention and control] [2,000 or more pieces of citrus fruit] [taken from a legally posted construction site] [a stop sign] [anhydrous ammonia] [a controlled substance. Under Florida law, (*name of controlled substance*) **is a controlled substance.]**

o. the value of the property taken was $40 or more but less than $750 and was taken from [a dwelling] [the unenclosed curtilage of a dwelling].

p. the value of the property taken was $750 or more and was taken from [a dwelling] [the unenclosed curtilage of a dwelling].

q. the property was taken from [more than 20 dwellings] [the unenclosed curtilage of more than 20 dwellings].

r. the value of the property taken was less than $40 and was taken from [a dwelling] [the unenclosed curtilage of a dwelling].

Give if applicable but only in cases of grand theft. § 812.014(2)(a)3, Fla. Stat.

If you find the defendant guilty of theft, you must also determine if the State has proved beyond a reasonable doubt whether:

s. in the course of committing the theft, (defendant) **used a motor vehicle as an instrumentality, other than merely as a getaway vehicle, to assist in committing the theft and thereby damaged the real property of another.**

t. in the course of committing the theft, (defendant) **caused more than $1,000 in damage to the [real] [personal] property of another.**

State of emergency. Applies only to elements b, c, d, j, k and l above.

If you find (defendant) **guilty of theft, you must also determine if the State has proved beyond a reasonable doubt whether:**

u. the theft was committed within a county that was subject to a state of emergency that had been declared by the governor under Chapter 252, the "State Emergency Management Act"

and

the perpetration of the theft was facilitated by conditions arising from the emergency.

Inferences. Give if applicable. § 812.022(1), Fla. Stat.

Proof that a person presented false identification, or identification not current in respect to name, address, place of employment, or other material aspect in connection with the leasing of personal property or failed to return leased property within 72 hours of the termination of the leasing agreement, unless satisfactorily explained, gives rise to an inference that the property was obtained or is now used with unlawful intent to commit theft.

§ 812.022(2), Fla. Stat.

Proof of possession of recently stolen property, unless satisfactorily explained, gives rise to an inference that the person in possession of the property knew or should have known that the property had been stolen.

§ 812.022(3), Fla. Stat. Do not give unless there is evidence of the fair market value of the stolen property. Barfield v. State, 613 So. 2d 507 (Fla. 1st DCA 1993).

Proof of the purchase or sale of stolen property at a price substantially below the fair market value, unless satisfactorily explained, gives rise to an inference that the person buying or selling the property knew or should have known that the property had been stolen.

§ 812.022(4), Fla. Stat.

Proof of the purchase or sale of stolen property by a dealer in property, out of the regular course of business or without the usual indicia of ownership other than mere possession, unless satisfactorily explained, gives rise to an inference that the person buying or selling the property knew or should have known that it had been stolen.

§ 812.022(5), Fla. Stat.

Proof that a dealer who regularly deals in used property possesses stolen property upon which a name and phone number of a person other than the offeror of the property are conspicuously displayed gives rise to an inference that the dealer possessing the property knew or should have known that the property was stolen.

§ 812.022(6), Fla. Stat.

Proof that a person was in possession of a stolen motor vehicle and that the ignition mechanism of the motor vehicle had been bypassed or the steering wheel locking mechanism had been broken or bypassed, unless satisfactorily explained, gives rise to an inference that the person in possession of the stolen motor vehicle knew or should have known that the motor vehicle had been stolen.

Definitions. Give if applicable.

§ 316.003, Fla. Stat.

"Authorized emergency vehicles" are vehicles of the fire department (fire patrol), police vehicles, and such ambulances and emergency vehicles

of municipal departments, public service corporations operated by private corporations, the Department of Environmental Protection, the Department of Health, the Department of Transportation, and the Department of Corrections as are designated or authorized by their respective department or the chief of police of an incorporated city or any sheriff of any of the various counties.

§ 812.012(1), Fla. Stat.

"Cargo" means partial or entire shipments, containers, or cartons of property which are contained in or on a trailer, motortruck, aircraft, vessel, warehouse, freight station, freight consolidation facility, or air navigation facility.

§ 812.014(2), Fla. Stat.

"Conditions arising from the emergency" means civil unrest, power outages, curfews, voluntary or mandatory evacuations, or a reduction in the presence of or response time for first responders or homeland security personnel.

§ 810.011(2), Fla. Stat.; Dubose v. State, 210 So. 3d 641 (Fla. 2017).

"Dwelling" means a building [or conveyance] of any kind, whether such building [or conveyance] is temporary or permanent, mobile or immobile, which has a roof over it and is designed to be occupied by people lodging therein at night, together with the enclosed space of ground and outbuildings immediately surrounding it. [The enclosure need not be continuous as it may have an ungated opening for entering and exiting.] For purposes of theft, a "dwelling" includes an attached porch or attached garage.

§ 812.014(2)(b)3, Fla. Stat.

"Emergency medical aircraft or vehicle" means any aircraft, ambulance or other vehicle used as an emergency medical service vehicle that has been issued a permit in accordance with Florida law.

§ 812.014(2)(b)3, Fla. Stat.

"Emergency medical equipment" means mechanical or electronic apparatus used to provide emergency service and care or to treat medical emergencies.

§ 395.002(9), Fla. Stat.

"Emergency services and care" means medical screening, examination, and evaluation by a physician, or other medically appropriate personnel under the supervision of a physician, to determine if an emergency medical condition exists, and if it does, the care, treatment, or surgery by a physician necessary to relieve or eliminate the emergency medical condition, within the service capability of the facility.

§ 812.014(2)(b)4, Fla. Stat., and § 943.10, Fla. Stat.

"Law enforcement equipment" means any property, device, or apparatus used by a law enforcement officer in the officer's official business. A law enforcement officer is any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.

§ 810.09(2)(d), Fla. Stat.

If the construction site is greater than one acre in area, see § 810.09(2)(d)1, Fla. Stat., and § 810.011(5)(a), Fla. Stat.

A "legally posted construction site" means a construction site of one acre or less in area with a sign prominently placed on the property where the construction permits are located, in letters no less than two inches in height, that reads in substantially the following manner: "THIS AREA IS A DESIGNATED CONSTRUCTION SITE, AND ANYONE WHO TRESPASSES ON THIS PROPERTY COMMITS A FELONY."

§ 395.002(16), Fla. Stat.

"Licensed facility" means a hospital, ambulatory surgical center, or mobile surgical facility licensed by the Florida Agency for Health Care Administration. *See chapter 395, Fla. Stat.*

Medrano v. State, 199 So. 3d 413 (Fla. 4th DCA 2016); § 320.01, Fla. Stat. (Some of these terms have their own statutory definitions, which should be given if necessary.)

"Motor vehicle" means an automobile, motorcycle, truck, trailer, semitrailer, truck tractor and semitrailer combination, or any other vehicle operated on the roads of this state, used to transport persons or property, and propelled by power other than muscular power, but the term does not include traction engines, road rollers, motorized scooters, micromobility devices, personal delivery devices, mobile carriers, special mobile equipment, vehicles that run only upon a track, bicycles, electric bicycles, swamp buggies, or mopeds.

§ 810.09(1)(b), Fla. Stat.

"Unenclosed curtilage" means the unenclosed land or grounds, and any outbuildings, that are directly and intimately adjacent to and connected with the dwelling and necessary, convenient, and habitually used in connection with that dwelling.

§ 812.012(3), Fla. Stat. Give appropriate portions of the definition as needed.

"Obtains or uses" means any manner of

a. Taking or exercising control over property.

b. Making any unauthorized use, disposition, or transfer of property.

c. Obtaining property by fraud, willful misrepresentation of a future act, or false promise.

d. Conduct previously known as stealing; larceny; purloining; abstracting; embezzlement; misapplication; misappropriation; conversion; or obtaining money or property by false pretenses, fraud, deception; or other conduct similar in nature.

"Endeavor" means to attempt or try.

§ 812.012(4), Fla. Stat. Give appropriate portions of the definition as needed.

"Property" means anything of value, and includes:

[real property, including things growing on, affixed to and found in land.]

[tangible or intangible personal property, including rights, privileges, interests, and claims.]

[services.]

§ 812.012(6), Fla. Stat. Give appropriate portions of the definition as needed.

"Services" means anything of value resulting from a person's physical or mental labor or skill, or from the use, possession, or presence of property, and includes:

[repairs or improvements to property.]

[professional services.]

[private, public or government communication, transportation, power, water, or sanitation services.]

[lodging accommodations.]

[admissions to places of exhibition or entertainment.]

§ 812.012(10), Fla. Stat.

"Value" means the market value of the property at the time and place of the offense, or if that value cannot be satisfactorily ascertained, the cost of replacement of the property within a reasonable time after the offense.

If the exact value of the property cannot be ascertained, you should attempt to determine a minimum value. If you cannot determine the minimum value, you must find the value is less than $100.

Theft of an Instrument. Give if applicable.

In the case of a written instrument that does not have a readily ascertainable market value, such as a check, draft, or promissory note, the value is the amount due or collectible.

In the case of any other instrument that creates, releases, discharges or otherwise affects any valuable legal right, privilege, or obligation, the value is the greatest amount of economic loss that the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

Theft of a Trade Secret. Give if applicable.

The value of a trade secret that does not have a readily ascertainable market value is any reasonable value representing the

damage to the owner suffered by reason of losing an advantage over those who do not know of or use the trade secret.

Theft Pursuant to One Scheme. Give if applicable.

Amounts of value of separate properties involved in thefts committed pursuant to one scheme or course of conduct, whether the thefts are from the same person or several persons, may be added together to determine the total value of the theft.

Good faith defense. Give if applicable. Cliff Berry, Inc. v. State, 116 So. 3d 394 (Fla. 3d DCA 2012).

It is a defense to the charge of Theft if (defendant) **had an honest, good faith belief that [he] [she] had the right to possess the** (property alleged) **of** (victim)**.**

If you have a reasonable doubt about whether (defendant) **had an honest, good faith belief, even though unreasonable or mistaken, that [he] [she] had the right to possess the** (property alleged) **of** (victim)**, you should find [him] [her] not guilty of Theft.**

If you find the State proved beyond a reasonable doubt the defendant did not have an honest, good faith belief that [he] [she] had the right to possess the (property alleged) **of** (victim)**, you should find [him] [her] guilty, if all of the elements of Theft have been proven beyond a reasonable doubt.**

Give if the degree of theft is higher based on one or more priors.

It is error to inform the jury of a prior theft conviction. If the charging document contains an allegation of one or more prior theft convictions, do not read that allegation and do not send the charging document into the jury room. If the defendant is found guilty of a theft, the historical fact of a previous conviction must be determined beyond a reasonable doubt in a bifurcated proceeding. State v. Harbaugh, 754 So. 2d 691 (Fla. 2000).

A prior robbery conviction can be used as a predicate for felony petit theft. Grimes v. State, 724 So. 2d 614 (Fla. 5th DCA 1998).

As of October 1, 2023, a second conviction for Grand Theft Firearm is a second degree felony ranked as a level 7 scoresheet offense.

Now that you have found the defendant guilty of Theft, you must further determine whether the State has proven beyond a reasonable

doubt that the defendant was previously convicted [two or more times] of any [Theft] [Robbery] [Grand Theft of a Firearm].

Lesser Included Offenses

Because the jury will be answering an interrogatory on the value of the property stolen, there does not need to be an instruction on lesser included theft offenses based solely on value.

GRAND THEFT — THIRD DEGREE (A MOTOR VEHICLE) —812.014(2)(c)6

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Trespass to conveyance	810.08	13.3

FELONY PETIT THEFT — 812.014(3)(c)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Petit theft — first degree		812.014(3)(b)	14.1
Petit theft — second degree		812.014(3)(a)	14.1

Comments

As of January 2025, it is unclear whether a conviction, for purposes of increasing the degree of the theft, requires an adjudication of guilt.

According to § 705.102, Fla. Stat., whenever any person finds lost or abandoned property, such person must report the description and location of the property to a law enforcement officer. Any person who unlawfully appropriates such lost or abandoned property to his or her own use commits Theft. In such cases, a special instruction will be required.

This instruction was adopted in 1981 and amended in 1985 [477 So. 2d 985], 1987 [508 So. 2d 1221], 1989 [543 So. 2d 1205], 1992 [603 So. 2d 1175], 2003 [850 So. 2d 1272], 2005 [911 So. 2d 766 and 915 So. 2d 609], 2008 [986 So. 2d 563], 2013 [109 So. 3d 721], 2016 [190 So. 3d 614], 2018 [256 So. 3d 1316], 2020 [288 So. 3d 540], on October 2, 2020, on March 8, 2024, and on February 21, 2025.

14.2 DEALING IN STOLEN PROPERTY (FENCING)

§ 812.019(1), Fla. Stat.

To prove the crime of Dealing in Stolen Property (Fencing), the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) **[trafficked in] [endeavored to traffic in]** (property alleged)**.**

2. (Defendant) **knew or should have known that** (property alleged) **was stolen.**

Inferences. Give if applicable. § 812.022(2), Fla. Stat.

Proof of possession of recently stolen property, unless satisfactorily explained, gives rise to an inference that the person in possession of the property knew or should have known that the property had been stolen.

Inferences. Give if applicable. § 812.022(3), Fla. Stat. Do not give unless there is evidence of the fair market value of the stolen property. Barfield v. State, 613 So. 2d 507 (Fla. 1st DCA 1993).

Proof of the purchase or sale of stolen property at a price substantially below the fair market value, unless satisfactorily explained, gives rise to an inference that the person buying or selling the property knew or should have known that the property had been stolen.

Inferences. Give if applicable. § 812.022(4), Fla. Stat.

Proof of the purchase or sale of stolen property by a dealer in property, out of the regular course of business or without the usual indicia of ownership other than mere possession, unless satisfactorily explained, gives rise to an inference that the person buying or selling the property knew or should have known that it had been stolen.

Inferences. Give if applicable. § 812.022(5), Fla. Stat.

Proof that a dealer who regularly deals in used property possesses stolen property, upon which a name and phone number of a person other than the offeror of the property are conspicuously displayed, gives rise to an inference that the dealer possessing the property knew or should have known that the property was stolen.

Inferences. Give if applicable. § 812.022(6), Fla. Stat.

Proof that a person was in possession of a stolen motor vehicle and that the ignition mechanism of the motor vehicle had been bypassed or the steering wheel locking mechanism had been broken or bypassed, unless satisfactorily explained, gives rise to an inference that the person in possession of the stolen motor vehicle knew or should have known that the motor vehicle had been stolen.

Definitions.

§ 812.012(3), Fla. Stat.

"Property" means anything of value, and includes: real property, including things growing on, affixed to and found in land; tangible or intangible personal property, including rights, privileges, interests, and claims; and services.

§§ 812.012(6), 812.028(3), Fla. Stat.

"Stolen property" means property that has been the subject of any criminally wrongful taking or if the property has not been stolen, that it was offered for sale to (defendant) **as stolen property.**

§ 812.012(7), Fla. Stat.

"Traffic" means: to sell, transfer, distribute, dispense or otherwise dispose of property; and to buy, receive, possess, obtain control of or use property with the intent to sell, transfer, distribute, dispense or otherwise dispose of that property.

Give if both theft and dealing in stolen property are submitted to the jury:

You will receive separate verdict forms for theft and dealing in stolen property as the defendant was charged with both crimes.

If you find that the State has not proven theft and dealing in stolen property, then you are to find the defendant not guilty of both offenses.

If you find that the State has proven theft, but not dealing in stolen property, then you are to find the defendant guilty of theft and not guilty of dealing in stolen property.

If you find that the State has proven dealing in stolen property, but not theft, then you are to find the defendant guilty of dealing in stolen property and not guilty of theft.

If you find that the State has proven both theft and dealing in stolen property, you must then decide whether both offenses were in connection with one scheme or course of conduct. "One scheme or course of conduct" means that there was no meaningful disruption of the defendant's conduct by either an interval of time or a set of circumstances.

If you find that both theft and dealing in stolen property were proven by the State, and the offenses were not in connection with one scheme or course of conduct, then you are to find the defendant guilty of both theft and dealing in stolen property.

If you find that both theft and dealing in stolen property were proven by the State, and the offenses were in connection with one scheme or course of conduct, then the defendant must be convicted of either theft or dealing in stolen property. In making your decision, you must determine whether the defendant is more of a common thief or more of a trafficker. This determination rests on the defendant's intended use of the stolen property. The defendant is a "common thief" if [he][she] had the intent to appropriate the property to [his] [her] own use or to the use of any person not entitled to the use of the property. The defendant is a "trafficker" if [he][she] had the intent to traffic in the stolen property. If you find the defendant more of a "common thief," then you are to find the defendant guilty of theft only. If you find the defendant more of a "trafficker," then you are to find the defendant guilty of dealing in stolen property only.

Lesser Included Offenses

DEALING IN STOLEN PROPERTY — TRAFFICKING — 812.019(1)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None	Grand theft — third degree	812.014(2)(c)	14.1
	Petit theft — first degree	812.014(2)(e)	14.1
	Petit theft — second degree	812.014(3)(a)	14.1

Comment

This instruction was adopted in 1981 and amended in 1989 [543 So. 2d 1205], 2007 [962 So. 2d 310], 2013 [121 So. 3d 520], 2014 [140 So. 3d 992], and 2016.

14.3 DEALING IN STOLEN PROPERTY (ORGANIZING)

§ 812.019(2), Fla. Stat.

To prove the crime of Dealing in Stolen Property (Organizing), the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) **[initiated] [organized] [planned] [financed] [directed] [managed] [supervised] the theft of** (property alleged)**.**

2. (Defendant) **trafficked in the** (property alleged)**.**

Inferences. Give if applicable. § 812.022(2), Fla. Stat.

Proof of possession of recently stolen property, unless satisfactorily explained, gives rise to an inference that the person in possession of the property knew or should have known that the property had been stolen.

Inferences. Give if applicable. § 812.022(3), Fla. Stat. Do not give unless there is evidence of the fair market value of the stolen property. Barfield v. State, 613 So. 2d 507 (Fla. 1st DCA 1993).

Proof of the purchase or sale of stolen property at a price substantially below the fair market value, unless satisfactorily explained, gives rise to an inference that the person buying or selling the property knew or should have known that the property had been stolen.

Inferences. Give if applicable. § 812.022(4), Fla. Stat.

Proof of the purchase or sale of stolen property by a dealer in property, out of the regular course of business or without the usual indicia of ownership other than mere possession, unless satisfactorily explained, gives rise to an inference that the person buying or selling the property knew or should have known that it had been stolen.

Inferences. Give if applicable. § 812.022(5), Fla. Stat.

Proof that a dealer who regularly deals in used property possesses stolen property, upon which a name and phone number of a person other than the offeror of the property are conspicuously displayed, gives rise to an inference that the dealer possessing the property knew or should have known that the property was stolen.

Inferences. Give if applicable. § 812.022(6), Fla. Stat.

Proof that a person was in possession of a stolen motor vehicle and that the ignition mechanism of the motor vehicle had been bypassed or

the steering wheel locking mechanism had been broken or bypassed, unless satisfactorily explained, gives rise to an inference that the person in possession of the stolen motor vehicle knew or should have known that the motor vehicle had been stolen.

Definitions.

§ 812.012(3), Fla. Stat.

"Property" means anything of value, and includes:

real property, including things growing on, affixed to and found in land;

tangible or intangible personal property, including rights, privileges, interests, and claims; and services.

§§ 812.012(6), 812.028(3), Fla. Stat.

"Stolen property" means property that has been the subject of any criminally wrongful taking or if the property has not been stolen, that it was offered for sale to (defendant) **as stolen property.**

§ 812.012(7), Fla. Stat.

"Traffic" means:

to sell, transfer, distribute, dispense or otherwise dispose of property; and

to buy, receive, possess, obtain control of or use property with the intent to sell, transfer, distribute, dispense or otherwise dispose of that property.

Lesser Included Offenses

DEALING IN STOLEN PROPERTY — MANAGING AND TRAFFICKING — 812.019(2)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Dealing in stolen property		812.019(1)	14.2
	None		

Comment

This instruction was adopted in 1981 and amended in 1989 [543 So. 2d 1205], 2007 [962 So. 2d 310], and 2016.

14.4 RETAIL THEFT

§ 812.015(8)(c), Fla. Stat.*

To prove the crime of Retail Theft, the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant)

Give one or more as applicable.

a. took possession of or carried away [merchandise] [property] [money] [negotiable documents] from a merchant.

b. altered or removed a [label] [universal product code] [price tag] from merchandise.

c. transferred merchandise from one container to another.

d. removed a shopping cart from a merchant.

2. (Defendant) **did so with the intent to deprive the merchant of possession, use, benefit, or full retail value of the [merchandise] [property] [money] [negotiable documents] [shopping cart].**

3. (Defendant) **[, acting individually or in concert with one or more other persons,] did so from more than one location within a 120-day period, and the total value of the [merchandise] [property] [money] [negotiable documents] [shopping cart] when added together was $750 or more.**

"Merchandise" means any personal property, capable of manual delivery, displayed, held, or offered for retail sale by a merchant.

"Merchant" means an owner or operator, or the agent, consignee, employee, lessee, or officer of an owner or operator, of any premises or apparatus used for retail purchase or sale of any merchandise.

"Value of merchandise" means the sale price of the merchandise at the time it was stolen or otherwise removed, depriving the owner of her or his lawful right to ownership and sale of said item.

Theft of an Instrument.

In the case of a written instrument that does not have a readily ascertainable market value, such as a check, draft, or promissory note, the value is the amount due or collectible.

In the case of any other instrument that creates, releases, discharges or otherwise affects any valuable legal right, privilege, or obligation, the value is the greatest amount of economic loss that the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

Give if applicable. Firearm. § 812.015(11), Fla. Stat. Retail Theft is bumped up to first degree felony if the defendant possessed a firearm during the commission of the crime.

You must also determine whether the State prove beyond a reasonable doubt that the defendant possessed a firearm during the commission of the Retail Theft.

A "firearm" means any weapon [including a starter gun] which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; [the frame or receiver of any such weapon;] [any firearm muffler or firearm silencer;] [any destructive device;] [any machine gun]. [The term "firearm" does not include an antique firearm unless the antique firearm is used in the commission of another crime. An antique firearm is *(insert definition in § 790.001, Fla. Stat.*]. **[A destructive device is** *(insert definition in § 790.001, Fla. Stat.*]**.**

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

Control can be exercised over a firearm whether it is carried on a person, near a person, or in a completely separate location. Mere proximity to a firearm 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 the firearm or the present ability to direct its control by another.**

Give if applicable.

Possession of a firearm may be sole or joint, that is, two or more persons may possess it.

Prior conviction. It is error to inform the jury of a prior Retail Theft conviction. If the charging document contains an allegation of Retail Theft convictions, do not read that allegation, and do not send the charging document into the jury room. If the defendant is found guilty of Retail Theft, the historical fact of previous convictions must be determined beyond a reasonable doubt in a bifurcated proceeding. State v. Harbaugh, 754 So. 2d 691 (Fla. 2000). As of

November 2024, it was undetermined whether a conviction requires an adjudication of guilt for purposes of the Retail Theft statute.

Now that you have found the defendant guilty of Retail Theft, you must further determine whether the State has proven beyond a reasonable doubt that the defendant was previously convicted two or more times of Retail Theft under either § 812.015(8), Florida Statutes, or § 812.015(9), Florida Statutes.

Lesser Included Offenses

RETAIL THEFT —— 812.015(8)(c)			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
Grand theft		812.014(2)(c)	14.1
Petit theft — first degree		812.014(2)(e)	14.1
Petit theft — second degree		812.014(3)(a)	14.1
	Theft of a shopping cart	506.513	--
	Attempt	777.04	5.1

Comments

*§ 812.015, Fla. Stat., contains multiple ways to commit Retail Theft. This instruction covers only § 812.015(8)(c), Fla. Stat. A special instruction will be necessary if other parts of § 812.015, Fla. Stat. are charged.

Under the Retail Theft statute, the "value" of the property is the price stated on the price tag affixed to the item at the time it was stolen. *F.T. v. State*, 146 So. 3d 1270 (Fla. 3d DCA 2014). This determination of "value" may be different than "value" as defined in the theft statute.

The 120-day period in which the crime of Retail Theft can be committed became effective on October 1, 2024. Prior to October 1st, the statute contained a 30-day period.

This instruction was adopted in 1981 and amended in 2017 [231 So. 3d 384], on May 22, 2020, on April 25, 2023, and on February 21, 2025.

14.5 THEFT OF COMMUNICATIONS SERVICES

§ 812.15(2)(a), Fla. Stat.

To prove the crime of Theft of Communications Services, the State must prove the following three elements beyond a reasonable doubt:

Give 1a or 1b as applicable.

1. (Defendant) **knowingly and willfully**

a. intercepted, received, decrypted, disrupted, transmitted, retransmitted or acquired access to any communication service.

b. assisted [others] [another] in intercepting, receiving, decrypting, disrupting, transmitting, retransmitting or acquiring access to any communication service.

2. (Defendant) **did not have the express authorization of the cable operator or other communications service provider to do so.**

3. (Defendant) **did so with the intent to defraud the cable operator or communications service provider.**

§ 812.15(3)(b), Fla. Stat. Give if applicable.

If you find the defendant guilty of Theft of Communications Services, you must further determine beyond a reasonable doubt whether the defendant acted for the purpose of direct or indirect commercial advantage or private financial gain.

No Defense. § 812.15(9), Fla. Stat. Give only if applicable.

This offense may be deemed to have been committed at any place where the defendant manufactured, developed or assembled any communications devices involved in the violation, or assists others in these acts, or any place where the communications device is sold or delivered to a purchaser or recipient.

It is not a defense that some of the acts constituting the offense occurred outside the state.

Definitions.

"Willfully" means intentionally and purposely.

"Cable Operator" means a communications service provider who provides some or all of its communications services pursuant to a "cable

television franchise" issued by a "franchising authority." *See 47 U.S.C. s. 522(9-10) (1992) for definitions of "cable television franchise" and "franchising authority."*

"Cable System" means any communications service network, system or facility owned or operated by a cable operator.

"Communications Device" means any type of electronic mechanism, transmission line or connections and appurtenances thereto, instrument, device, machine, equipment, or software that is capable of intercepting, transmitting, acquiring, decrypting, or receiving any communications service, or any part, accessory, or component thereof, including any computer circuit, splitter, connector, switches, transmission hardware, security module, smart card, software, computer chip, electronic mechanism, or other component, accessory, or part of any communication device which is capable of facilitating the interception, transmission, retransmission, acquisition, decryption, or reception of any communications service.

"Communications service" means any service lawfully provided for a charge or compensation by any cable system or by any radio, fiber optic, photo-optical, electromagnetic, photoelectronic, satellite, microwave, data transmission, internet-based, or wireless distribution network, system, or facility, including but not limited to, any electronic, data, video, audio, internet access, microwave, and radio communications, transmissions, signals, and service, and any such communications, transmissions, signals, and services lawfully provided for a charge or compensation, directly or indirectly by or through any of those networks, systems, or facilities.

"Communications service provider" means:

1. **Any person or entity owning or operating any cable system or any fiber optic, photo-optical, electromagnetic, photoelectronic, satellite, wireless, microwave, radio, data transmission, or internet-based distribution network, system, or facility.**

2. **Any person or entity providing any lawful communications service, whether directly or indirectly, as a reseller or licensee, by or through any such distribution network, system or facility.**

Give 1 or 2 as applicable, only if element 1b is charged.

The term "assisted others" includes:

1. **The sale, transfer, license, distribution, deployment, lease, manufacture, development, or assembly of a communication device for the purpose of facilitating the unauthorized receipt, acquisition, interception, disruption, decryption, transmission, retransmission, or access to any communications service offered by a cable operator or any other communications service provider.**

2. **The sale, transfer, license, distribution, deployment, lease, manufacture, development, or assembly of a communication device for the purpose of defeating or circumventing any effective technology, device, or software, or any component thereof, used by cable operator or other communications service provider to protect any communications service from unauthorized receipt, acquisition interception, disruption, decryption, transmission, retransmission.**

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comments

A first violation of this statute is a first-degree misdemeanor. A subsequent conviction becomes a third-degree felony. As of September 2020, it is unclear whether the fact of a prior conviction will be viewed as an element of the felony or as a recidivist factor for the judge to determine at sentencing.

If treated as an element, it is error to inform the jury of a prior conviction. Therefore, if the information or indictment contains an allegation of one or more prior Theft of Communications Services convictions, do not read that allegation and do not send the information or indictment into the jury room. Instead, a modified version of the information or indictment alleging a misdemeanor violation may be read and/or sent into the jury room. If the defendant is found guilty, the historical fact of a prior conviction shall be determined beyond a reasonable doubt in a bifurcated proceeding before a jury. *See State v. Harbaugh*, 754 So. 2d 691 (Fla. 2000).

This instruction was adopted in 2007 [965 So. 2d 811] and amended on October 2, 2020.

14.6 UNAUTHORIZED POSSESSION OF A COMMUNICATIONS DEVICE

§ 812.15(4)(a)-(c), Fla. Stat.

To prove the crime of Unauthorized Possession of a Communications Device, the State must prove the following four elements beyond a reasonable doubt:

1. (Defendant) **intentionally possessed a communications device**.

2. (Defendant) **did not have the express authorization of the cable operator or other communications service provider to possess such a device.**

3. (Defendant) **knew or had reason to know that the design of such device rendered it primarily useful [for assisting others] to willfully intercept, receive, decrypt, disrupt, transmit, retransmit, or acquire access to any communications service.**

4. (Defendant) **intentionally possessed the communications device with the intent to defraud the cable operator or communications service provider.**

If you find the defendant guilty of Unauthorized Possession of a Communications Device, you must determine beyond a reasonable doubt whether the defendant possessed:

Give a, b, or c as applicable.

a. **Less than five communications devices.**

b. **Five or more communications devices, but less than fifty.**

c. **Fifty or more communications devices.**

Possession.

To prove that a person "possessed" a communications device, the State must prove beyond a reasonable doubt that [he] [she] a) knew of the existence of the communications device; and b) intentionally exercised control over it.

Give if applicable.

Control can be exercised over a communications device whether it is carried on a person, near a person, or in a completely separate location. Mere proximity to a communication device does not establish that the

person intentionally exercised control over it in the absence of additional evidence. Control can be established by proof that the person had direct personal power to control the communications device or the present ability to direct its control by another.

Joint possession.

Possession of a communications device card may be sole or joint, that is, two or more persons may possess it.

"Willfully" means knowingly, intentionally, and purposely.

"Cable Operator" means a communications service provider who provides some or all of its communications services pursuant to a "cable television franchise" issued by a "franchising authority." *See 47 U.S.C. s. 522(9-10) (1992) for definitions of "cable television franchise" and "franchising authority."*

"Cable System" means any communications service network, system or facility owned or operated by a cable operator.

"Communications Device" means any type of electronic mechanism, transmission line or connections and appurtenances thereto, instrument, device, machine, equipment, or software that is capable of intercepting, transmitting, acquiring, decrypting, or receiving any communications service, or any part, accessory, or component thereof, including any computer circuit, splitter, connector, switches, transmission hardware, security module, smart card, software, computer chip, electronic mechanism, or other component, accessory, or part of any communication device which is capable of facilitating the interception, transmission, retransmission, acquisition, decryption, or reception of any communications service.

"Communications service" means any service lawfully provided for a charge or compensation by any cable system or by any radio, fiber optic, photo-optical, electromagnetic, photoelectronic, satellite, microwave, data transmission, internet-based, or wireless distribution network, system, or facility, including but not limited to, any electronic, data, video, audio, internet access, microwave, and radio communications, transmissions, signals, and service, and any such communications, transmissions, signals, and services lawfully provided for a charge or compensation, directly or indirectly by or through any of those networks, systems, or facilities.

"Communications service provider" means

1. **Any person or entity owning or operating any cable system or any fiber optic, photo-optical, electromagnetic, photoelectronic, satellite, wireless, microwave, radio, data transmission, or internet-based distribution network, system, or facility.**

2. **Any person or entity providing any lawful communications service, whether directly or indirectly, as a reseller or licensee, by or through any such distribution network, system or facility.**

Give only if the bracketed portion in element #3 is read.

The term "assisting others" includes:

1. **The sale, transfer, license, distribution, deployment, lease, manufacture, development, or assembly of a communication device for the purpose of facilitating the unauthorized receipt, acquisition, interception, disruption, decryption, transmission, retransmission, or access to any communications service offered by a cable operator or any other communications service provider.**

2. **The sale, transfer, license, distribution, deployment, lease, manufacture, development, or assembly of a communication device for the purpose of defeating or circumventing any effective technology, device, or software, or any component thereof, used by cable operator or other communications service provider to protect any communications service from unauthorized receipt, acquisition, interception, disruption, decryption, transmission, retransmission.**

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comment

This instruction was adopted in 2007 [965 So. 2d 811] and was amended on October 2, 2020.

14.7 FALSE VERIFICATION OF OWNERSHIP OR FALSE IDENTIFICATION TO A PAWNBROKER

§ 539.001(8)(b)8, Fla. Stat.

To prove the crime of False Verification of Ownership or False Identification to a Pawnbroker, the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **sold or pledged [goods] [**(property alleged)**] to a pawnbroker.**

2. **At the time,** (defendant) **knowingly gave [false verification of ownership of the [goods] [**(property alleged)]**] [false or altered identification] to the pawnbroker.**

3. (Defendant) **received money from the pawnbroker for the [goods] [**(property alleged)**] sold or pledged.**

Enhanced penalty. Give if applicable.

If you find (defendant) **guilty of false verification of ownership or false identification to a pawnbroker, you must then determine whether the State has proven beyond a reasonable doubt that the value of the money received was $300 or more.**

Definition.

§ 539.001(2)(i), Fla. Stat.

"Pawnbroker" means any person who is engaged in the business of making pawns; who makes a public display containing the term "pawn," "pawnbroker," or "pawnshop" or any derivative thereof; or who publicly displays a sign or symbol historically identified with pawns. A pawnbroker may also engage in the business of purchasing goods which includes consignment and trade.

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comment

This instruction was adopted in 2008.

14.8 UNLAWFUL POSSESSION OF A STOLEN [CREDIT] [DEBIT] CARD

§ 817.60(8), Fla. Stat.

To prove the crime of Unlawful Possession of a Stolen [Credit] [Debit] Card, the State must prove the following four elements beyond a reasonable doubt:

1. (Defendant) **knowingly [possessed] [received] [retained custody of] a [credit] [debit] card.**

2. **The [credit] [debit] card had been taken from the [possession] [custody] [control] of another without the cardholder's consent.**

3. **The** (defendant) **knew the [credit] [debit] card had been taken from the [possession] [custody] [control] of another without the cardholder's consent.**

4. **At the time** (defendant) **[possessed] [received] [retained] the [credit] [debit] card, [he] [she] had the intent to impede the recovery of the [credit] [debit] card by the cardholder.**

Definitions.

§ 817.58(4), Fla. Stat.

"Credit card" means any instrument or device, whether known as a credit card, credit plate, bank service card, banking card, check guarantee card, electronic benefits transfer (EBT) card, or debit card or by any other name, issued with or without fee by an issuer for the use of the cardholder in obtaining money, goods, services, or anything else of value on credit or for use in an automated banking device to obtain any of the services offered through the device.

Possession.

To prove that a person "possessed" a [credit] [debit] card, the State must prove beyond a reasonable doubt that [he] [she] a) knew of the existence of the [credit] [debit] card; and b) intentionally exercised control over it.

Give if applicable.

Control can be exercised over a [credit] [debit] card whether it is carried on a person, near a person, or in a completely separate location. Mere proximity to a [credit] [debit] card does not establish that the person intentionally exercised control over it in the absence of

additional evidence. Control can be established by proof that the person had direct personal power to control the [credit] [debit] card or the present ability to direct its control by another.

Joint possession.

Possession of [credit] [debit] card may be sole or joint, that is, two or more persons may possess it.

Lesser Included Offenses

UNLAWFUL POSSESSION OF A STOLEN [CREDIT] [DEBIT] CARD—817.60(8)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempt	777.04	5.1

Comments

Pursuant to § 817.60(8), Fla. Stat., it is not a crime for a retailer or retail employee, in the ordinary course of business, to possess, receive, or return a credit card or debit card that the retailer or retail employee does not know was stolen or to possess, receive, or retain a credit card or debit card that the retailer or retail employee knows is stolen for the purpose of an investigation into the circumstances regarding the theft of the card or its possible unlawful use.

This instruction was adopted in 2013 [131 So. 3d 720] and amended in 2018.

14.9 VENDING MACHINE THEFT

§ 877.08(3), Fla. Stat.

To prove the crime of Vending Machine Theft, the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **[molested] [opened] [broke] [injured] [damaged] [inserted any part of [his] [her] body] [any instrument] into a [coin-operated vending machine] [parking meter].**

2. **[He] [She] intended to commit theft.**

3. **The coin-operated vending machine or parking meter was the property of** (name of owner)**.**

A "coin-operated vending machine" or "parking meter" is any machine, contrivance, or device that is adapted for use in such a way that, as a result of the insertion of any money, coin or other object, the machine, contrivance, parking meter, or device operates or may be operated and the user becomes entitled to receive any food, drink, telephone or telegraph service, insurance protection, parking privilege or any other personal property, service, protection, right, or privilege of any kind or nature whatsoever.

A theft is defined as (insert relevant elements from instruction 14.1)**.**

Lesser Included Offense

VENDING MACHINE THEFT — 877.08(3)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Petit theft — second degree		812.014(3)(a)	14.1
	Criminal Mischief	806.13(1)(b)1.	12.4

Comments

Prior to April 2026, this instruction was numbered as 29.11.

This instruction was adopted in 1981.

14.10 FAILURE TO RETURN [HIRED] [LEASED] PROPERTY

§ 812.155(3), Fla. Stat.

To prove the crime of Failure to Return [Hired] [Leased] Property, the State must prove the following four elements beyond a reasonable doubt:

1. (Defendant) **[hired] [leased] personal property [or equipment] from** (victim) **[or** (victim's agent)**].**

2. **As part of the [hiring] [leasing],** (defendant) **agreed to return the property [or equipment] to** (victim) **[or** (victim's agent)**] at the end of the period for which the property [or equipment] was [hired] [leased].**

3. (Defendant) **knowingly [abandoned] [refused to return] the property [or equipment] as agreed.**

4. (Defendant) **did so without the consent of** (victim) **[or** (victim's agent)**].**

Enhancement. Give if applicable.

If you find the defendant guilty of Failure to Return Hired or Leased Property, you must also determine whether the State proved beyond a reasonable doubt that the value of the property [or equipment] was $300 or more.

Give if applicable. § 812.012(10), Fla. Stat.

"Value" means the market value of the property at the time and place of the offense, or if that value cannot be satisfactorily ascertained, the cost of replacement of the property within a reasonable time after the offense. If the exact value of the property cannot be ascertained, you should attempt to determine a minimum value. If you cannot determine the minimum value, you must find the value was less than $300.

Lesser Included Offenses

FAILURE TO RETURN HIRED OR LEASED PROPERTY — 812.155(3)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempt	777.04(1)	5.1

Comment

See § 812.155(6), Fla. Stat. for the notice that is required in the leasing agreement which is a prerequisite to prosecution.

This instruction was adopted in 2014.

14.11 [POSSESSION OF] [USE OF] [OR] [ATTEMPT TO USE] AN ANTISHOPLIFTING OR INVENTORY CONTROL DEVICE COUNTERMEASURE

§ 812.015(7), Fla. Stat.

To prove the crime of [Possession of] [Use of] [or] [Attempt to Use an] an Antishoplifting or Inventory Control Device Countermeasure, the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) **[possessed] [used] [or] [attempted to use] an antishoplifting or inventory control device countermeasure.**

2. **At the time, [he] [she] was within any premises used for the retail purchase or sale of any merchandise.**

Definitions.

§ 812.015(1)(i), Fla. Stat.

"Antishoplifting or inventory control device countermeasure" means any item or device which is designed, manufactured, modified, or altered to defeat any antishoplifting or inventory control device.

§ 812.015(1)(h), Fla. Stat.

"Antishoplifting or inventory control device" means a mechanism or other device designed and operated for the purpose of detecting the removal from a mercantile establishment or similar enclosure, or from a protected area within such an enclosure, of specially marked or tagged, merchandise. The term includes any electronic or digital imaging or any video recording or other film used for security purposes and the cash register tape or other record made of the register receipt.

§ 812.015(1)(a), Fla. Stat.

"Merchandise" means any personal property, capable of manual delivery, displayed, held, or offered for retail sale by a merchant.

§ 812.015(1)(b), Fla. Stat.

"Merchant" means an owner or operator, or the agent, consignee, employee, lessee, or officer of an owner or operator, of any premises or apparatus used for retail purchase or sale of any merchandise.

Possession. Give if applicable.

To prove (defendant) **"possessed an antishoplifting or inventory control device countermeasure," the State must prove beyond a reasonable doubt that [he] [she] a) knew of the existence of the antishoplifting or inventory control device countermeasure and b) intentionally exercised control over that antishoplifting or inventory control device countermeasure.**

Control can be exercised over an antishoplifting or inventory control device countermeasure whether the antishoplifting or inventory control device countermeasure is carried on a person, near a person, or in a completely separate location, that is within any premises for the retail purchase or sale of any merchandise. Mere proximity to an antishoplifting or inventory control device countermeasure does not establish that the person intentionally exercised control over the antishoplifting or inventory control device countermeasure in the absence of additional evidence. Control can be established by proof that (defendant) **had direct personal power to control the antishoplifting or inventory control device countermeasure or the present ability to direct its control by another.**

Joint possession. Give if applicable.

Possession of an antishoplifting or inventory control device countermeasure may be sole or joint, that is, two or more persons may possess an antishoplifting or inventory control device countermeasure.

Lesser Included Offense

The Committee on Standard Jury Instructions in Criminal Cases identified no lesser included offenses.

Comment

This instruction was adopted on April 5, 2021.

14.12 MISAPPLICATION OF CONSTRUCTION FUNDS

§ 713.345(1), Fla. Stat.

To prove the crime of Misapplication of Construction Funds, the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **received a payment on account of improving real property.**

2. (Defendant) **knowingly and intentionally failed to apply such portion of any payment to the payment of all amounts then due and owing for [services and labor which were performed on] [materials which were furnished for] such improvement prior to receipt of the payment.**

3. **At the time of element #2,** (defendant) **was a person, firm, or corporation, or an agent, officer, or employee of a firm or a corporation.**

Give as applicable.

If you find the defendant guilty of Misapplication of Construction Funds, you must also determine if the State proved beyond a reasonable doubt that:

a. **the amount of payments misapplied had an aggregate value of $100,000 or more.**

b. **the amount of payments misapplied had an aggregate value of $1,000 or more but less than $100,000.**

c. **the amount of payments misapplied had an aggregate value of less than $1,000.**

§ 192.001(12), Fla. Stat.

"Real property" means land, buildings, fixtures, and all other improvements to land. The terms "land," "real estate," "realty," and "real property" may be used interchangeably.

"Knowingly" means that the defendant is aware of the act and is not acting through ignorance, mistake or accident.

The intent with which an act is done is an operation of the mind and, therefore, is not always capable of direct and positive proof. It may be established by circumstantial evidence like any other fact in a case.

§ 713.345(1), Fla. Stat.

You may infer that the defendant knowingly and intentionally misapplied construction funds if a valid lien had been recorded against the property of an owner for labor, services, or materials; or if the person who ordered the labor, services, or materials had received sufficient funds to pay for such labor, services, or materials; and the person failed, for a period of at least 45 days from receipt of the funds, to remit sufficient funds to pay for such labor, services, or materials.

This inference does not apply if the defendant withheld any payment, or any part of any payment, in accordance with the terms of a contract for services, labor or materials or pursuant to a genuine dispute regarding the amount due, if any, for such services labor, or materials.

Lesser Included Offense

14.12 MISAPPLICATION OF CONSTRUCTION FUNDS – 713.345(1)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS.NO.
None			
	Theft	812.014	14.1

Comments

The crime in § 713.345(1), Fla. Stat. does not prevent any person from withholding any payment, or any part of a payment, in accordance with the terms of a contract for services, labor, or materials, or pursuant to a bona fide dispute regarding the amount due, if any, for such services, labor, or materials. As of February 2026, it was unclear whether this provision will be treated as an affirmative defense, and if so, which party has the burden of persuasion and by what standard of proof. A special instruction will be necessary if there is evidence of one of these circumstances.

§ 713.345(2), Fla. Stat. states that the crime does not apply to mortgage bankers or their agents, servants, or employees for their acts in the usual course of the business of lending or disbursing mortgage funds. As of February 2026, it was unclear whether this provision will be treated as an affirmative defense, and if so, which party has the burden of persuasion and by what standard of proof. A special instruction will be necessary if there is evidence of this circumstance.

This instruction was adopted on March 20, 2026.

CHAPTER 15 — ROBBERY

15.1 ROBBERY

§ 812.13, Fla. Stat.

To prove the crime of Robbery, the State must prove the following four elements beyond a reasonable doubt:

1. (Defendant) **took [the] [a] [an]** (money or property described in charge) **from the person or custody of** (person alleged)**.**

2. **Force, violence, assault, or putting in fear was used in the course of the taking.**

3. **The property taken was of some value.**

4. **The taking was with the intent to permanently or temporarily [deprive** (victim) **of [his] [her] right to the property or any benefit from it] [appropriate the property of** (victim) **to [his] [her] own use or to the use of any person not entitled to it].**

Assault. § 784.011, Fla. Stat.

An "assault" is an intentional and unlawful threat, either by word or act, to do violence to a victim, when it appears the person making the threat has the ability to carry out the threat, and the act creates in the mind of that victim a well-founded fear that violence is about to take place.

Fear. Give only if applicable. Smithson v. State, 689 So. 2d 1226 (Fla. 5th DCA 1997).

If the circumstances were such as to ordinarily induce fear in the mind of a reasonable person, then a victim may be found to have been in fear, and actual fear on the part of a victim need not be shown.

In the course of the taking. § 812.13(3)(b), Fla. Stat.

Abandonment. Give bracketed language only if applicable. Peterson v. State, 24 So. 3d 686 (Fla. 2d DCA 2009).

"In the course of the taking" means that the act occurred prior to, contemporaneous with, or subsequent to the taking of the property and that the act and the taking of the property constitute a continuous series of acts or events.

[If a defendant abandoned the property that had been taken before he or she used force or threatened to use force, then the taking of the

property and the use of force or threatened force was not a continuous series of acts or events. In such a case, the taking does not constitute Robbery, but may constitute Theft, and the use of force or threatened force may constitute separate crimes.]

Afterthought. Give only if applicable. DeJesus v. State, 98 So. 3d 105 (Fla. 2d DCA 2012).

If you find that the taking of property occurred as an afterthought to the use of force or violence [or the threat of force or violence] against (victim)**, the taking does not constitute Robbery, but may still constitute Theft.**

Title to property. Give if applicable.

In order for a taking of property to be Robbery, it is not necessary that the person robbed be the owner of the property. It is sufficient if the person has the custody of the property at the time of the offense.

Force. Give bracketed language only if applicable. Thomas v. State, 36 So. 3d 853 (Fla. 3d DCA 2010).

The taking must be by the use of force or violence so as to overcome the resistance of a person, or by putting a person in fear so that he or she does not resist. [The law does not require the force, violence, assault, or putting in fear to be exerted against the victim from whom the property was taken if the force, violence, assault, or putting in fear was exerted against another in the course of the taking.] The law does not require that a victim of Robbery resist to any particular extent or that a victim offer any actual physical resistance if the circumstances are such that a victim is placed in fear of death or great bodily harm if he or she does resist. But unless prevented by fear, there must be some resistance to make the taking one done by force or violence.

Victim unconscious. Give only if applicable.

It is also Robbery if a person, with intent to take the property from a victim, administers any substance to that victim so that [he] [she] becomes unconscious and then takes the property from the person or custody of that victim.

Taking. Give if applicable.

In order for a taking by force, violence, or putting in fear to be Robbery, it is not necessary that the taking be from the person of a victim. It is sufficient if the property taken is under the custody of a

victim so that it cannot be taken without the use of force, violence, or intimidation directed against a victim.

Higher degrees of Robbery. Give only if applicable. § 812.13(3)(a), Fla. Stat.

If you find the defendant guilty of the crime of Robbery, you must further determine beyond a reasonable doubt if "in the course of committing the robbery" the defendant carried some kind of weapon. An act is "in the course of committing the robbery" if it occurs in an attempt to commit robbery or in flight after the attempt or commission.

With a firearm. § 812.13(2)(a), Fla. Stat.

If you find that the defendant carried a firearm in the course of committing the Robbery, you should find [him] [her] guilty of Robbery with a firearm.

A "firearm" means any weapon [including a starter gun] which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; [the frame or receiver of any such weapon;] [any firearm muffler or firearm silencer;] [any destructive device;] [any machine gun]. [The term "firearm" does not include an antique firearm unless the antique firearm is used in the commission of a crime. An antique firearm is (*insert definition in § 790.001, Fla. Stat.)***]. [A destructive device is** *(insert definition in § 790.001, Fla. Stat.)***].**

With a deadly weapon. § 812.13(2)(a), Fla. Stat.

If you find that the defendant carried a (deadly weapon described in charge) **in the course of committing the Robbery and that the** (deadly weapon described in charge) **was a deadly weapon, you should find [him] [her] guilty of Robbery with a deadly weapon.**

A "deadly weapon" is any object, other than a firearm, that will likely cause death or great bodily harm if used in the ordinary and usual manner contemplated by its design and construction.

Give if applicable.

An object not designed to inflict death or great bodily harm may be a "deadly weapon" if it was [used] [or] [threatened to be used] [or] [intended to be used] in a manner likely to cause death or great bodily harm.

Give if applicable.

"Great bodily harm" means great as distinguished from slight, trivial, minor, or moderate harm, and as such does not include mere bruises.

With other weapon. § 812.13(2)(b), Fla. Stat.

If you find that the defendant carried a weapon that was not a firearm or a deadly weapon in the course of committing the Robbery, you should find [him] [her] guilty of Robbery with a weapon.

A "weapon" is any object, other than a firearm, that will likely cause bodily harm if used in the ordinary and usual manner contemplated by its design and construction.

Give if applicable.

An object not designed to inflict bodily harm may be a "weapon" if it was [used] [or] [threatened to be used] [or] [intended to be used] in a manner likely to cause bodily harm.

With no firearm or weapon. § 812.13(2)(c), Fla. Stat.

If you find that the defendant carried no firearm or weapon in the course of committing the Robbery, but did commit the Robbery, you should find [him] [her] guilty only of Robbery.

Lesser Included Offenses

***ROBBERY WITH A FIREARM OR DEADLY WEAPON — 812.13(2)(a)**

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Robbery with a weapon		812.13(2)(b)	15.1
Robbery		812.13(2)(c)	15.1
Petit theft – second degree		812.014(3)(a)	14.1
Assault (if assault was charged)		784.011	8.1
	Grand theft – first degree	812.014(2)(a)	14.1
	Display of firearm	790.07(4)	10.4
	Aggravated Battery	784.045	8.4
	Grand theft—second degree	812.014(2)(b)	14.1

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
	Robbery by sudden snatching with a firearm or deadly weapon	812.131(2)(a)	15.4
	Display of firearm	790.07(2)	10.3
	Aggravated Assault	784.021	8.2
	Felony Battery	784.041	8.5
	Robbery by Sudden Snatching	812.131(2)(b)	15.4
	Grand theft—third degree	812.014(2)(c)	14.1
	Grand theft—third degree	812.014(2)(d)	14.1
	Display of firearm	790.07(1)	10.3
	Felony Petit Theft	812.014(3)(c)	14.1
	Petit theft—first degree	812.014(2)(e)	14.1
	Petit theft—first degree	812.014(3)(b)	14.1
	Battery	784.03	8.3
	Resisting a Merchant	812.015(6)	14.4

*ROBBERY WITH A WEAPON — 812.13(2)(b)			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
Robbery		812.13(2)(c)	15.1
Petit theft – second degree		812.014(3)(a)	14.1
Assault (if assault was charged)		784.011	8.1
	Grand theft—first degree	812.014(2)(a)	14.1
	Display of a weapon	790.07(4)	10.4
	Attempt	777.04(1)	5.1
	Aggravated Battery	784.045	8.4
	Grand theft—second degree	812.014(2)(b)	14.1
	Robbery by sudden snatching with a firearm or deadly weapon	812.131(2)(a)	15.4
	Display of firearm	790.07(2)	10.3
	Aggravated Assault	784.021	8.2
	Felony battery	784.041	8.5
	Robbery by sudden snatching	812.131(2)(b)	15.4
	Grand theft—third degree	812.014(2)(c)	14.1
	Grand theft—third degree	812.014(2)(d)	14.1
	Display of firearm	790.07(1)	10.3
	Felony petit theft	812.014(3)(c)	14.1
	Petit theft—first degree	812.014(2)(e)	14.1
	Petit theft—first degree	812.014(3)(b)	14.1
	Battery	784.03	8.3
	Resisting a Merchant	812.015(6)	14.4

ROBBERY — 812.13(2)(c)			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
Petit theft – second degree		812.014(3)(a)	14.1
Assault (if assault was charged)		784.011	8.1
	Grand theft—second degree	812.014(2)(b)	14.1
	Robbery By Sudden Snatching with a firearm or deadly weapon	812.131(2)(a)	15.4
	Display of firearm	790.07(2)	10.3
	Aggravated Assault	784.021	8.2
	Felony Battery	784.041	8.5
	Robbery by sudden snatching	812.131(2)(b)	15.4
	Grand theft—third degree	812.014(2)(c)	14.1
	Grand theft—third degree	812.014(2)(d)	14.1
	Display of firearm	790.07(1)	10.3
	Felony petit theft	812.014(3)(c)	14.1
	Petit theft—first degree	812.014(2)(e)	14.1
	Petit theft—first degree	812.014(3)(b)	14.1
	Battery	784.03	8.3
	Resisting a Merchant	812.015(6)	14.4

Comments

If applicable, see Instruction 5.1 for "attempt."

*The felony degree of a Robbery gets bumped up if a defendant carried a firearm or a deadly weapon or a weapon. In *Sanders v. State*, 944 So. 2d 203, 207 n.3 (Fla. 2006) (Pariente, J., concurring), some Florida Supreme Court justices expressed a preference to have findings for carrying a firearm or a deadly weapon or a weapon made in a separate interrogatory rather than as part of lesser-included offenses.

For the crime of Robbery, according the First and Fifth DCAs, upon request, the judge must instruct that the jury can convict a defendant of more than one offense such as 1) theft and assault or 2) theft and resisting a

merchant. *See Spencer v. State*, 71 So. 3d 901 (Fla. 1st DCA 2011) and *Stuckey v. State*, 972 So. 2d 918 (Fla. 5th DCA 2007). *See also Gian-Grasso v. State*, 899 So. 2d 392 (Fla. 4th DCA 2005) (holding that a defendant is entitled to have a jury consider convicting of the two separate component offenses of a compound offense). However, according to the Third DCA, the jury should be given the option of finding multiple lesser-included offenses only if there is evidence that the force, violence, assault or putting in fear was not used in the course of the taking. *See Gordon v. State*, 219 So. 3d 189 (Fla. 3rd DCA 2017).

A special instruction will be necessary in cases where the deadly weapon was an animal or a substance or something that is not commonly referred to as an "object."

This instruction was adopted in 1981 and amended in 1985 [477 So. 2d 985], 1989 [543 So.2d 1205], 1995 [665 So. 2d 212], 2008 [982 So. 2d 1160], 2013 [122 So. 3d 263], 2018 [260 So. 3d 941], and on May 22, 2020.

15.2 CARJACKING

§ 812.133, Fla. Stat.

To prove the crime of Carjacking, the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **took a motor vehicle from the person or custody of** (person alleged)**.**

2. **Force, violence, assault, or putting in fear was used in the course of the taking.**

3. **The taking was with the intent to temporarily or permanently [deprive** (victim) **of [his] [her] right to the motor vehicle or any benefit from it] [appropriate the motor vehicle of** (victim) **to [his] [her] own use or to the use of any person not entitled to it].**

Medrano v. State, 199 So. 3d 413 (Fla. 4th DCA 2016). § 320.01, Fla. Stat. Many of these terms have their own statutory definitions which should be given as applicable.

"Motor vehicle" means an automobile, motorcycle, truck, trailer, semitrailer, truck tractor and semitrailer combination, or any other vehicle operated on the roads of this state, used to transport persons or property, and propelled by power other than muscular power[, but the term does not include traction engines, road rollers, motorized scooters, micromobility devices, personal delivery devices, mobile carriers, special mobile equipment, vehicles that run only upon a track, electric bicycles, bicycles, swamp buggies, or mopeds].

Assault. § 784.011 Fla. Stat.

An "assault" is defined as an intentional and unlawful threat, either by word or act, to do violence to a victim, when it appears the person making the threat has the ability to carry out the threat, and the act creates in the mind of that victim a well-founded fear that violence is about to take place.

Fear. Give only if applicable. Smithson v. State, 689 So. 2d 1226 (Fla. 5th DCA 1997).

If the circumstances were such as to ordinarily induce fear in the mind of a reasonable person, then a victim may be found to have been in fear, and actual fear on the part of a victim need not be shown.

In the course of the taking. § 812.133(3)(b), Fla. Stat.

Abandonment. Give bracketed language only if applicable. Peterson v. State, 24 So. 3d 686 (Fla. 2d DCA 2009).

"In the course of the taking" means that the act occurred before, during, or after the taking of the motor vehicle and that the act and the taking of the motor vehicle constitute a continuous series of acts or events.

[If a defendant abandoned the motor vehicle that had been taken before he or she used force or threatened to use force, then the taking of the motor vehicle and the use of force or threatened force was not a continuous series of acts or events. In such a case, the taking does not constitute Carjacking, but may constitute Theft, and the use of force or threatened force may constitute separate crimes.]

Afterthought. Give only if applicable. DeJesus v. State, 98 So. 3d 105 (Fla. 2d DCA 2012).

If you find that the taking of the motor vehicle occurred as an afterthought to the use of force or violence [or the threat of force or violence] against (victim)**, the taking does not constitute Carjacking, but may still constitute Grand Theft Motor Vehicle.**

Title to motor vehicle. Give if applicable.

In order for a taking of the motor vehicle to be Carjacking, it is not necessary that the person carjacked be the owner of the motor vehicle. It is sufficient if the person has custody of the motor vehicle at the time of the offense.

Force. Give bracketed language only if applicable. Thomas v. State, 36 So. 3d 853 (Fla. 3d DCA 2010).

The taking must be by the use of force or violence or by assault so as to overcome the resistance of a person, or by putting a person in fear so that he or she does not resist. [The law does not require the force, violence, assault, or putting in fear to be exerted against the victim from whom the motor vehicle was taken if the force, violence, assault, or putting in fear was exerted against another in the course of the taking.] The law does not require that a victim of Carjacking resist to any particular extent or that a victim offer any actual physical resistance if the circumstances are such that a victim is placed in fear of death or great bodily harm if he or she does resist. But unless prevented by fear,

there must be some resistance to make the taking one done by force or violence.

Victim unconscious. Give only if applicable.

It is also Carjacking if a person, with intent to take the motor vehicle from a victim, administers any substance to that victim so that [he] [she] becomes unconscious and then takes the motor vehicle from the person or custody of that victim.

Taking. Give if applicable.

In order for a taking by force, violence, or putting in fear to be Carjacking, it is not necessary that the taking be from the person of a victim. It is sufficient if the motor vehicle taken is under the custody of a victim so that it cannot be taken without the use of force, violence, or intimidation directed against a victim.

Higher degrees of Carjacking. Give only if applicable. §§ 812.133(2)(a) and 812.133(3)(a) Fla. Stats.

If you find the defendant guilty of the crime of Carjacking, you must further determine beyond a reasonable doubt if "in the course of committing the Carjacking" the defendant carried a firearm or other deadly weapon. An act is "in the course of committing the Carjacking" if it occurs in an attempt to commit Carjacking or in flight after the attempt or commission.

With a firearm or deadly weapon. § 812.133(2)(a), Fla. Stat.

If you find that the defendant carried a firearm or other deadly weapon in the course of committing the Carjacking, you should find [him] [her] guilty of Carjacking with a firearm or deadly weapon.

A "firearm" means any weapon [including a starter gun] which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; [the frame or receiver of any such weapon;] [any firearm muffler or firearm silencer;] [any destructive device;] [any machine gun]. [The term "firearm" does not include an antique firearm unless the antique firearm is used in the commission of a crime. An antique firearm is (*insert definition in § 790.001, Fla. Stat.)***]. [A destructive device is** *(insert definition in § 790.001, Fla. Stat.)***].**

A "deadly weapon" is any object, other than a firearm, that will likely cause death or great bodily harm if used in the ordinary and usual manner contemplated by its design and construction.

Give if applicable.

An object not designed to inflict death or great bodily harm may be a "deadly weapon" if it was [used] [or] [threatened to be used] [or] [intended to be used] in a manner likely to cause death or great bodily harm.

"Great bodily harm" means great as distinguished from slight, trivial, minor, or moderate harm, and as such does not include mere bruises.

With no firearm or weapon. § 812.133(2)(b) Fla. Stat.

If you find that the defendant carried no firearm or deadly weapon in the course of committing the Carjacking, but did commit the Carjacking, you should find [him] [her] guilty only of Carjacking.

Lesser Included Offenses

***CARJACKING — 812.133**			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
Robbery		812.13(2)(c)	15.1
Grand theft – motor vehicle		812.014(2)(c)6	14.1
Assault (if assault was charged)		784.011	8.2
	Aggravated Battery	784.045	8.4
	Attempted Carjacking	777.04(1)	5.1
	Aggravated Assault	784.021	8.2
	Felony Battery	784.041	8.5
	Battery	784.03	8.3
	Resisting a Merchant	812.015(6)	14.4

Comments

*****The only increased penalty under the Carjacking statute is for carrying a firearm or other deadly weapon, not for carrying a weapon as in the Robbery statute. In *Sanders v. State*, 944 So. 2d 203, 207 n.3 (Fla. 2006) (Pariente, J., concurring), some Florida Supreme Court justices expressed a preference to have findings for carrying a firearm or a deadly weapon made in a separate interrogatory rather than as part of lesser-included offenses.

If applicable, see Instruction 5.1 for "attempt."

For the crime of Carjacking, it is likely that the First, Fourth, and Fifth DCAs would hold that the judge must, upon request, instruct that the jury can convict a defendant of more than one lesser-included offense such as grand theft auto and assault. *See Spencer v. State*, 71 So. 3d 901 (Fla. 1st DCA 2011); *Stuckey v. State*, 972 So. 2d 918 (Fla. 5th DCA 2007); *Gian-Grasso v. State*, 899 So. 2d 392 (Fla. 4th DCA 2005) (holding that a defendant is entitled to have a jury consider convicting of the two separate component offenses of a compound offense). However, according to the Third DCA, the jury should be given the option of finding multiple lesser-included offenses only if there is evidence that the force, violence, assault or putting in fear was not used in the course of the taking. *See Gordon v. State*, 219 So. 3d 189 (Fla. 3rd DCA 2017).

A special instruction will be necessary in cases where the deadly weapon was an animal or a substance or something that is not commonly referred to as an "object."

This instruction was adopted in 1997 [697 So.2d 84] and amended in 2008 [982 So. 2d 1160], 2013 [122 So. 3d 263], 2018 [260 So. 3d 941], on May 22, 2020, and on October 2, 2020.

15.3 HOME-INVASION ROBBERY

§ 812.135, Fla. Stat.

To prove the crime of Home-Invasion Robbery, the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **entered the dwelling of** (victim)**.**

2. **At the time** (defendant) **entered the dwelling, [he] [she] intended to commit robbery.**

3. **While inside the dwelling,** (defendant) **did commit robbery.**

A robbery consists of the following:

1. (Defendant) **took [the] [a] [an]** (money or property described in charge) **from the person or custody of** (person alleged)**.**

2. **Force, violence, assault, or putting in fear was used in the course of the taking.**

3. **The property taken was of some value.**

4. **The taking was with the intent to permanently or temporarily [deprive** (victim) **of [his] [her] right to the property or any benefit from it] [appropriate the property of (**victim**) to [his] [her] own use or to the use of any person not entitled to it].**

Assault. § 784.011, Fla. Stat.

An "assault" is defined as an intentional and unlawful threat, either by word or act, to do violence to a victim, when it appears the person making the threat has the ability to carry out the threat, and the act creates in the mind of that victim a well-founded fear that violence is about to take place.

Fear. Give only if applicable. Smithson v. State, 689 So. 2d 1226 (Fla. 5th DCA 1997).

If the circumstances were such as to ordinarily induce fear in the mind of a reasonable person, then a victim may be found to have been in fear, and actual fear on the part of a victim need not be shown.

In the course of the taking. § 812.13(3)(b), Fla. Stat.

Abandonment. Give bracketed language only if applicable. Peterson v. State, 24 So. 3d 686 (Fla. 2d DCA 2009).

"In the course of the taking" means that the act occurred prior to, contemporaneous with, or subsequent to the taking of the property and that the act and the taking of the property constitute a continuous series of acts or events.

[If a defendant abandoned the property that had been taken before he or she used force or threatened to use force, then the taking of the property and the use of force or threatened force was not a continuous series of acts or events. In such a case, the taking does not constitute Robbery.]

Afterthought. Give only if applicable. DeJesus v. State, 98 So. 3d 105 (Fla. 2d DCA 2012).

If you find that the taking of property occurred as an afterthought to the use of force or violence [or the threat of force or violence] against (victim)**, the taking does not constitute Robbery but may still constitute Theft.**

Title to property. Give if applicable.

In order for a taking of property to be Robbery, it is not necessary that the person robbed be the owner of the property. It is sufficient if the person has the custody of the property at the time of the offense.

Force. Give bracketed language only if applicable. Thomas v. State, 36 So. 3d 853 (Fla. 3d DCA 2010).

The taking must be by the use of force or violence so as to overcome the resistance of a person, or by putting a person in fear so that he or she does not resist. [The law does not require the force, violence, assault, or putting in fear to be exerted against the victim from whom the property was taken if the force, violence, assault, or putting in fear was exerted against another in the course of the taking.] The law does not require that a victim of Robbery resist to any particular extent or that a victim offer any actual physical resistance if the circumstances are such that a victim is placed in fear of death or great bodily harm if he or she does resist. But unless prevented by fear, there must be some resistance to make the taking one done by force or violence.

Victim unconscious. Give only if applicable.

It is also Robbery if a person, with intent to take the property from a victim, administers any substance to that victim so that [he] [she] becomes unconscious and then takes the property from the person or custody of that victim.

Taking. Give if applicable.

In order for a taking by force, violence, or putting in fear to be robbery, it is not necessary that the taking be from the person of a victim. It is sufficient if the property taken is under the actual control of a victim so that it cannot be taken without the use of force, violence, or intimidation directed against a victim.

Jacobs v. State, 41 So. 3d 1004 (Fla. 1st DCA 2010); DuBose v. State, 210 So. 3d 641 (Fla. 2017).

"Dwelling" means a building [or conveyance] of any kind, including any attached porch, whether such building [or conveyance] is temporary or permanent, mobile or immobile, which has a roof over it and is designed to be occupied by people lodging therein at night, together with the enclosed space of ground and outbuildings immediately surrounding it. [The enclosure need not be continuous and may have an ungated opening for entering and exiting.]

Higher degrees of Home-Invasion Robbery. Give if applicable.

If you find the defendant guilty of the crime of Home-Invasion Robbery, you must further determine beyond a reasonable doubt if in the course of committing the Home-Invasion Robbery, the defendant carried some kind of weapon.

With a firearm. § 812.135(2)(a), Fla. Stat.

If you find that the defendant carried a firearm in the course of committing the Home-Invasion Robbery, you should find [him] [her] guilty of Home-Invasion Robbery with a firearm.

A "firearm" means any weapon [including a starter gun] which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; [the frame or receiver of any such weapon;] [any firearm muffler or firearm silencer;] [any destructive device;] [any machine gun]. [The term "firearm" does not include an antique firearm unless the antique firearm is used in the commission of a crime. An antique firearm is (*insert definition in § 790.001, Fla. Stat.)***]. [A destructive device is** *(insert definition in § 790.001, Fla. Stat.)***].**

With a deadly weapon. § 812.135(2)(a), Fla. Stat.

A "deadly weapon" is any object, other than a firearm, that will likely cause death or great bodily harm if used in the ordinary and usual manner contemplated by its design and construction.

Give if applicable.

An object not designed to inflict death or great bodily harm may be a "deadly weapon" if it was [used] [or] [threatened to be used] [or] [intended to be used] in a manner likely to cause death or great bodily harm.

"Great bodily harm" means great as distinguished from slight, trivial, minor, or moderate harm, and as such does not include mere bruises.

With other weapon. § 812.135(2)(b), Fla. Stat.

If you find that the defendant carried a weapon that was not a firearm or a deadly weapon in the course of committing the Home-Invasion Robbery, you should find [him] [her] guilty of Home-Invasion Robbery with a weapon.

A "weapon" is any object, other than a firearm, that will likely cause bodily harm if used in the ordinary and usual manner contemplated by its design and construction.

Give if applicable.

An object not designed to inflict bodily harm may be a "weapon" if it was [used] [or] [threatened to be used] [or] [intended to be used] in a manner likely to cause bodily harm.

With no firearm or weapon. § 812.135(2)(c), Fla. Stat.

If you find that the defendant carried no firearm or weapon in the course of committing the Home-Invasion Robbery, but did commit the Home-Invasion Robbery, you should find [him] [her] guilty only of Home-Invasion Robbery.

Lesser Included Offenses

***HOME INVASION ROBBERY — 812.135**			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
Burglary of a dwelling		810.02(3)	13.1
Robbery		812.13(2)(c)	15.1
Burglary of a Structure		810.02	13.1
Petit theft – second degree		812.014(3)(a)	14.1

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Assault		784.011	8.1
	Grand theft—first degree	812.014(2)(a)	14.1
	Attempt	777.04(1)	5.1
	Aggravated battery	784.045	8.4
	Grand theft—second degree	812.014(2)(b)	14.1
	Aggravated assault	784.021	8.2
	Felony battery	784.041	8.5
	Grand theft—third degree	812.014(2)(c)	14.1
	Grand theft—third degree	812.014(2)(d)	14.1
	Felony petit theft	812.014(3)(c)	14.1
	Petit theft—first degree	812.014(2)(e)	14.1
	Petit theft—first degree	812.014(3)(b)	14.1
	Battery	784.03	8.3
	Trespass	810.08	13.3

Comments

If applicable, see Instruction 5.1 for "attempt."

*The felony degree of a Home-Invasion Robbery gets bumped up if a defendant carried a firearm or a deadly weapon or a weapon. In *Sanders v. State*, 944 So. 2d 203, 207 n.3 (Fla. 2006) (Pariente, J., concurring), some Florida Supreme Court justices expressed a preference to have findings for carrying a firearm or a deadly weapon or a weapon made in a separate interrogatory rather than as part of lesser-included offenses.

The Home-Invasion Robbery statute does not contain an explanation of "in the course of committing the home-invasion robbery." It is unclear whether the courts would look to the robbery and carjacking statutes so that "in the course of committing" would include an attempt to commit Home-Invasion Robbery or in flight after the attempt or commission.

For the crime of Home-Invasion Robbery, it is likely that the First, Fourth, and Fifth DCAs would hold that the judge must, upon request, instruct that the jury can convict a defendant of more than one lesser-included offense such as theft and assault. *See Spencer v. State*, 71 So. 3d 901 (Fla. 1st DCA 2011); *Stuckey v. State*, 972 So. 2d 918 (Fla. 5th DCA 2007); *Gian-Grasso v. State*, 899 So. 2d 392 (Fla. 4th DCA 2005) (holding that a defendant is entitled

to have a jury consider convicting of the two separate component offenses of a compound offense). However, according to the Third DCA, the jury should be given the option of finding multiple lesser-included offenses only if there is evidence that the force, violence, assault or putting in fear was not used in the course of the taking. *See Gordon v. State*, 219 So. 3d 189 (Fla. 3rd DCA 2017).

A special instruction will be necessary in cases where the [deadly] weapon was an animal or a substance or something that is not commonly referred to as an "object."

This instruction was adopted in 1997 [697 So.2d 84] and amended in 2008 [982 So. 2d 1160], 2013 [122 So. 3d 263], 2018 [260 So. 3d 941], and on May 22, 2020.

15.4 ROBBERY BY SUDDEN SNATCHING

§ 812.131, Fla. Stat.

To prove the crime of Robbery by Sudden Snatching, the State must prove the following four elements beyond a reasonable doubt:

1. (Defendant) **took the** (money or property described in charge) **from the person of** (person alleged)**.**

2. **The property taken was of some value.**

3. **The taking was with the intent to permanently or temporarily deprive** (victim) **or the owner of [his] [her] right to the property.**

4. **In the course of the taking,** (victim) **was or became aware of the taking.**

In the course of the taking means that the act occurred prior to, contemporaneous with, or subsequent to the taking of the property and that the act and the taking of the property constitute a continuous series of acts or events.

Force or resistance.

It is not necessary for the State to prove that the defendant used any amount of force beyond that effort necessary to obtain possession of the money or other property, that there was any resistance offered by the victim or that there was any injury to the victim's person.

Title to property.

In order for a taking to be Robbery by Sudden Snatching, it is not necessary that the person robbed be the actual owner of the property. It is sufficient if the victim has possession of the property at the time of the offense.

Higher degree of Robbery by Sudden Snatching. Give if applicable.

If you find the defendant guilty of the crime of Robbery by Sudden Snatching, you must further determine beyond a reasonable doubt if in the course of committing the Robbery by Sudden Snatching, the defendant carried a firearm or other deadly weapon. An act is in the course of committing a Robbery by Sudden Snatching if it occurs in an attempt to commit Robbery by Sudden Snatching or in fleeing after the attempt or commission.

With a firearm.

If you find that the defendant carried a firearm in the course of committing the Robbery by Sudden Snatching, you should find [him] [her] guilty of Robbery by Sudden Snatching with a firearm.

A firearm means any weapon (including a starter gun) which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; any destructive device; or any machine gun. [The term "firearm" does not include an antique firearm unless the antique firearm is used in the commission of a crime. An antique firearm is (*insert definition in § 790.001, Fla. Stat.)***]. [A destructive device is** *(insert definition in § 790.001, Fla. Stat.)***].**

With a deadly weapon.

If you find that the defendant carried a (deadly weapon described in charge) **in the course of committing the Robbery by Sudden Snatching, and that the** (deadly weapon described in charge) **was a deadly weapon, you should find [him] [her] guilty of Robbery by Sudden Snatching with a deadly weapon.**

A "deadly weapon" is any object, other than a firearm, that will likely cause death or great bodily harm if used in the ordinary and usual manner contemplated by its design and construction.

Give if applicable.

An object not designed to inflict death or great bodily harm may be a "deadly weapon" if it was [used] [or] [threatened to be used] [or] [intended to be used] in a manner likely to cause death or great bodily harm.

"Great bodily harm" means great as distinguished from slight, trivial, minor, or moderate harm, and as such does not include mere bruises.

With no firearm or deadly weapon.

If you find that the defendant carried no firearm or deadly weapon in the course of committing the Robbery by Sudden Snatching, but did commit the Robbery by Sudden Snatching, you should find [him] [her] guilty only of Robbery by Sudden Snatching.

Lesser Included Offenses

*ROBBERY BY SUDDEN SNATCHING — 812.131			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO**
Petit theft – second degree		812.014(3)(a)	14.1
	Attempt	777.04(1)	5.1
	Grand theft	812.014(2)(c)	14.1
	Petit theft – first degree	812.014(2)(e)	14.1
	Battery	784.03	8.3
	Assault	84.011	8.1
	Resisting a merchant	812.015(6)	

Comment

*The only increased penalty in the Robbery by Sudden Snatching statute is for carrying a firearm or other deadly weapon, not for carrying a weapon as in the Robbery statute. In *Sanders v. State*, 944 So. 2d 203, 207 n.3 (Fla. 2006) (Pariente, J., concurring), some Florida Supreme Court justices expressed a preference to have findings for carrying a firearm or a deadly weapon made in a separate interrogatory rather than as part of lesser-included offenses.

A special instruction will be necessary in cases where the deadly weapon was an animal or a substance or something that is not commonly referred to as an "object."

This instruction was adopted in 2009 [6 So. 3d 574] and amended in 2013 [122 So. 3d 263] and on April 3, 2020.

15.5 RESISTING RECOVERY OF STOLEN PROPERTY

§ 812.015(6), Fla. Stat.

To prove the crime of Resisting Recovery of Stolen Property, the State must prove the following five elements beyond a reasonable doubt:

1. (Defendant) **[was committing] [or] [had a committed] a theft of property from** (name of owner or custodian of property)**.**

2. **During or after the theft,** (victim) **made a reasonable effort to recover the property.**

3. (Defendant) **resisted** (victim's) **effort to recover the property.**

4. **At the time of** (defendant's) **resistance,** (victim) **had probable cause to believe** (defendant) **had concealed or removed the property from [its place of display] [**(place where property had been kept)**].**

5. **At the time of the resistance,** (victim) **was a [merchant] [merchant's employee] [law enforcement officer].**

Definitions.

§ 812.014(1), Fla. Stat.

A "theft" occurs when someone knowingly and unlawfully obtains or uses or endeavors to obtain or to use the property of another and does so with intent to, either temporarily or permanently, deprive the person of his or her right to the property or any benefit from it or to appropriate the property to his or her own use or to the use of any person not entitled to it.

§ 812.012(4), Fla. Stat.

"Property" means anything of value, and includes tangible personal property.

§ 812.015(1), Fla. Stat.

"Merchant" means an owner or operator, or the agent, consignee, employee, lessee, or officer of an owner or operator, of any premises or apparatus used for retail purchase or sale of any merchandise.

§ 812.015(1), Fla. Stat.

"Merchandise" means any personal property, capable of manual delivery, displayed, held, or offered for retail sale by a merchant.

Maryland v. Pringle, 540 U.S. 366 (2003); State v. Neumann, 567 So. 2d 950 (Fla. 4th DCA 1990).

"Probable cause" is not capable of a precise quantification into percentages because it depends on an assessment of probabilities in a particular factual context. The term "probable cause" does not mean more likely true than false. Instead, "probable cause" is a practical, common sense determination, given the totality of circumstances, including a person's knowledge, training and experience, as to whether there was a fair probability for a person to believe a certain fact is true.

Affirmative Defense. § 812.015(6), Fla. Stat.

The statute and case law are silent as to 1) which party bears the burden of persuasion of the affirmative defense and 2) the standard for the burden of persuasion. Under the common law, defendants had both the burden of production and the burden of persuasion on an affirmative defense by a preponderance of the evidence. The Florida Supreme Court has often decided, however, that once a defendant meets the burden of production on an affirmative defense, the burden of persuasion is on the State to disprove the affirmative defense beyond a reasonable doubt (e.g., self-defense and consent to enter in a burglary prosecution). In the absence of case law, trial judges must resolve the issue via a special instruction. See the opinions in Dixon v. United States, 548 U.S. 1 (2006), for further guidance.

It is a defense to the crime of Resisting Recovery of Stolen Property if, at the time of the resistance, (defendant) **did not know or did not have reason to know that** (victim) **was a [merchant] [merchant's employee] [law enforcement officer].**

If burden of persuasion is on the defendant:

If you find that defendant proved *(insert appropriate burden of persuasion)* **that [he] [she] did not know or did not have reason to know that** (victim) **was a [merchant] [merchant's employee] [law enforcement officer], you should find [him] [her] not guilty. If the defendant did not prove** *(insert appropriate burden of persuasion)* **that [he] [she] did not know or did not have reason to know that** (victim) **was a [merchant] [merchant's employee] [law enforcement officer], you should find [him] [her] guilty, if all the elements of the charge have been proven beyond a reasonable doubt.**

If burden of persuasion is on the State:

If you find that the State proved *(insert appropriate burden of persuasion)* **that the defendant knew or had reason to know that** (victim) **was a [merchant] [merchant's employee] [law enforcement officer], you should find [him] [her] guilty, if all of the elements of the charge have been proven beyond a reasonable doubt. However, if you are not convinced** *(insert appropriate burden of persuasion)* **that the defendant knew or had reason to know that** (victim) **was a [merchant] [merchant's employee] [law enforcement officer], you should find [him] [her] not guilty.**

Lesser Included Offenses

RESISTING RECOVERY OF STOLEN PROPERTY - 812.015(6)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO
Petit theft - second degree*		812.014(3)(a)	14.1
	Attempt	777.04(1)	5.1
	Petit theft - first degree*	812.014(2)(e)	14.1
	Battery	784.03	8.3
	Assault	784.011	8.1

Comments

*§ 812.015(6), Fla. Stat., states: "For purposes of this section the charge of theft and the charge of resisting may be tried concurrently." In Stuckey v. State, 972 So. 2d 918 (Fla. 5th DCA 2007), the court interpreted that to mean that a defendant can be prosecuted and convicted for both Resisting a Merchant and Theft without offending double jeopardy. Accordingly, if Theft is charged as a separate count, then Theft should not be given as a lesser-included offense of

Resisting a Merchant. If, however, the jurors are being instructed on Resisting a Merchant as a lesser-included offense of Robbery, then Theft should be given as a lesser-included offense.

"Law enforcement officer" is not defined in chapter 812, Florida Statutes, or in case law interpreting § 812.015(6), Fla. Stat. Trial judges may consult § 790.01, Fla. Stat., § 934.02, Fla. Stat., and § 943.10, Fla. Stat. in deciding whether and how to define "law enforcement officer" for the jury.

This instruction was adopted in 2015.

CHAPTER 16 — CHILD ABUSE

16.1 AGGRAVATED CHILD ABUSE

§ 827.03(2)(a), Fla. Stat.

To prove the crime of Aggravated Child Abuse, the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant)

Give 1a–1e as applicable.

a. committed Aggravated Battery upon (victim)**.**

b. willfully tortured (victim)**.**

c. maliciously punished (victim)**.**

d. willfully and unlawfully caged (victim)**.**

e. knowingly or willfully committed Child Abuse upon (victim) **and in so doing caused great bodily harm, permanent disability, or permanent disfigurement to** (victim)**.**

2. (Victim) **was under the age of 18 years.**

Give if element 1a is alleged.

In order to prove that an Aggravated Battery was committed, the State must prove the following two elements. The first element is a definition of Battery.

1. (Defendant) **actually and intentionally**

Give 1a or 1b or both as applicable.

a. touched or struck (victim) **against the will of** (victim)**.**

b. caused bodily harm to (victim)**.**

Give 2a or 2b or both as applicable.

2. a. In so doing, (defendant) **[intentionally or knowingly caused [great bodily harm] [permanent disability] [permanent disfigurement]] [or] [used a deadly weapon].**

b. At the time, (victim) **was pregnant and** (defendant) **knew or should have known** (victim) **was pregnant.**

Give if applicable.

A "deadly weapon" is any object that will likely cause death or great bodily harm if used or threatened to be used in the ordinary and usual manner contemplated by its design and construction.

Give if applicable.

An object not designed to inflict bodily harm may nonetheless be a "deadly weapon" if it was used or threatened to be used in a manner likely to cause death or great bodily harm.

Give if applicable.

"Great bodily harm" means great as distinguished from slight, trivial, minor, or moderate harm, and as such does not include mere bruises.

Give only if applicable. Fey v. State, 125 So. 3d 828 (Fla. 4th DCA 2013).

An intentional touching or striking includes situations where a defendant knows that a touch or strike is substantially certain to result from his or her act.

Give only if applicable. Clark v. State, 783 So. 2d 967 (Fla. 2001).

A Battery may be found as a result of the intentional touching or intentional striking of something other than the actual body of the person. However, the object that is touched or struck must have such an intimate connection with the person that it is to be regarded as a part or as an extension of the person. [For example, in cases where a person intentionally drove into another occupied vehicle, it is for you to determine whether the vehicle that was struck should be considered as a part or as an extension of the person inside that vehicle. This determination may include consideration about whether the person was "touched" through the force of impact by being jostled or otherwise impacted through the transfer of energy from the collision.]

Give if element 1b, 1d, or 1e is alleged.

"Willfully" means intentionally and purposely.

Give if element 1c is alleged. § 827.03(c), Fla. Stat.

"Maliciously" means wrongfully, intentionally, and without legal justification or excuse. Maliciousness may be established by

circumstances from which one could conclude that a reasonable parent would not have engaged in the damaging acts toward the child for any valid reason and that the primary purpose of the acts was to cause the victim unjustifiable pain or injury.

Give if element 1e is alleged. § 827.03(1)(b), Fla. Stat.

"Child Abuse" means [the intentional infliction of physical or mental injury upon a child] [an intentional act that could reasonably be expected to result in physical or mental injury to a child] [active encouragement of any person to commit an act that results or could reasonably be expected to result in physical or mental injury to a child].

Give if applicable. § 827.03(1)(d), Fla. Stat.

"Mental injury" means injury to the intellectual or psychological capacity of a child as evidenced by a discernible and substantial impairment in the ability of the child to function within the normal range of performance and behavior as supported by expert testimony.

Parental affirmative defense. Give if applicable. See Raford v. State, 828 So. 2d 1012 (Fla. 2002). See § 39.01(49), Florida Statutes, if the defendant's status as a parent is at issue.

§ 827.03, Fla. Stat., and case law are silent as to (1) which party bears the burden of persuasion of the affirmative defense and (2) the standard for the burden of persuasion. Under the common law, defendants had both the burden of production and the burden of persuasion on affirmative defenses by a preponderance of the evidence. The Florida Supreme Court has often decided, however, that once a defendant meets the burden of production on an affirmative defense, the burden of persuasion is on the State to disprove the affirmative defense beyond a reasonable doubt (e.g., self-defense and consent to enter in a burglary prosecution). In the absence of case law, trial judges must resolve the issue via a special instruction. See the opinions in Dixon v. United States, 548 U.S. 1 (2006), for further guidance.

It is not a crime for [a parent] [a person who is acting in place of a parent] of a child to impose reasonable physical discipline on a child for misbehavior under the circumstances even though physical injury resulted from the discipline.

If burden of persuasion is on the defendant:

If you find that the defendant proved *(insert appropriate burden of persuasion)* **that [he] [she] was [a parent] [a person acting in place of a parent] of** (victim) **and that [he] [she] imposed reasonable physical**

discipline on (victim) **for misbehavior under the circumstances, you should find [him] [her] not guilty.**

If the defendant did not prove *(insert appropriate burden of persuasion)* **that [he] [she] was [a parent] [a person acting in place of a parent] of** (victim) **or if the defendant did not prove that [he] [she] imposed reasonable physical discipline on** (victim) **for misbehavior under the circumstances**, **you should find [him] [her] guilty, if all the elements of the charge have been proven beyond a reasonable doubt.**

If burden of persuasion is on the State:

If you find that the State proved *(insert appropriate burden of persuasion)* **that the defendant was not [a parent] [a person acting in place of a parent] of** (victim) **or if you find that the State proved** *(insert appropriate burden of persuasion)* **that the defendant's physical discipline on** (victim) **was not reasonable for misbehavior under the circumstances, you should find [him] [her] guilty, if all of the elements of the charge have been proven beyond a reasonable doubt.**

Lesser Included Offenses

AGGRAVATED CHILD ABUSE — 827.03(2)(a)			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
Aggravated Battery; if element 1a is charged		784.045	8.4, 8.4(a)
Felony Battery; if element 1a is charged		784.041	8.5
Battery; if element 1a is charged and only under certain circumstances. See *Kama v. State*, 507 So. 2d 154 (Fla. 2d DCA 1987)		784.03	8.3
Child Abuse; if element 1e is charged		827.03(2)(c)	16.3
	Attempt	777.04(1)	5.1

Comments

Florida law on alternative conduct statutes is unsettled. For example, in a DUI case, it is permissible for some jurors to conclude the State proved only driving while impaired, and other jurors to conclude the State proved only driving with an unlawful breath alcohol level. *Euceda v. State*, 711 So. 2d 122 (Fla. 3d DCA 1998). However, according to the Second District, in Aggravated Battery cases, it is improper for some jurors to conclude the State proved only

that the defendant intentionally caused great bodily harm and other jurors to conclude the State proved only that the defendant used a deadly weapon. *Miller v. State*, 123 So. 3d 595 (Fla. 2d DCA 2013). Unless the case law changes, in Aggravated Child Abuse cases based on a theory of Aggravated Battery where the State has charged both alternatives, trial judges must give a special instruction that informs jurors they must be unanimous on each alternative theory. For other Aggravated Child Abuse cases, as of September 2019, it is undetermined whether jurors must be unanimous for each alternative within element #1.

Num-chucks, which were originally designed as a farm tool, can be a deadly weapon. *R.V. v. State*, 497 So. 2d 912 (Fla. 5th DCA 1986). Jurors could find that a 7-inch straight-edged razor might be a dangerous weapon. *R.R. v. State*, 826 So. 2d 465 (Fla. 5th DCA 2002). In trials involving these types of objects, the judge should consider a special instruction informing jurors that an object can be a deadly weapon if its sole modern use is to cause great bodily harm or death. A special instruction may also be necessary in cases where the deadly weapon was an animal or a substance or something that is not commonly referred to as an "object."

This instruction was adopted in 1981 and amended in 2002 [824 So. 2d 881], 2005 [911 So. 2d 766], 2013 [122 So. 3d 263], 2014 [152 So. 3d 475], 2016 [190 So. 3d 614], and on April 3, 2020.

16.2 FAILURE TO PROVIDE FINANCIAL SUPPORT

§ 827.06, Fla. Stat.

To prove the crime of Failure to Provide Financial Support, the State must prove the following five elements beyond a reasonable doubt:

1. (Defendant) **willfully failed to provide financial support for** (victim)**.**

2. **At the time,** (victim) **was the [child] [spouse] of** (defendant)**.**

3. **At the time,** (defendant) **was legally obligated to provide financial support for** (victim)**.**

4. **At the time,** (defendant) **knew [he] [she] was legally obligated to provide financial support for** (victim)**.**

5. **At the time,** (defendant) **had the ability to provide financial support for** (victim)**.**

§ 827.06(3), Fla. Stat. $5000 or more. Give if applicable.

If you find (defendant) **guilty of Failure to Provide Financial Support, you must further determine if the State proved beyond a reasonable doubt whether the defendant owed, for more than one year, financial support to** (victim) **in an amount equal to or greater than $5,000.**

§ 827.06(5)(a), Fla. Stat. Give if applicable.

Evidence that the defendant willfully failed to make sufficient good faith efforts to legally acquire the resources to pay legally ordered support may be sufficient to prove that [he] [she] had the ability to provide financial support but willfully failed to do so.

§ 827.06(5)(b), Fla. Stat., § 88.1011(22), Fla. Stat. Give if applicable.

You may conclude that (defendant) **knew [he] [she] was legally obligated to provide financial support for** (victim) **if you find that a court or tribunal entered an order that obligated the defendant to provide financial support to** (victim)**. "Tribunal" means a court, administrative agency, or quasi-judicial entity authorized to establish, enforce, or modify support orders or to determine parentage of a child.**

Definition.

Patterson v. State, 512 So. 2d 1109 (Fla. 1st DCA 1987).

"Willfully" means intentionally, knowingly, and purposely.

Lesser Included Offenses

FAILURE TO PROVIDE FINANCIAL SUPPORT ($5000 OR MORE) — 827.06(3)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Failure to Provide Financial Support		827.06(2)	16.2

FAILURE TO PROVIDE FINANCIAL SUPPORT (4TH OR SUBSEQUENT OFFENSE) — 827.06(3)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Failure to Provide Financial Support		827.06(2)	16.2

Comments

It is error to inform the jury of prior convictions for Failure to Provide Financial Support. Therefore, if the information or indictment contains an allegation of three or more prior Failure to Provide Financial Support convictions, do not read that allegation and do not send the information or indictment into the jury room. If the defendant is found guilty of Failure to Provide Financial Support, the historical fact of previous Failure to Provide Financial Support convictions shall be determined beyond a reasonable doubt in a bifurcated proceeding. *State v. Harbaugh*, 754 So. 2d 691 (Fla. 2000).

This instruction was adopted in 2014.

16.3 CHILD ABUSE

§ 827.03(2)(c), Fla. Stat.

To prove the crime of Child Abuse, the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) **knowingly or willfully abused** (victim) **by:**

Give as applicable.

a. intentionally inflicting [physical] [or] [mental] injury upon (victim)**.**

b. committing an intentional act that could reasonably be expected to result in [physical] [or] [mental] injury to (victim)**.**

c. actively encouraging another person to commit an act that resulted in or could reasonably have been expected to result in [physical] [or] [mental] injury to (victim)**.**

2. (Victim) **was under the age of 18 years.**

Parental affirmative defense. Give if applicable. See Raford v. State, 828 So. 2d 1012 (Fla. 2002). See § 39.01(49), Florida Statutes, if the defendant's status as a parent is at issue.

§ 827.03 Fla. Stat., and case law are silent as to (1) which party bears the burden of persuasion of the affirmative defense and (2) the standard for the burden of persuasion. Under the common law, defendants had both the burden of production and the burden of persuasion on affirmative defenses by a preponderance of the evidence.

The Florida Supreme Court has often decided, however, that once a defendant meets the burden of production on an affirmative defense, the burden of persuasion is on the State to disprove the affirmative defense beyond a reasonable doubt (e.g., self-defense and consent to enter in a burglary prosecution). In the absence of case law, trial judges must resolve the issue via a special instruction. See the opinion in Dixon v. United States, 548 U.S. 1 (2006), for further guidance.

It is not a crime for [a parent] [a person who is acting in place of a parent] of a child to impose reasonable physical discipline on a child for misbehavior under the circumstances even though physical injury resulted from the discipline.

If burden of persuasion is on the defendant:

If you find that defendant proved *(insert appropriate burden of persuasion)* **that [he] [she] was [a parent] [a person acting in place of a parent] of** (victim) **and that [he] [she] imposed reasonable physical discipline on** (victim) **for misbehavior under the circumstances, you should find [him] [her] not guilty.**

If the defendant did not prove *(insert appropriate burden of persuasion)* **that [he] [she] was [a parent] [a person acting in place of a parent] of** (victim) **or if you find that the defendant did not prove** *(insert appropriate burden of persuasion)* **that [he] [she] imposed reasonable physical discipline on** (victim) **for misbehavior under the circumstances**, **you should find [him] [her] guilty, if all the elements of the charge have been proven beyond a reasonable doubt.**

If burden of persuasion is on the State:

If you find that the State proved *(insert appropriate burden of persuasion)* **that the defendant was not [a parent] [a person acting in place of a parent] of** (victim) **or if you find that the State proved** *(insert appropriate burden of persuasion)* **that the defendant's physical discipline on** (victim) **was not reasonable for misbehavior under the circumstances, you should find [him] [her] guilty, if all of the elements of the charge have been proven beyond a reasonable doubt.**

Definitions, give as applicable.

"Willfully" means intentionally and purposely.

§ 827.03(1)(d), Fla. Stat.

"Mental injury" means an injury to the intellectual or psychological capacity of a child as evidenced by a discernible and substantial impairment in the ability to function within the normal range of performance and behavior as supported by expert testimony.

Lesser Included Offenses

CHILD ABUSE — 827.03(2)(c)			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
None			
	Contributing to the dependency of a minor	827.04(1)	16.4
	Battery; only under certain circumstances. See *Kama v. State*, 507 So. 2d 154 (Fla. 1st DCA 1987)	784.03	8.3
	Attempt	777.04(1)	5.1

Comments

See *Raford v. State*, 828 So. 2d 1012 (Fla. 2002) and *Dufresne v. State*, 826 So. 2d 272 (Fla. 2002) for authority to incorporate definitions from Chapter 39, Florida Statutes.

This instruction was adopted in 1981 and amended in 1985, 1989, 2002 [824 So. 2d 881], 2011 [75 So. 3d 207], 2013 [122 So. 3d 263], 2014 [152 So. 3d 475], and 2016.

16.4 CONTRIBUTING TO CHILD [DELINQUENCY] [DEPENDENCY] [IN NEED OF SERVICES]

§ 827.04(1), Fla. Stat.

To prove the crime of Contributing to a Child's Becoming a [Delinquent Child] [Dependent Child] [Child in Need of Services], the State must prove the following element beyond a reasonable doubt:

Give if § 827.04(1)(a), Fla. Stat., is charged.

(Defendant) **knowingly** (read act alleged from charge)**, which [caused] [tended to cause] [encouraged] [contributed to]** (victim) **to become a [delinquent] [dependent] child [in need of services].**

Give if § 827.04(1)(b), Fla. Stat., is charged.

(Defendant), **knowingly, by [act] [threat] [command] [or] [persuasion], [induced] [endeavored to induce]** (victim) **to [commit or perform an act] [follow a course of conduct] [live in a manner] that caused or tended to cause** (victim) **to [become] [remain] a [delinquent] [dependent] child [in need of services].**

Definition. § 827.01(2), Fla. Stat.

"Child" means any person under the age of 18 years.

State v. Shamrani, 370 So. 2d 1 (Fla. 1979). The option of "remain" applies only if § 827.04(1)(b), Fla. Stat., is charged.

"Knowingly" means that (defendant) **created a substantial and unjustifiable risk that [his] [her] act[s] [caused] [or] [tended to cause]** (victim) **to [become] [remain] a [delinquent] [dependent] child [in need of services].**

Give as applicable.

§ 984.03(9), Fla. Stat. If the allegation involves habitual truancy from school, a special instruction regarding § 1003.26, Fla. Stat., and 1003.27, Fla. Stat., will be needed.

"Child in need of services" means a child for whom there is no pending investigation into an allegation or suspicion of abuse, neglect, or abandonment; no pending referral alleging the child is delinquent; or no current supervision by the Department of Juvenile Justice or the Department of Children and Families for an adjudication of dependency or delinquency. The child must also be found by the court:

a. To have persistently run away from the child's parents or legal custodians despite reasonable efforts of the child, the parents or legal custodians, and appropriate agencies to remedy the conditions contributing to the behavior. Reasonable efforts shall include voluntary participation by the child's parents or legal custodians and the child in family mediation, services, and treatment offered by the Department of Juvenile Justice or the Department of Children and Families;

b. To be habitually truant from school, while subject to compulsory school attendance, despite reasonable efforts to remedy the situation pursuant to law and through voluntary participation by the child's parents or legal custodians and by the child in family mediation, services, and treatment offered by the Department of Juvenile Justice or the Department of Children and Families; or

c. To have persistently disobeyed the reasonable and lawful demands of the child's parents or legal custodians, and to be beyond their control despite efforts by the child's parents or legal custodians and appropriate agencies to remedy the conditions contributing to the behavior. Reasonable efforts may include such things as good faith participation in family or individual counseling.

§ 984.03(11), and § 985.03(53), Fla. Stat.

"Delinquent Child" means a child who committed a violation of any law [of this state, the United States, or any other state which is a misdemeanor or a felony or a violation of a county or municipal ordinance] which would be punishable by incarceration if the violation were committed by an adult [or direct or indirect contempt of court,] [except that this definition shall not include an act constituting contempt of court arising out of a dependency proceeding or a proceeding pursuant to Chapter 984 of Florida Statutes]. (Name of violation of law**) is such a violation of law.**

Give if the child has yet to be found delinquent by a court.

The elements of this violation of law are: (*define the elements of the crime***).**

§ 984.03(12), Fla. Stat.

"Dependent child" means a child who, pursuant to Chapter 984 of Florida Statutes, is found by the court:

a. To have been abandoned, abused, or neglected by the child's parents or other custodians.

b. To have been surrendered to the former Department of Health and Rehabilitative Services, the Department of Children and Families, or a licensed child-placing agency for purpose of adoption.

c. To have been voluntarily placed with a licensed child-caring agency, a licensed child-placing agency, an adult relative, the former Department of Health and Rehabilitative Services, or the Department of Children and Families, after which placement, under the requirements of Chapter 984, a case plan has expired and the parent or parents have failed to substantially comply with the requirements of the plan.

d. To have been voluntarily placed with a licensed child-placing agency for the purposes of subsequent adoption and a natural parent or parents signed a consent pursuant to the Florida Rules of Juvenile Procedure.

e. To have no parent, legal custodian, or responsible adult relative to provide supervision and care.

f. To be at substantial risk of imminent abuse or neglect by the parent or parents or the custodian.

Lesser Included Offenses

CONTRIBUTING TO CHILD DELINQUENCY OR DEPENDENCY OR TO CHILD IN NEED OF SERVICES — 827.04(1)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempt	777.04(1)	5.1

Comment

This instruction was adopted in 1981 and amended in 1989, 1992 [603 So. 2d 1175], and 2016.

16.4(a) CONTRIBUTING TO CHILD DEPENDENCY, PERSON 21 OR OLDER IMPREGNATING CHILD UNDER 16

§ 827.04(3), Fla. Stat.

To prove the crime of Contributing to Child Dependency, the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **impregnated** (victim).

2. At the time, (defendant) **was 21 years of age or older.**

3. At the time, (victim) **was a child under the age of 16 years.**

Neither the victim's lack of chastity nor the victim's consent is a defense to this offense.

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comment

This instruction was adopted in 2012.

16.5 NEGLECT OF A CHILD BY A CAREGIVER CAUSING [GREAT BODILY HARM] [PERMANENT DISABILITY] [PERMANENT DISFIGUREMENT]

§ 827.03(2)(b), Fla. Stat.

To prove the crime of Neglect of a Child by a Caregiver Causing [Great Bodily Harm] [Permanent Disability] [Permanent Disfigurement], the State must prove the following four elements beyond a reasonable doubt:

1. (Defendant)**, willfully or by culpable negligence, neglected** (victim)**.**

2. **In so doing,** (defendant) **caused [great bodily harm] [permanent disability] [permanent disfigurement] to** (victim)**.**

3. **At the time,** (defendant) **was a caregiver for** (victim).

4. **At the time,** (victim) **was under the age of 18 years.**

"Caregiver" means a parent, adult household member, or other person responsible for a child's welfare.

"Child" means a person under the age of 18 years.

Neglect of a child means that a caregiver willfully failed or omitted to provide a child with the care, supervision, and services necessary to maintain the child's physical and mental health, including, but not limited to, food, nutrition, clothing, shelter, supervision, medicine, and medical services that a prudent person would consider essential for the well-being of the child. The term includes a caregiver's failure to make a reasonable effort to protect a child from abuse, neglect, or exploitation by another person.

Neglect of a child may be based on repeated conduct or on a single incident or omission that resulted in, or reasonably could have been expected to result in, serious physical or mental injury, or a substantial risk of death, to a child.

Neglect of a child does not include a caregiver allowing a child to engage in independent and unsupervised activities unless allowing such activities constitutes willful and wanton conduct that endangers the health and safety of the child. Such independent and unsupervised activities include, but are not limited to, traveling to and from school or nearby locations by bicycle or on foot, playing outdoors, or remaining at home or any other locations for a reasonable period of time.

"Willfully" means intentionally, knowingly, and purposely.

I will now define what is meant by the term "culpable negligence." Each of us has a duty to act reasonably toward others. If there is a violation of that duty, without any conscious intention to harm, that violation is negligence. But culpable negligence is more than a failure to use ordinary care for others. For negligence to be culpable, it must be gross and flagrant. Culpable negligence is a course of conduct showing reckless disregard of human life or a grossly careless disregard for the safety and welfare of the public. The negligent act or omission must have been committed with an utter disregard for the safety of another. Culpable negligence is consciously doing an act or following a course of conduct that the defendant knew or reasonably should have known was likely to cause death or great bodily injury.

"Great bodily harm" means harm that is more than slight, trivial, minor, or moderate.

Lesser Included Offenses

NEGLECT OF A CHILD BY A CAREGIVER CAUSING GREAT BODILY HARM, PERMANENT DISABILITY OR PERMANENT DISFIGUREMENT— 827.03(2)(b)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Child neglect		827.03(3)(d)	16.6
Culpable Negligence Inflicting Injury, if culpable negligence is charged		784.05	8.9
Culpable Negligence Exposing Another to Injury, if culpable negligence is charged		784.05	8.9

Comments

There is no definition for "abuse, neglect, or exploitation" in Chapter 827. However, those terms are defined elsewhere, such as in Chapters 39, 415, and 984. Also, § 827.03, Fla. Stat., defines "child abuse" and "neglect of a child." Trial judges will need to draft a special instruction if further explanation of the phrase "abuse, neglect, or exploitation" is necessary.

This instruction was adopted in 2002 [824 So. 2d 881] and amended in 2013 [122 So. 3d 263], 2019 [267 So. 3d 980], and on September 12, 2025.

16.6 NEGLECT OF A CHILD BY A CAREGIVER (WITHOUT GREAT BODILY HARM, PERMANENT DISABILITY, OR PERMANENT DISFIGUREMENT)

§ 827.03 (2)(d), Fla. Stat.

To prove the crime of Neglect of a Child by a Caregiver, the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant)**, willfully or by culpable negligence, neglected** (victim)**.**

2. At the time, (defendant) **was a caregiver for** (victim)**.**

3. At the time, (victim) **was under the age of 18 years.**

"Caregiver" means a parent, adult household member, or other person responsible for a child's welfare.

"Child" means a person under the age of 18 years.

Neglect of a child means that a caregiver willfully failed or omitted to provide a child with the care, supervision, and services necessary to maintain the child's physical and mental health, including, but not limited to, food, nutrition, clothing, shelter, supervision, medicine, and medical services that a prudent person would consider essential for the well-being of the child. The term includes a caregiver's failure to make a reasonable effort to protect a child from abuse, neglect, or exploitation by another person.

Neglect of a child may be based on repeated conduct or on a single incident or omission that resulted in, or reasonably could have been expected to result in, serious physical or mental injury, or a substantial risk of death, to a child.

Neglect of a child does not include a caregiver allowing a child to engage in independent and unsupervised activities unless allowing such activities constitutes willful and wanton conduct that endangers the health and safety of the child. Such independent and unsupervised activities include, but are not limited to, traveling to and from school or nearby locations by bicycle or on foot, playing outdoors, or remaining at home or any other locations for a reasonable period of time.

"Willfully" means intentionally, knowingly, and purposely.

I will now define what is meant by the term "culpable negligence." Each of us has a duty to act reasonably toward others. If there is a violation of that duty, without any conscious intention to harm, that violation is negligence. But culpable negligence is more than a failure to

use ordinary care for others. For negligence to be culpable, it must be gross and flagrant. Culpable negligence is a course of conduct showing reckless disregard of human life or a grossly careless disregard for the safety and welfare of the public. The negligent act or omission must have been committed with an utter disregard for the safety of another. Culpable negligence is consciously doing an act or following a course of conduct that the defendant knew or reasonably should have known was likely to cause death or great bodily injury.

Lesser Included Offenses

NEGLECT OF A CHILD BY A CAREGIVER — 827.03(2)(d)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Culpable Negligence Exposing Another to Injury, if culpable negligence is charged		784.05	8.9
	Culpable Negligence Inflicting Injury on Another, if charged	784.05	8.9

Comments

There is no definition for "abuse, neglect, or exploitation" in Chapter 827. However, those terms are defined elsewhere, such as in Chapters 39, 415, and 984. Also, § 827.03, Fla. Stat., defines "child abuse" and "neglect of a child." Trial judges will need to draft a special instruction if further explanation of the phrase "abuse, neglect, or exploitation" is necessary.

This instruction was adopted in 2002 [824 So. 2d 881] and amended in 2013 [122 So. 3d 263], and on September 12, 2025.

16.7 USE OF A CHILD IN A SEXUAL PERFORMANCE

§ 827.071(2)(a), Fla. Stat.*

To prove the crime of Use of a Child in a Sexual Performance, the State must prove the following three elements beyond a reasonable doubt:

Give 1a or 1b or both as applicable.

1. a. (Defendant) **[employed] [authorized] [induced]** (victim) **to engage in a sexual performance.**

b. (Defendant), **being a [parent] [legal guardian] [custodian of** (victim)**], consented to** (victim's) **participation in a sexual performance.**

2. (Defendant) **knew the character and content of the performance.**

3. At the time, (victim) **was a child.**

Give if applicable.

If you find (defendant) **guilty of Use of a Child in a Sexual Performance, you must also determine whether the State proved beyond a reasonable doubt that** (defendant) **was 18 years of age or older at the time** (defendant) **[employed] [authorized] [induced]** (victim) **to engage in a sexual performance or consented to** (victim's) **participation in a sexual performance.**

"Sexual performance" means any performance or part thereof which includes sexual conduct by a child.

"Performance" means any play, motion picture, photograph, or dance or any other visual representation exhibited before an audience.

"Sexual conduct" means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual or simulated lewd exhibition of the genitals; actual physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast, with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed. [A mother's breastfeeding of her baby does not under any circumstance constitute "sexual conduct."]

"Actual or simulated lewd exhibition of the genitals" may be evidenced by the overall contents of an image taking into account the age

of the minor depicted and including, but not limited to whether, the focal point of the image is on the minor's genitals, the setting of the image is sexually suggestive or in a place or pose generally associated with sexual conduct, the minor is depicted in an unnatural pose or in inappropriate attire considering the age of the minor, the image suggests sexual coyness or a willingness to engage in sexual conduct or the image is intended or designed to elicit a sexual response in the viewer.

"Child" means any person, whose identity is known or unknown, younger than 18 years of age.

Give as applicable.

"Deviate sexual intercourse" means sexual conduct between persons not married to each other consisting of contact between the penis and the anus, the mouth and the penis, or the mouth and the vulva.

"Sadomasochistic abuse" means flagellation or torture by or upon a person, or the condition of being fettered, bound, or otherwise physically restrained, for the purpose of deriving sexual satisfaction from inflicting harm on another or receiving such harm oneself.

"Sexual battery" means oral, anal, or female genital* penetration by, or union with, the sexual organ of another or the anal or female genital penetration of another by any other object[; however, "sexual battery" does not include an act done for a genuine medical purpose].

"Female genitals*" includes the labia minora, labia majora, clitoris, vulva, hymen, and vagina.

Lakey v. State, 113 So. 3d 90 (Fla. 5th DCA 2013).

"An object" includes a finger.

Phillips v. State, 238 So. 3d 308 (Fla. 4th DCA 2018).

"Union" means contact.

"Sexual bestiality" means any sexual act between a person and an animal involving the sex organ of the one and the mouth, anus, or female genitals of the other.

"Simulated" means the explicit depiction of "sexual conduct," as defined above, which creates the appearance of such conduct and which exhibits any uncovered portion of the breasts, genitals, or buttocks.

Lesser Included Offense

USE OF A CHILD IN A SEXUAL PERFORMANCE —§ 827.071(2)(a)			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
None			
	Attempt	777.04(1)	5.1

Comments

*Effective October 1, 2022, the Legislature changed "vagina" to "female genitals" in sex crimes-related statutes. Judges should ensure the jury instructions contain correct statutory terms, which will depend on the date alleged in the charging document. *Flores v. State,* 391 So. 3d 481 (Fla. 4th DCA 2024) is an example of an appellate court finding fundamental error when the trial judge expanded the definition of "vaginal penetration" by instructing on "female genital penetration."

As of September 2026, it was unclear whether acts done for bona fide medical purposes or a mother's breastfeeding of her baby should be treated as affirmative defenses or as elements that the State must disprove. If treated as an affirmative defense, the judge must then determine who has the burden of persuasion and what that burden is (preponderance, clear and convincing, or beyond a reasonable doubt).

Under § 827.071(7), Fla. Stat., a court is not required to impose the minimum mandatory sentence of 15 years in prison for a defendant who was 18 years of age or older at the time of the crime if the judge makes certain factual findings. As of July 2026, there was no case law that held the Sixth Amendment requires any jury finding regarding those facts, and it is unclear whether any such jury finding is required because those facts may lead to a decrease in the sentence, not an increase.

This instruction was adopted in 2008 [995 So. 2d 489] amended on December 21, 2022, on March 20, 2026, and on October 9, 2026.

16.8 AGGRAVATED USE OF A CHILD IN A SEXUAL PERFORMANCE

§ 827.071(2)(b), Fla. Stat.

To prove the crime of Aggravated Use of a Child in a Sexual Performance, the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **[employed] [authorized] [induced]** (victim) **to engage in a sexual performance.**

2. (Defendant) **knew the character and content of the performance.**

3. At the time, (victim) **was a child younger than 12 years of age.**

Give if applicable.

If you find (defendant) **guilty of Aggravated Use of a Child in a Sexual Performance, you must also determine whether the State proved beyond a reasonable doubt that** (defendant) **was 18 years of age or older at the time [he] [she] [employed] [authorized] [induced]** (victim) **to engage in a sexual performance.**

"Sexual performance" means any performance or part thereof which includes sexual conduct by a child.

"Performance" means any play, motion picture, photograph, or dance or any other visual representation exhibited before an audience.

"Sexual conduct" means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual or simulated lewd exhibition of the genitals; actual physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast, with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed. [A mother's breastfeeding of her baby does not under any circumstance constitute "sexual conduct."]

"Actual or simulated lewd exhibition of the genitals" may be evidenced by the overall contents of an image taking into account the age of the minor depicted and including, but not limited to whether, the focal point of the image is on the minor's genitals, the setting of the image is sexually suggestive or in a place or pose generally associated with sexual conduct, the minor is depicted in an unnatural pose or in inappropriate attire considering the age of the minor, the image suggests sexual coyness

or a willingness to engage in sexual conduct or the image is intended or designed to elicit a sexual response in the viewer.

"Child" means any person, whose identity is known or unknown, younger than 18 years of age.

Give as applicable.

"Deviate sexual intercourse" means sexual conduct between persons not married to each other consisting of contact between the penis and the anus, the mouth and the penis, or the mouth and the vulva.

"Sadomasochistic abuse" means flagellation or torture by or upon a person, or the condition of being fettered, bound, or otherwise physically restrained, for the purpose of deriving sexual satisfaction from inflicting harm on another or receiving such harm oneself.

"Sexual battery" means oral, anal, or female genital* penetration by, or union with, the sexual organ of another or the anal or female genital penetration of another by any other object[; however, "sexual battery" does not include an act done for a genuine medical purpose].

"Female genitals*" includes the labia minora, labia majora, clitoris, vulva, hymen, and vagina.

Lakey v. State, 113 So. 3d 90 (Fla. 5th DCA 2013).

"An object" includes a finger.

Phillips v. State, 238 So. 3d 308 (Fla. 4th DCA 2018).

"Union" means contact.

"Sexual bestiality" means any sexual act between a person and an animal involving the sex organ of the one and the mouth, anus, or female genitals of the other.

"Simulated" means the explicit depiction of "sexual conduct," as defined above, which creates the appearance of such conduct and which exhibits any uncovered portion of the breasts, genitals, or buttocks.

Lesser Included Offense

AGGRAVATED USE OF A CHILD IN A SEXUAL PERFORMANCE — § 827.071(2)(b)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Use of a Child in a Sexual Performance		827.071(2)(a)	16.7
	Attempt	777.04(1)	5.1

Comments

Prior to September 2026, instruction 16.8 covered the alternative in § 827.071(2)(a), Fla. Stat., that a parent, guardian, or custodian of a child consented to the child's participation in a sexual performance. Because instruction 16.7 can be used for that crime (specifically element #1b), the Committee on Standard Jury Instructions revised this instruction to cover Aggravated Use of a Child in a Sexual Performance, that was created in Chapter 2026-20, Laws of Florida, located in § 827.071(2)(b), Fla. Stat.

As of September 2026, it was unclear whether acts done for bona fide medical purposes or a mother's breastfeeding of her baby should be treated as affirmative defenses or as elements that the State must disprove. If treated as an affirmative defense, the judge must then determine who has the burden of persuasion and what that burden is (preponderance, clear and convincing, or beyond a reasonable doubt).

This instruction was adopted on October 9, 2026.

16.9 PROMOTING A SEXUAL PERFORMANCE BY A CHILD

§ 827.071(3), Fla. Stat.*

To prove the crime of Promoting a Sexual Performance by a Child, the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **[produced] [directed] [promoted] a performance.**

2. The performance included sexual conduct by a child.

3. (Defendant) **knew the character and content of the performance.**

Give if applicable.

If you find (defendant) **guilty of Promoting a Sexual Performance by a Child, you must also determine whether the State proved beyond a reasonable doubt that** (defendant) **was 18 years of age or older at the time** (defendant) **[produced] [directed] [promoted] a performance that included sexual conduct by a child.**

"Promote" means to procure, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmute, publish, distribute, circulate, disseminate, present, exhibit, send, post, share, or advertise or to offer or agree to do the same.

"Performance" means any play, motion picture, photograph, or dance or any other visual representation exhibited before an audience.

"Sexual conduct" means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual or simulated lewd exhibition of the genitals; actual physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast, with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed. [A mother's breastfeeding of her baby does not under any circumstance constitute "sexual conduct."]

"Actual or simulated lewd exhibition of the genitals" may be evidenced by the overall contents of an image taking into account the age of the minor depicted and including, but not limited to whether, the focal point of the image is on the minor's genitals, the setting of the image is sexually suggestive or in a place or pose generally associated with sexual conduct, the minor is depicted in an unnatural pose or in inappropriate

attire considering the age of the minor, the image suggests sexual coyness or a willingness to engage in sexual conduct or the image is intended or designed to elicit a sexual response in the viewer.

"Child" means any person, whose identity is known or unknown, younger than 18 years of age.

Give as applicable.

"Deviate sexual intercourse" means sexual conduct between persons not married to each other consisting of contact between the penis and the anus, the mouth and the penis, or the mouth and the vulva.

"Sadomasochistic abuse" means flagellation or torture by or upon a person, or the condition of being fettered, bound, or otherwise physically restrained, for the purpose of deriving sexual satisfaction from inflicting harm on another or receiving such harm oneself.

"Sexual battery" means oral, anal, or female genital* penetration by, or union with, the sexual organ of another or the anal or female genital penetration of another by any other object[; however, "sexual battery" does not include an act done for a genuine medical purpose].

"Female genitals*" includes the labia minora, labia majora, clitoris, vulva, hymen, and vagina.

Lakey v. State, 113 So. 3d 90 (Fla. 5th DCA 2013).

"An object" includes a finger.

Phillips v. State, 238 So. 3d 308 (Fla. 4th DCA 2018).

"Union" means contact.

"Sexual bestiality" means any sexual act between a person and an animal involving the sex organ of the one and the mouth, anus, or female genitals of the other.

"Simulated" means the explicit depiction of "sexual conduct," as defined above, which creates the appearance of such conduct and which exhibits any uncovered portion of the breasts, genitals, or buttocks.

Lesser Included Offense

PROMOTING A SEXUAL PERFORMANCE BY A CHILD — 827.071(3)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Transmission of Child Sexual Abuse Material by Electronic Device or Equipment	847.0137	11.20

Comments

*Effective October 1, 2022, the Legislature changed "vagina" to "female genitals" in sex crimes-related statutes. Judges should ensure the jury instructions contain correct statutory terms, which will depend on the date alleged in the charging document. *Flores v. State,* 391 So. 3d 481 (Fla. 4th DCA 2024) is an example of an appellate court finding fundamental error when the trial judge expanded the definition of "vaginal penetration" by instructing on "female genital penetration."

As of September 2026, it was unclear whether acts done for bona fide medical purposes or a mother's breastfeeding of her baby should be treated as affirmative defenses or as elements that the State must disprove. If treated as an affirmative defense, the judge must then determine who has the burden of persuasion and what that burden is (preponderance, clear and convincing, or beyond a reasonable doubt).

Under § 827.071(7), Fla. Stat., a court is not required to impose the minimum mandatory sentence of 15 years in prison for a defendant who was 18 years of age or older at the time of the crime if the judge makes certain factual findings. As of September 2026, there was no case law that held the Sixth Amendment requires any jury finding regarding those facts, and it is unclear whether any such jury finding is required because those facts may lead to a decrease in the sentence, not an increase.

This instruction was adopted in 2008 [995 So. 2d 489] and was amended on October 2, 2020, on December 21, 2022, on March 20, 2026, and on October 9, 2026.

16.10 POSSESSION OF CHILD SEXUAL ABUSE MATERIAL WITH INTENT TO PROMOTE

§ 827.071(4), Fla. Stat.*

To prove the crime of Possession of ~~a~~ Child Sexual Abuse Material with Intent to Promote, the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **possessed a[n] [photograph] [motion picture] [exhibition] [show] [representation] [presentation].**

2. **The [photograph] [motion picture] [exhibition] [show] [representation] [presentation] included, in whole or in part, child sexual abuse material.**

3. **At the time,** (defendant) **had the intent to promote the [photograph] [motion picture] [exhibition] [show] [representation] [presentation].**

Give if applicable.

The possession of three or more copies of such [photographs] [motion pictures] [exhibitions] [shows] [representations] [presentations] may justify a finding of an intent to promote.

Possession.

To prove (defendant) **possessed a[n] [photograph] [motion picture] [exhibition] [show] [representation] [presentation] that included sexual conduct by a child, the State must prove beyond a reasonable doubt that [he] [she] a) knew of the nature of the material in the [photograph] [motion picture] [exhibition] [show] [representation] [presentation] and b) intentionally exercised control over that [photograph] [motion picture] [exhibition] [show] [representation] [presentation].**

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

Joint possession. Give if applicable.

Possession may be sole or joint, that is, two or more persons may possess a[n] [photograph] [motion picture] [exhibition] [show] [representation] [presentation].

§ 827.071(1), Fla. Stat.

"Child sexual abuse material" means:

1. Any image depicting a minor engaged in sexual conduct;

or

2. Any image that has been created, altered, adapted, or modified by electronic, mechanical, or other means, to portray an identifiable minor engaged in sexual conduct.

"Identifiable minor" means a person:

1. Who was a minor at the time the image was created, altered, adapted, or modified, or whose image as a minor was used in the creating, altering, adapting, or modifying of the image;

and

2. Who is recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic, such as a unique birthmark, or other recognizable feature.

The term may not be construed to require proof of the actual identity of the identifiable minor.

"Minor" means any person, whose identity is known or unknown, younger than 18 years of age.

"Promote" means to procure, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmit, transmute, publish, distribute, circulate, disseminate, present, exhibit, send, post, share, or advertise or to offer or agree to do the same.

"Sexual conduct" means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual or simulated lewd exhibition of the genitals; actual physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast, with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulates that sexual

battery is being or will be committed. [A mother's breastfeeding of her baby does not under any circumstance constitute "sexual conduct."]

"Actual or simulated lewd exhibition of the genitals" may be evidenced by the overall contents of an image taking into account the age of the minor depicted and including, but not limited to whether, the focal point of the image is on the minor's genitals, the setting of the image is sexually suggestive or in a place or pose generally associated with sexual conduct, the minor is depicted in an unnatural pose or in inappropriate attire considering the age of the minor, the image suggests sexual coyness or a willingness to engage in sexual conduct or the image is intended or designed to elicit a sexual response in the viewer.

"Deviate sexual intercourse" means sexual conduct between persons not married to each other consisting of contact between the penis and the anus, the mouth and the penis, or the mouth and the vulva.

"Sadomasochistic abuse" means flagellation or torture by or upon a person, or the condition of being fettered, bound, or otherwise physically restrained, for the purpose of deriving sexual satisfaction from inflicting harm on another or receiving such harm oneself.

"Sexual battery" means oral, anal, or female genital* penetration by, or union with, the sexual organ of another or the anal or female genital penetration of another by any other object[; however, "sexual battery" does not include an act done for a genuine medical purpose].

"Female genitals*" includes the labia minora, labia majora, clitoris, vulva, hymen, and vagina.

Lakey v. State, 113 So. 3d 90 (Fla. 5th DCA 2013).

"An object" includes a finger.

Phillips v. State, 238 So. 3d 308 (Fla. 4th DCA 2018).

"Union" means contact.

"Sexual bestiality" means any sexual act between a person and an animal involving the sex organ of the one and the mouth, anus, or female genitals of the other.

§ 827.071(1), Fla. Stat.

“Simulated” means the explicit depiction of “sexual conduct,” as defined above, which creates the appearance of such conduct and which exhibits any uncovered portion of the breasts, genitals, or buttocks.

Lesser Included Offenses

POSSESSION OF CHILD SEXUAL ABUSE MATERIAL WITH INTENT TO PROMOTE — 827.071(4)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Possession (do not include "intentional viewing" unless charged) of a photograph, motion picture, exhibition, show, representation, or other presentation which, in whole or in part, was known by defendant to include child sexual abuse material		827.071(5)(a)	16.11
	Attempt	777.04(1)	5.1

Comments

*Effective October 1, 2022, the Legislature changed "vagina" to "female genitals" in sex crimes-related statutes. Judges should ensure the jury instructions contain correct statutory terms, which will depend on the date alleged in the charging document. *Flores v. State,* 391 So. 3d 481 (Fla. 4th DCA 2024) is an example of an appellate court finding fundamental error when the trial judge expanded the definition of "vaginal penetration" by instructing on "female genital penetration."

As of September 2026, it was unclear whether acts done for bona fide medical purposes or a mother's breastfeeding of her baby should be treated as affirmative defenses or as elements that the State must disprove. If treated as an affirmative defense, the judge must then determine who has the burden of persuasion and what that burden is (preponderance, clear and convincing, or beyond a reasonable doubt).

Before July 1, 2026, the statute contained the term "child pornography," not "child sexual abuse material." Trial judges should review the date alleged in the charging document to determine which phrase should be used in this instruction.

This instruction was adopted in 2008 [995 So. 2d 489] and amended in 2018 [238 So. 3d 182], on December 21, 2022, on March 20, 2026, and on October 9, 2026.

16.11 [POSSESSION] [CONTROL] [INTENTIONAL VIEWING] [SOLICITATION] OF CHILD SEXUAL ABUSE MATERIAL

§ 827.071(5)(a), Fla. Stat.*

To prove the crime of [Possession] [Control] [Intentional Viewing] [Solicitation] of Child Sexual Abuse Material, the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **[knowingly possessed] [knowingly controlled] [intentionally viewed] [knowingly solicited] a[n] [photograph] [motion picture] [exhibition] [show] [representation] [image] [data] [computer depiction] [presentation].**

2. **The [photograph] [motion picture] [exhibition] [show] [representation] [image] [data] [computer depiction] [presentation] included, in whole or in part, child sexual abuse material.**

3. (Defendant) **knew that the [photograph] [motion picture] [exhibition] [show] [representation] [image] [data] [computer depiction] [presentation] included child sexual abuse material.**

Possession. Give if applicable.

To prove (defendant) **possessed a[n] [photograph] [motion picture] [exhibition] [show] [representation] [image] [data] [computer depiction] [presentation] that included child sexual abuse material, the State must prove beyond a reasonable doubt that [he] [she] a) knew of the nature of the material in the [photograph] [motion picture] [exhibition] [show] [representation] [image] [data] [computer depiction] [presentation]; and b) intentionally exercised control over that [photograph] [motion picture] [exhibition] [show] [representation] [image] [data] [computer depiction] [presentation].**

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

Joint possession. Give if applicable.

Possession may be sole or joint, that is, two or more persons may possess a[n] [photograph] [motion picture] [exhibition] [show] [representation] [image] [data] [computer depiction] [presentation].

Give if applicable.

"Intentionally view" means to deliberately, purposefully, and voluntarily view. Proof of intentional viewing requires establishing more than a single image, motion picture, exhibition, show, image, data, computer depiction, representation, or other presentation over any period of time.

Give if applicable.

"Solicited" means to try to obtain.

§ 827.071(1), Fla. Stat.

"Child sexual abuse material" means:

1. Any image depicting a minor engaged in sexual conduct;

or

2. Any image that has been created, altered, adapted, or modified by electronic, mechanical, or other means, to portray an identifiable minor engaged in sexual conduct.

"Identifiable minor" means a person:

1. Who was a minor at the time the image was created, altered, adapted, or modified, or whose image as a minor was used in the creating, altering, adapting, or modifying of the image;

and

2. Who is recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic, such as a unique birthmark, or other recognizable feature.

The term may not be construed to require proof of the actual identity of the identifiable minor.

"Minor" means any person, whose identity is known or unknown, younger than 18 years of age.

"Sexual conduct" means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual or simulated lewd exhibition of the genitals; actual physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast, with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed. [A mother's breastfeeding of her baby does not under any circumstance constitute "sexual conduct."]

"Deviate sexual intercourse" means sexual conduct between persons not married to each other consisting of contact between the penis and the anus, the mouth and the penis, or the mouth and the vulva.

"Sadomasochistic abuse" means flagellation or torture by or upon a person, or the condition of being fettered, bound, or otherwise physically restrained, for the purpose of deriving sexual satisfaction from inflicting harm on another or receiving such harm oneself.

"Actual or simulated lewd exhibition of the genitals" may be evidenced by the overall contents of an image taking into account the age of the minor depicted and including, but not limited to whether, the focal point of the image is on the minor's genitals, the setting of the image is sexually suggestive or in a place or pose generally associated with sexual conduct, the minor is depicted in an unnatural pose or in inappropriate attire considering the age of the minor, the image suggests sexual coyness or a willingness to engage in sexual conduct or the image is intended or designed to elicit a sexual response in the viewer.

"Sexual battery" means oral, anal, or female genital* penetration by, or union with, the sexual organ of another or the anal or female genital penetration of another by any other object[; however, "sexual battery" does not include an act done for a genuine medical purpose].

"Female genitals"* includes the labia minora, labia majora, clitoris, vulva, hymen, and vagina.

Lakey v. State, 113 So. 3d 90 (Fla. 5th DCA 2013).

"An object" includes a finger.

Phillips v. State, 238 So. 3d 308 (Fla. 4th DCA 2018).

"Union" means contact.

"Sexual bestiality" means any sexual act between a person and an animal involving the sex organ of the one and the mouth, anus, or female genitals of the other.

"Simulated" means the explicit depiction of "sexual conduct," as defined above, which creates the appearance of such conduct and which exhibits any uncovered portion of the breasts, genitals, or buttocks.

Lesser Included Offense

[POSSESSION] [CONTROL] [INTENTIONAL VIEWING] [SOLICITATION] OF CHILD SEXUAL ABUSE MATERIAL— § 827.071(5)(a)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempt**	777.04(1)	5.1

Comments

*Effective October 1, 2022, the Legislature changed "vagina" to "female genitals" in sex crimes-related statutes. Judges should ensure the jury instructions contain correct statutory terms, which will depend on the date alleged in the charging document. *Flores v. State,* 391 So. 3d 481 (Fla. 4th DCA 2024) is an example of an appellate court finding fundamental error when the trial judge expanded the definition of "vaginal penetration" by instructing on "female genital penetration."

** Attempt would not be a lesser included offense if the State charged Solicitation of Sexual Abuse Material.

As of September 2026, it was unclear whether acts done for bona fide medical purposes or a mother's breastfeeding of her baby should be treated as affirmative defenses or as elements that the State must disprove. If treated as an affirmative defense, the judge must then determine who has the burden of persuasion and what that burden is (preponderance, clear and convincing, or beyond a reasonable doubt).

Before July 1, 2026, the statute contained the term "child pornography," not "child sexual abuse material." Trial judges should review the date alleged in the charging document to determine which phrase should be used in this instruction.

This instruction was adopted in 2008 [995 So. 2d 489] and amended in 2013 [131 So. 3d 720], 2018 [259 So. 3d 765], on December 21, 2022, on March 20, 2026, and on October 9, 2026.

16.12 LEAVING A CHILD UNATTENDED OR UNSUPERVISED IN A MOTOR VEHICLE

§ 316.6135, Fla. Stat.

To prove the crime of Leaving a Child Unattended or Unsupervised in a Motor Vehicle, the State must prove the following [three] [four] elements beyond a reasonable doubt:

1. (Defendant) **was a [parent of] [legal guardian for] [person responsible for]** (victim)**.**

2. (Victim) **was younger than 6 years of age.**

Give 3a and/or 3b as applicable.

3. (Defendant) **left** (victim) **unattended or unsupervised in a motor vehicle**

a. for a period in excess of 15 minutes.

Give 3b, if applicable, only when the crime charged is a violation of § 316.6135(4), Fla. Stat.

b. for any period of time if [the motor of the vehicle was running] [the health of the child was in danger] [the child appeared to be in distress].

Give if crime charged is a violation of § 316.6135(4), Fla. Stat.

4. In so doing, (defendant) **caused [great bodily harm] [a permanent disability] [permanent disfigurement] to** (victim).

Definition. § 316.003(44), Fla. Stat. Some of these terms have their own statutory definitions, which should be given if necessary.

"Motor vehicle" means a self-propelled vehicle not operated upon rails or guideway[, but not a bicycle, electric bicycle, motorized scooter, electric personal assistive mobility device, mobile carrier, personal delivery device, swamp buggy, or moped].

§ 316.003(103), Fla. Stat.

"Vehicle" means every device in, upon, or by which any person or property is or may be transported or drawn upon a highway[, except personal delivery devices, mobile carriers, and devices used exclusively upon stationary rails or tracks].

Great bodily harm. Wheeler v. State, 203 So. 3d 1007 (Fla. 4th DCA 2016).

"Great bodily harm" means great as distinguished from slight, trivial, minor, or moderate harm, and as such does not include mere bruises.

Lesser Included Offenses

LEAVING A CHILD UNATTENDED OR UNSUPERVISED IN A MOTOR VEHICLE — 316.6135(4)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Leaving a Child Unattended if § 316.6135(4), Fla. Stat. is charged.		316.6135(1)(a)	16.12
	Attempt	777.04(1)	5.1

Comment

This instruction was adopted in 2009 [3 So. 3d 1172] and amended in 2013 [131 So. 3d 755], 2019 [262 So. 3d 59], and on October 2, 2020.

16.13 FAILURE TO REPORT CHILD [ABUSE] [ABANDONMENT] [OR] [NEGLECT]

§ 39.205(1), Fla. Stat.

To prove the crime of Failure to Report Child [Abuse] [Abandonment] [or] [Neglect], the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) **knew or suspected child [abuse] [abandonment] [or] [neglect] occurred.**

2. (Defendant) **knowingly and willfully [failed to report such information to the central abuse hotline of the Department of Children and Families] [or] [prevented another person from reporting such information to the central abuse hotline of the Department of Children and Families].**

Definitions. Give as applicable. Some words or phrases within these definitions are defined in § 39.01, Fla. Stat. or elsewhere and should be given if requested.

§ 39.01(2), Fla. Stat.

"Child abuse" means any willful act or threatened act that results in any physical, mental, or sexual abuse, injury, or harm that causes or is likely to cause the child's physical, mental, or emotional health to be significantly impaired. Abuse of a child includes acts or omissions.

[Corporal discipline of a child by a parent or legal custodian for disciplinary purposes does not in itself constitute abuse when it does not result in harm to the child.]

[Abuse of a child includes the birth of a new child into a family during the course of an open dependency case when the parent or caregiver has been determined to lack the protective capacity to safely care for the children in the home and has not substantially complied with the case plan towards successful reunification or met the conditions for return of the children into the home.]

§ 39.01(1), Fla. Stat.

"Child abandonment" means a situation in which the parent or legal custodian of a child or, in the absence of a parent or legal custodian, the caregiver, while being able, has made no significant contribution to the child's care and maintenance or has failed to establish or maintain a substantial and positive relationship with the child, or both.

"Establish or maintain a substantial and positive relationship" includes, but is not limited to, frequent and regular contact with the child through frequent and regular visitation or frequent and regular communication to or with the child, and the exercise of parental rights and responsibilities. Marginal efforts and incidental or token visits or communications are not sufficient to establish or maintain a substantial and positive relationship with a child.

["Caregiver" means the parent, legal custodian, permanent guardian, adult household member, or other person responsible for a child's welfare.

"Other person responsible for a child's welfare" includes the child's legal guardian or foster parent; an employee of any school, public or private child day care center, residential home, institution, facility, or agency; a law enforcement officer employed in any facility, service, or program for children that is operated or contracted by the Department of Juvenile Justice; or any other person legally responsible for the child's welfare in a residential setting; and also includes an adult sitter or relative entrusted with a child's care.]

[A man's acknowledgment of paternity of the child does not limit the period of time considered in determining whether the child was abandoned.]

[The absence of a parent, legal custodian, or caregiver responsible for a child's welfare, who is a servicemember, by reason of deployment or anticipated deployment as defined in 50 U.S.C. s. 3938(e), may not be considered or used as a factor in determining abandonment.]

[The incarceration, repeated incarceration, or extended incarceration of a parent, legal custodian, or caregiver responsible for a child's welfare may support a finding of abandonment.]

[The term does not include a surrendered newborn infant as described in s. 383.50, a "child in need of services" as defined in chapter 984, or a "family in need of services" as defined in chapter 984.]

§39.01(50), Fla. Stat.

"Child neglect" occurs when a child is deprived of, or is allowed to be deprived of, necessary food, clothing, shelter, or medical treatment or a child is permitted to live in an environment when such deprivation or environment causes the child's physical, mental, or emotional health to be significantly impaired or to be in danger of being significantly impaired. The foregoing circumstances shall not be considered neglect if caused primarily by financial inability unless actual services for relief

have been offered to and rejected by such person. Neglect of a child includes acts or omissions.

[A parent or legal custodian legitimately practicing religious beliefs in accordance with a recognized church or religious organization who thereby does not provide specific medical treatment for a child may not, for that reason alone, be considered a negligent parent or legal custodian; however, such an exception does not preclude a court from ordering the following services to be provided, when the health of the child so requires:

a. Medical services from a licensed physician, dentist, optometrist, podiatric physician, or other qualified health care provider; or

b. Treatment by a duly accredited practitioner who relies solely on spiritual means for healing in accordance with the tenets and practices of a well-recognized church or religious organization.]

§ 39.01(11), Fla. Stat.

"Child" means any unmarried person under the age of 18 years who has not been emancipated by order of the court.

"Willfully" means intentionally and purposely.

Lesser Included Offenses

No lesser included offenses have been identified.

Comments

§ 39.201(1), Fla. Stat., contains the requirements for mandatory reporting of known or suspected child abuse, abandonment, or neglect. Exceptions to mandatory reporting are in § 39.201(2), Fla. Stat.

This instruction was adopted on December 15, 2021.

16.14 [POSSESSION] [CONTROL] [INTENTIONAL VIEWING] OF GENERATED CHILD SEXUAL ABUSE MATERIAL

§ 827.072(2)(a), Fla. Stat.

To prove the crime of [Possession] [Control] [Intentional Viewing] of Generated Child Sexual Abuse Material, the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **[knowingly possessed or controlled] [intentionally viewed] a[n] [photograph] [motion picture] [representation] [image] [data file] [computer depiction] [or other presentation].**

2. **The [photograph] [motion picture] [representation] [image] [data file] [computer depiction] [or other presentation] included, in whole or in part, generated child sexual abuse material.**

3. (Defendant) **knew that the [photograph] [motion picture] [representation] [image] [data file] [computer depiction] [or other presentation] included generated child sexual abuse material.**

Possession. Give if applicable.

To prove (defendant) **possessed a[n] [photograph] [motion picture] [representation] [image] [data file] [computer depiction] [or other presentation] that included generated child sexual abuse material, the State must prove beyond a reasonable doubt that [he] [she] a) knew of the nature of the material in the [photograph] [motion picture] [representation] [image] [data file] [computer depiction] [or other presentation]; and b) intentionally exercised control over that [photograph] [motion picture] [representation] [image] [data file] [computer depiction] [or other presentation].**

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

Joint possession. Give if applicable.

Possession may be sole or joint, that is, two or more persons may possess a[n] [photograph] [motion picture] [representation] [image] [data file] [computer depiction] [or other presentation].

Intentionally view. Give if applicable.

"Intentionally view" means to deliberately, purposefully, and voluntarily view. Proof of intentional viewing requires establishing more than a single image, motion picture, image, data, computer depiction, representation, or other presentation over any period of time.

§ 827.072, Fla. Stat.

"Generated child sexual abuse material" means any image that has been created, altered, adapted, or modified by electronic, mechanical, or other computer-generated means to portray a fictitious person, who a reasonable person would regard as being a real person younger than 18 years of age, engaged in sexual conduct.

"Sexual conduct" means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual or simulated lewd exhibition of the genitals; actual physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast, with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed. [A mother's breastfeeding of her baby does not under any circumstance constitute "sexual conduct."]

Give as applicable.

"Deviate sexual intercourse" means sexual conduct between persons not married to each other consisting of contact between the penis and the anus, the mouth and the penis, or the mouth and the vulva.

"Sadomasochistic abuse" means flagellation or torture by or upon a person, or the condition of being fettered, bound, or otherwise physically restrained, for the purpose of deriving sexual satisfaction from inflicting harm on another or receiving such harm oneself.

"Sexual battery" means oral, anal, or female genital penetration by, or union with, the sexual organ of another or the anal or female genital penetration of another by any other object[; however, "sexual battery" does not include an act done for a bona fide medical purpose. "Bona fide" means genuine].

"An object" includes a finger.

"Union" means contact.

"Female genitals" includes the labia minora, labia majora, clitoris, vulva, hymen, and vagina.

"Sexual bestiality" means any sexual act between a person and an animal involving the sex organ of the one and the mouth, anus, or female genitals of the other.

"Simulated" means the explicit depiction of "sexual conduct," as defined above, which creates the appearance of such conduct and which exhibits any uncovered portion of the breasts, genitals, or buttocks.

Lesser Included Offense

[POSSESSION] [CONTROL] [INTENTIONAL VIEWING] OF GENERATED CHILD SEXUAL ABUSE MATERIAL — 827.072(2)(a)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempt	777.04(1)	5.1

Comments

Before July 1, 2026, the statute contained the term "child pornography," not "child sexual abuse material." Trial judges should review the date alleged in the charging document to determine which phrase should be used in this instruction.

As of September 2026, it was unclear whether acts done for bona fide medical purposes or a mother's breastfeeding of her baby should be treated as affirmative defenses or as elements that the State must disprove. If treated as an affirmative defense, the judge must then determine who has the burden of persuasion and what that burden is (preponderance, clear and convincing, or beyond a reasonable doubt).

This instruction was adopted on February 21, 2025, and amended on October 9, 2026.

16.15 TRANSMISSION OF GENERATED CHILD SEXUAL ABUSE MATERIAL

§ 827.072(2)(b), Fla. Stat.

To prove the crime of Transmission of Generated Child Sexual Abuse Material, the State must prove the following two elements beyond a reasonable doubt:

Give 1a or 1b as applicable.

§ 827.072(2)(b)1., Fla. Stat.

1. a. (Defendant)**, when in the State of Florida, transmitted generated child sexual abuse material to another person.**

§ 827.072(2)(b)2., Fla. Stat.

b. (Defendant)**, when not in the State of Florida, transmitted generated child sexual abuse material to any person who was in the State of Florida.**

2. (Defendant) **knew or reasonably should have known that what [he] [she] transmitted was generated child sexual abuse material.**

§§ 827.072 and 847.0137, Fla. Stats.

"Transmit" means the act of sending and causing to be delivered, including the act of providing access for receiving and causing to be delivered, any image, information, or data over or through any medium, including the internet or an interconnected network, by use of any electronic equipment or device. The term also includes the act of providing access to any image, information, or data in cloud storage by sharing, publishing, or otherwise making available a link, access credential, or other similar means by which another person may access, view, or obtain such image, information, or data.

"Access credential" means any password, username, token, unique link, uniform resource locator (URL), hyperlink, or other data that enables a user to access a digital file or other data in cloud storage.

"Cloud storage" means any remote, networked, or third-party provided storage service that enables a user to store, host, or share a digital file or other data and to access such a digital file or other data via the Internet or other network, whether by direct file transfer, access credential, link, or other similar means.

"Link" means any uniform resource locater (URL), hyperlink, short link, shareable link, magnet link, or other string, token, or data that, when used, directs or grants a user access to a digital file or other data that is stored remotely, including in cloud storage

"Generated child sexual abuse material" means any image that has been created, altered, adapted, or modified by electronic, mechanical, or other computer-generated means to portray a fictitious person, who a reasonable person would regard as being a real person younger than 18 years of age, engaged in sexual conduct.

"Sexual conduct" means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual or simulated lewd exhibition of the genitals; actual physical contact with a person's clothed or unclosed genitals, pubic area, buttocks, or, if such person is a female, breast with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed. [A mother's breastfeeding of her baby does not under any circumstance constitute "sexual conduct."]

"Simulated" means the explicit depiction of conduct described in the definition of "sexual conduct" which creates the appearance of such conduct and which exhibits any uncovered portion of the breasts, genitals, or buttocks.

"Deviate sexual intercourse" means sexual conduct between persons not married to each other consisting of contact between the penis and the anus, the mouth and the penis, or the mouth and the vulva.

"Sexual bestiality" means any sexual act, actual or simulated, between a person and an animal involving the sex organ of the one and the mouth, anus, or female genitals of the other.

"Sadomasochistic abuse" means flagellation or torture by or upon a person or animal, or the condition of being fettered, bound, or otherwise physically restrained, for the purpose of deriving sexual satisfaction, or satisfaction brought about as a result of sadistic violence, from inflicting harm on another or receiving such harm oneself.

"Sexual Battery" means oral, anal, or female genital* penetration by, or union with, the sexual organ of another or the anal or female genital penetration of another by any other object[; however, "sexual battery" does not include an act done for a bona fide medical purpose. "Bona fide" means genuine].

"Female genitals*" includes the labia minora, labia majora, clitoris, vulva, hymen, and vagina.

Phillips v. State, 238 So. 3d 308 (Fla. 4th DCA 2018).

"Union" means contact.

Lakey v. State, 113 So. 3d 90 (Fla. 5th DCA 2013).

"An object" includes a finger.

Lesser Included Offense

TRANSMISSION OF GENERATED CHILD SEXUAL ABUSE MATERIAL — 827.072(2)(b)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempt	777.04(1)	5.1

Comments

As of September 2026, it was unclear whether acts done for bona fide medical purposes or a mother's breastfeeding of her baby should be treated as affirmative defenses or as elements that the State must disprove. If treated as an affirmative defense, the judge must then determine who has the burden of persuasion and what that burden is (preponderance, clear and convincing, or beyond a reasonable doubt).

This instruction was adopted on October 9, 2026.

16.16 INTENTIONAL CREATION OF GENERATED CHILD SEXUAL ABUSE MATERIAL

§ 827.072(2)(c), Fla. Stat.

To prove the crime of Intentional Creation of Generated Child Sexual Abuse Material, the State must prove the following element beyond a reasonable doubt:

1. (Defendant) **intentionally created generated child sexual abuse material.**

"Generated child sexual abuse material" means any image that has been created, altered, adapted, or modified by electronic, mechanical, or other computer-generated means to portray a fictitious person, who a reasonable person would regard as being a real person younger than 18 years of age, engaged in sexual conduct.

"Sexual conduct" means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual or simulated lewd exhibition of the genitals; actual physical contact with a person's clothed or unclosed genitals, pubic area, buttocks, or, if such person is a female, breast with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed. [A mother's breastfeeding of her baby does not under any circumstance constitute "sexual conduct."]

"Simulated" means the explicit depiction of conduct described in the definition of "sexual conduct" which creates the appearance of such conduct and which exhibits any uncovered portion of the breasts, genitals, or buttocks.

"Deviate sexual intercourse" means sexual conduct between persons not married to each other consisting of contact between the penis and the anus, the mouth and the penis, or the mouth and the vulva.

"Sexual bestiality" means any sexual act, actual or simulated, between a person and an animal involving the sex organ of the one and the mouth, anus, or female genitals of the other.

"Sadomasochistic abuse" means flagellation or torture by or upon a person or animal, or the condition of being fettered, bound, or otherwise physically restrained, for the purpose of deriving sexual satisfaction, or satisfaction brought about as a result of sadistic violence, from inflicting harm on another or receiving such harm oneself.

"Sexual Battery" means oral, anal, or female genital* penetration by, or union with, the sexual organ of another or the anal or female genital penetration of another by any other object[; however, "sexual battery" does not include an act done for a bona fide medical purpose. "Bona fide" means genuine].

"Female genitals*" includes the labia minora, labia majora, clitoris, vulva, hymen, and vagina.

Phillips v. State, 238 So. 3d 308 (Fla. 4th DCA 2018).

"Union" means contact.

Lakey v. State, 113 So. 3d 90 (Fla. 5th DCA 2013).

"An object" includes a finger.

Lesser Included Offense

INTENTIONAL CREATION OF GENERATED CHILD SEXUAL ABUSE MATERIAL — 827.072(2)(c)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempt	777.04(1)	5.1

Comments

As of September 2026, it was unclear whether acts done for bona fide medical purposes or a mother's breastfeeding of her baby should be treated as affirmative defenses or as elements that the State must disprove. If treated as an affirmative defense, the judge must then determine who has the burden of persuasion and what that burden is (preponderance, clear and convincing, or beyond a reasonable doubt).

This instruction was adopted on October 9, 2026.

CHAPTER 17 — FORGERY AND WORTHLESS CHECKS

17.1 FORGERY

§ 831.01, Fla. Stat.

To prove the crime of Forgery, the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) **falsely [made] [altered] [forged] [counterfeited] a** (document named in charge)**.**

2. (Defendant) **intended to injure or defraud some person or firm.**

It is not necessary that the defendant intended to use (document named in charge) **[himself] [herself] or to profit [himself] [herself] from its use. It is sufficient if [he] [she] intended that some person would use it to injure or defraud**.

Give if victim not named.

Nor is it necessary to prove what person the defendant intended to be injured or defrauded if [he] [she] did intend that some person would be injured or defrauded.

Lesser Included Offenses

FORGERY — 831.01

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempt	777.04(1)	5.1

Comment

This instruction was adopted in 1981.

17.2 FORGERY — UTTERING

§ 831.02, Fla. Stat.

To prove the crime of Uttering a Forgery, the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **passed or offered to pass as true a** (document described in charge)**.**

2. (Defendant) **knew the** (document described in charge) **to be [false] [altered] [forged] [counterfeited].**

3. (Defendant) **intended to injure or defraud some person or firm.**

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comment

This instruction was adopted in 1981.

17.3 WORTHLESS CHECK

§ 832.05(2), Fla. Stat.

This statute applies to a variety of orders to pay money and "commercial paper," and to a variety of types of drawees and transactions. The charge has been framed to cover the most common transaction encountered in criminal litigation. It can be readily modified to fit other transactions covered by the statute.

To prove the crime of (crime charged)**, the State must prove the following [six] [seven] elements beyond a reasonable doubt:**

1. (Defendant)

[drew]

[made]

[uttered]

[issued]

[delivered]

the check admitted in evidence as State Exhibit _____.

2. **When** (defendant) **did so, there was not sufficient money on deposit in the bank to pay the check.**

3. (Defendant) **knew when [he] [she] wrote the check that [he] [she] did not have sufficient money on deposit with the bank.**

4. (Defendant) **knew [he] [she] had no arrangement or understanding with the bank for the payment of the check when it was presented.**

5. **The check was in the amount of $150 or more.**

Give 6a when payee exchanges for value.

6. **a.** (Person or business alleged)**, to whom the check was payable, transferred it to** (as alleged) **in exchange for** (goods or money alleged)**.**

Give 6b when subsequent holder exchanges for value.

b. (Holder alleged) **transferred the check to** (as alleged) **in exchange for** (goods or money alleged)**.**

Give 7 only if not exchanged for money.

7. The (goods) **had some monetary value.**

Defenses. Give if applicable.

Even if you find all these elements are proved, you should go on to consider the defense. You must find the defendant not guilty if you find that either of the following three defenses have been proved:

1. (Name of payee or holder) **knew that** (defendant's) **funds and credit at the bank at the time the check was given were insufficient to pay the check; or**

2. (Name of payee or holder) **had good reason to believe that** (defendant's) **funds and credit at the bank at the time the check was given were insufficient to pay the check; or**

3. The check was post-dated.

Give if applicable.

When an employee of a business receives a check, the business must be regarded as knowing whatever the employee knows about the check.

Lesser Included Offenses

WORTHLESS CHECKS — 832.05(2)			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
None			
	Attempt, except when uttering is charged — under $150	777.04(1)	5.1

Comment

This instruction was adopted in 1981 and amended in 1987.

17.4 WORTHLESS CHECK — OBTAINING PROPERTY

§ 832.05(4), Fla. Stat.

This statute applies to a variety of orders to pay money and "commercial paper," and to a variety of types of drawees and transactions. The charge has been framed to cover the most common transaction encountered in criminal litigation. It can be readily modified to fit other transactions covered by the statute.

To prove the crime of (crime charged)**, the State must prove the following seven elements beyond a reasonable doubt:**

1. (Defendant)

[drew]

[made]

[uttered]

[issued]

[delivered]

the check admitted in evidence as State Exhibit _____.

2. (Defendant) **did so to obtain**

[services].

[goods].

[wares].

[(other thing of value alleged)**].**

3. **The [services] [goods] [wares] [**(other thing of value alleged)**] had some monetary value.**

4. **When** (defendant) **did so, there was not sufficient money on deposit in the bank to pay the check.**

5. (Defendant) **knew when the check was written there was not sufficient money on deposit with the bank.**

6. (Defendant) **knew there was no arrangement or understanding with the bank for the payment of the check when it was presented.**

7. The check was in the amount of $150 or more.

Defenses. Give if applicable.

Even if you find all these elements are proved, you should go on to consider the defense. You must find the defendant not guilty if you find either of the following two defenses to have been proved:

1. (Name of payee) **knew that** (defendant's) **funds and credit at the bank at the time the check was given were insufficient to pay the check; or**

2. (Name of payee) **had good reason to believe that** (defendant's) **funds and credit at the bank at the time the check was given were insufficient to pay the check.**

Give if applicable.

When an employee of a business receives a check, the business must be regarded as knowing whatever the employee knows about the check.

Give if applicable.

The fact that (defendant) **had previously issued a worthless check to the payee did not, by itself, give** (payee) **reason to believe that** (defendant) **had insufficient funds to ensure payment of this check.**

Lesser Included Offenses

OBTAINING PROPERTY BY WORTHLESS CHECKS — 832.05(4)			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
Worthless check		832.05(2)	17.3
	Attempt	777.04(1)	5.1

Comment

This instruction was adopted in 1981 and amended in 1987.

17.5 STOPPING PAYMENT ON A CHECK [§ 832.041 RESERVED]

17.6 VENDING AND COUNTERFEIT TRADEMARKS [§ 831.05 RESERVED]

CHAPTER 18 — PERJURY

18.1 PERJURY (NOT IN AN OFFICIAL PROCEEDING) (IN AN OFFICIAL PROCEEDING)

§§ 837.012, 837.02, Fla. Stat.

To prove the crime of [Perjury Not in an Official Proceeding] [Perjury in an Official Proceeding], the State must prove the following five elements beyond a reasonable doubt:

1. (Defendant) **took an oath or otherwise affirmed that [he] [she] was obligated by conscience or by law to speak the truth in** (describe proceedings, official or unofficial, in which the alleged oath was taken)**.**

2. **The oath or affirmation was made to** (person allegedly administering oath)**, who was a** (official capacity)**.**

3. (Defendant)**, while under an oath, made the statement** (read from charge)**.**

4. **The statement was false.**

5. (Defendant) **did not believe the statement was true when [he] [she] made it.**

Give if applicable.

§§ 837.012(2), 837.02(2), Fla. Stat.

Knowledge of the materiality of the statement is not an element of this crime, and the defendant's mistaken belief that [his] [her] statement was not material is not a defense to the charge.

§ 837.011, Fla. Stat.

Questions of the authority to administer oaths, whether the form of the oath or attestation is required or authorized by law, the official or unofficial nature of the proceedings and the materiality of a statement are matters of law.

Give if applicable. § 837.011(3), Fla. Stat.

The law requires the judge to decide if the alleged statement is material, and I have decided that it is material. Therefore, you will not further concern yourself with this issue.

An instruction on recantation should be given when raised as a defense. See § 837.07, Fla. Stat.; Carter v. State, 384 So.2d 1255 (Fla. 1980).

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comment

This instruction was adopted in 1981 and amended in 1992.

18.2 PERJURY BY CONTRADICTORY STATEMENTS

§ 837.021, Fla. Stat.

To prove the crime of Perjury by Contradictory Statements, the State must prove the following six elements beyond a reasonable doubt:

1. (Defendant) **took an oath or otherwise affirmed that [he] [she] was obligated by conscience or by law to speak the truth in** (describe the official proceeding or proceedings in which the alleged contradictory statements were made under oath)**.**

2. **In** (describe the official proceeding in which one of the statements was made)**,** (defendant) **made the statement** (read from charge)**.**

3. **[In** (describe the official proceeding in which the other statement was made)**,** (defendant) **made the statement** (read from charge)**.] [In the same proceeding,** (defendant) **made the statement** (read from charge)**.]**

4. (Defendant) **made both statements while under oath or affirmation.**

5. **The statements were contradictory, which means that both statements could not be true.**

6. (Defendant) **made both statements knowingly and intentionally.**

§ 837.021(3), Fla. Stat.

It is not necessary for the State to prove that either of the statements is untrue, if the State has proved they are contradictory.

Defense

§ 837.021(4), Fla. Stat.

You should acquit the defendant if you find that [he] [she] believed each statement to be true at the time [he] [she] made it.

§§ 837.011, 837.021, Fla. Stat.

Questions of the authority to administer oaths, whether the form of the oath or attestation is required or authorized by law, the official or unofficial nature of the proceedings and the materiality of a statement are matters of law.

Give if applicable.

§ 837.021(2), Fla. Stat.

The law requires the judge to decide if the alleged statements are material, and I have decided that they are material. Therefore, you will not further concern yourself with this issue.

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comment

This instruction was adopted in 1981.

CHAPTER 19 — BRIBERY

19.1 BRIBERY OF A PUBLIC SERVANT

§ 838.015(1), Fla. Stat.

To prove the crime of Bribery of a Public Servant, the State must prove the following five elements beyond a reasonable doubt:

1. (Name of public servant) **was a public servant.**

2. (Defendant) **knew that** (name of public servant) **was a public servant.**

3. (Defendant) **knowingly and intentionally [gave] [offered] [promised]** (name of public servant) **a pecuniary or other benefit.**

4. (Defendant's) **[gift] [offer] [promise] was made with the intent or purpose to influence** (name of public servant) **in the performance of any act [or omission] that**

Give 4a or 4b as applicable.

a. (defendant) **believed to be [within the official discretion of** (name of public servant)**] [in violation of a public duty of** (name of public servant)**] [in performance of a public duty of** (name of public servant)**]**.

b. (name of public servant) **represented as being [within [his] [her] official discretion] [in violation of [his] [her] public duty] [in performance of [his] [her] public duty].**

5. The pecuniary or other benefit was not authorized by law.

Definitions.

§ 838.014(7)(a), Fla. Stat.

"Public servant" means any officer or employee of a governmental entity, including any executive, legislative, or judicial branch officer or employee.

Give if applicable. § 838.014(7)(b) and (7)(c), Fla. Stat.

"Public servant" also includes any person, except a witness, who acts as a general or special magistrate, receiver, auditor, arbitrator, umpire, referee, consultant, or hearing officer while performing a governmental function or a candidate for election or appointment to any

of these officer positions; or an individual who has been elected to, but has yet to officially assume the responsibilities of, public office.

§ 838.014(4), Fla. Stat.

"Governmental entity" means an agency or entity of the state, a county, municipality, or special district or any other public entity created or authorized by law.

Give the following three paragraphs to explain "a pecuniary or other benefit not authorized by law" in element #5. Czajkowski v. State, 178 So. 3d 498 (Fla. 4th DCA 2015). § 838.014(1), Fla. Stat.

"Pecuniary" means in the form of money. "Benefit" means gain or advantage or anything regarded by the person to be benefited as a gain or advantage, including the doing of an act beneficial to any person in whose welfare he or she is interested, including any commission, gift, gratuity, property, commercial interest, or any other thing of economic value not authorized by law.

§ 112.313(2), Fla. Stat.

According to Florida law, no public officer, employee of an agency, local government attorney, or candidate for nomination or election shall solicit or accept anything of value to the recipient, including a gift, loan, reward, promise of future employment, favor, or service, based upon any understanding that the vote, official action, or judgment of the public officer, employee, local government attorney, or candidate would be influenced thereby.

§ 112.313(4), Fla. Stat.

According to Florida law, no public officer, employee of an agency, or local government attorney or his or her spouse or minor child shall, at any time, accept any compensation, payment, or thing of value when such public officer, employee, or local government attorney knows, or, with the exercise of reasonable care, should know, that it was given to influence a vote or other action in which the officer, employee, or local government attorney was expected to participate in his or her official capacity.

Give if applicable. § 838.015(2), Fla. Stat.

In order for the defendant to be guilty of Bribery of a Public Servant, it is not necessary that (name of public servant) **had assumed office.**

Give if applicable. § 838.015(2), Fla. Stat.

In order for the defendant to be guilty of Bribery of a Public Servant, it is not necessary that the act with respect to which the bribe was [given] [offered] [promised] was properly pending before (name of public servant)**, or that by law it might be properly brought before [him] [her], or that [he] [she] was qualified to act in the desired way, or that [he] [she] had jurisdiction over the matter, or that [his] [her] official action was necessary to achieve the purpose of the defendant.**

Lesser Included Offense

BRIBERY OF A PUBLIC SERVANT — 838.015(1)			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
None			
	Attempt if only "give" is charged	777.04(1)	5.1

Comment

This instruction was adopted in 1981 and amended in 2005 [911 So. 2d 766] and 2017.

19.2 BRIBERY BY A PUBLIC SERVANT

§ 838.015(1), Fla. Stat.

To prove the crime of Bribery by a Public Servant, the State must prove the following four elements beyond a reasonable doubt:

1. (Defendant) **was a public servant.**

2. (Defendant) **knowingly and intentionally [requested] [solicited] [accepted] [agreed to accept for [himself] [herself] [or another]] from** (person making bribe) **a pecuniary or other benefit.**

3. (Defendant's) **[request] [solicitation] [acceptance] [agreement to accept] was made with the intent of being influenced in the performance of some act [or omission] that**

Give 3a or 3b as applicable.

a. (person making bribe**) believed to be**

[within the official discretion of (defendant)**.]**
[in violation of a public duty of (defendant)**.]**
[in performance of public duty of (defendant)**.]**

b. (defendant) **represented as being**

[within [his] [her] official discretion].
[in violation of [his] [her] public duty].
[in performance of [his] [her] public duty].

4. The pecuniary or other benefit was not authorized by law.

Definitions.

§ 838.014(7)(a), Fla. Stat.

"Public servant" means any officer or employee of a governmental entity, including any executive, legislative, or judicial branch officer or employee.

Give if applicable. § 838.014(7)(b) and (7)(c), Fla. Stat.

"Public servant" also includes any person, except a witness, who acts as a general or special magistrate, receiver, auditor, arbitrator, umpire, referee, consultant, or hearing officer while performing a governmental function or a candidate for election or appointment to any

of these officer positions; or an individual who has been elected to, but has yet to officially assume the responsibilities of, public office.

§ 838.014(4), Fla. Stat.

"Governmental entity" means an agency or entity of the state, a county, municipality, or special district or any other public entity created or authorized by law.

Give the following three paragraphs to explain "a pecuniary or other benefit not authorized by law" in element #4. Czajkowski v. State, 178 So. 3d 498 (Fla. 4th DCA 2015). § 838.014(1), Fla. Stat.

"Pecuniary" means in the form of money. "Benefit" means gain or advantage or anything regarded by the person to be benefited as a gain or advantage, including the doing of an act beneficial to any person in whose welfare he or she is interested, including any commission, gift, gratuity, property, commercial interest, or any other thing of economic value not authorized by law.

§ 112.313(2), Fla. Stat.

According to Florida law, no public officer, employee of an agency, local government attorney, or candidate for nomination or election shall solicit or accept anything of value to the recipient, including a gift, loan, reward, promise of future employment, favor, or service, based upon any understanding that the vote, official action, or judgment of the public officer, employee, local government attorney, or candidate would be influenced thereby.

§ 112.313(4), Fla. Stat.

According to Florida law, no public officer, employee of an agency, or local government attorney or his or her spouse or minor child shall, at any time, accept any compensation, payment, or thing of value when such public officer, employee, or local government attorney knows, or, with the exercise of reasonable care, should know, that it was given to influence a vote or other action in which the officer, employee, or local government attorney was expected to participate in his or her official capacity.

Give if applicable. § 838.015(2), Fla. Stat.

In order for the defendant to be guilty of Bribery by a Public Servant, it is not necessary that [he] [she] had assumed office.

Give if applicable. § 838.015(2), Fla. Stat.

In order for the defendant to be guilty of Bribery by a Public Servant, it is not necessary that the act with respect to which [the bribe was [requested] [solicited] [accepted]] [an agreement was reached for the bribe] was properly pending before the defendant, or that by law it might be properly brought before [him] [her], or that [he] [she] was qualified to act in the desired way, or that [he] [she] had jurisdiction over the matter, or that [his] [her] official action was necessary to achieve the purpose of the person making the bribe.

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comment

This instruction was adopted in 1981 and amended in 2005 [911 So. 2d 766] and 2017.

19.3 UNLAWFUL COMPENSATION OR REWARD TO PUBLIC SERVANT FOR OFFICIAL BEHAVIOR

§ 838.016(1), Fla. Stat.

To prove the crime of Unlawful Compensation or Reward to a Public Servant for Official Behavior, the State must prove the following five elements beyond a reasonable doubt:

1. (Name of public servant) **was a public servant.**

2. (Defendant) **knew that** (name of public servant) **was a public servant.**

3. (Defendant) **knowingly and intentionally [gave] [offered] [promised] a pecuniary or other benefit to** (name of public servant)**.**

4. The [gift] [offer] [promise] was made for the past, present, or future performance, nonperformance, or violation of any act or omission of (name of public servant) **that**

Give relevant part of 4a or 4b as applicable.

a. [(defendant) **believed to be**

[within the official discretion of (name of public servant)**].]**

[in violation of a public duty of (name of public servant)].]

[in performance of a public duty of (name of public servant)**].]**

b. [(name of public servant) **represented as being**

[within [his] [her] official discretion].]

[in violation of [his] [her] public duty].]

[in performance of [his] [her] public duty].]

5. The pecuniary or other benefit was not authorized by law.

Definitions.

§ 838.014(7)(a), Fla. Stat.

"Public servant" means any officer or employee of a governmental entity, including any executive, legislative, or judicial branch officer or employee.

Give if applicable. § 838.014(7)(b) and (7)(c), Fla. Stat.

"Public servant" also includes any person, except a witness, who acts as a general or special magistrate, receiver, auditor, arbitrator, umpire, referee, consultant, or hearing officer while performing a governmental function or a candidate for election or appointment to any of these officer positions; or an individual who has been elected to, but has yet to officially assume the responsibilities of, public office.

§ 838.014(4), Fla. Stat.

"Governmental entity" means an agency or entity of the state, a county, municipality, or special district or any other public entity created or authorized by law.

Give the following three paragraphs to explain "a pecuniary or other benefit which was not authorized by law" in element #5. Czajkowski v. State, 178 So. 3d 498 (Fla. 4th DCA 2015). § 838.014(1), Fla. Stat.

"Pecuniary" means in the form of money. "Benefit" means gain or advantage or anything regarded by the person to be benefited as a gain or advantage, including the doing of an act beneficial to any person in whose welfare he or she is interested, including any commission, gift, gratuity, property, commercial interest, or any other thing of economic value not authorized by law.

§ 112.313(2), Fla. Stat.

According to Florida law, no public officer, employee of an agency, local government attorney, or candidate for nomination or election shall solicit or accept anything of value to the recipient, including a gift, loan, reward, promise of future employment, favor, or service, based upon any understanding that the vote, official action, or judgment of the public officer, employee, local government attorney, or candidate would be influenced thereby.

§ 112.313(4), Fla. Stat.

According to Florida law, no public officer, employee of an agency, or local government attorney or his or her spouse or minor child shall, at any time, accept any compensation, payment, or thing of value when such public officer, employee, or local government attorney knows, or, with the exercise of reasonable care, should know, that it was given to influence a vote or other action in which the officer, employee, or local government attorney was expected to participate in his or her official capacity.

Give if applicable.

§ 838.016(3), Fla. Stat.

It is not necessary for the State to prove that the exercise of official discretion or violation of a public duty or performance of a public duty for which the bribe was [given] [offered] [promised] was accomplished or was within the official discretion or public duty of the public servant whose action or omission was sought to be rewarded or compensated.

Lesser Included Offenses

19.3 UNLAWFUL COMPENSATION OR REWARD TO PUBLIC SERVANT FOR OFFICIAL BEHAVIOR — 838.016(1)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempt if only "gave" is charged	777.04(1)	5.1

Comments

§ 838.016(1), Fla. Stat.

There is no prohibition against a public servant accepting a reward for services performed in apprehending a criminal. Therefore, if the evidence presents a factual issue on this point, a special instruction must be given.

This instruction was adopted in 1981 and amended in 2005 [911 So. 2d 766], 2013 [131 So. 3d 720], and 2017.

19.4 UNLAWFUL COMPENSATION OR REWARD BY PUBLIC SERVANT FOR OFFICIAL BEHAVIOR

§ 838.016(1), Fla. Stat.

To prove the crime of Unlawful Compensation or Reward by a Public Servant for Official Behavior, the State must prove the following four elements beyond a reasonable doubt:

1. (Defendant) **was a public servant.**

2. (Defendant) **knowingly and intentionally [requested] [solicited] [agreed to accept or accepted] a pecuniary or other benefit from** (person making bribe)**.**

3. The [request] [solicitation] [agreement to accept or acceptance] was made for the past, present, or future performance, nonperformance or violation of any act or omission of (defendant) **that**

Give relevant part of 3a or 3b as applicable.

a. [(person making bribe) **believed to be**

[within the official discretion of (defendant)**].]**

[in violation of a public duty of (defendant)**].]**

[in performance of a public duty of (defendant)**].]**

b. [(defendant) **represented as being**

[within [his] [her] official discretion].]

[in violation of [his] [her] public duty].]

[in performance of [his] [her] public duty].]

4. The pecuniary or other benefit was not authorized by law.

Definitions.

§ 838.014(7)(a), Fla. Stat.

"Public servant" means any officer or employee of a governmental entity, including any executive, legislative, or judicial branch officer or employee.

Give if applicable. § 838.014(7)(b) and (7)(c), Fla. Stat.

"Public servant" also includes any person, except a witness, who acts as a general or special magistrate, receiver, auditor, arbitrator, umpire, referee, consultant, or hearing officer while performing a governmental function or a candidate for election or appointment to any of these officer positions; or an individual who has been elected to, but has yet to officially assume the responsibilities of, public office.

§ 838.014(4), Fla. Stat.

"Governmental entity" means an agency or entity of the state, a county, municipality, or special district or any other public entity created or authorized by law.

Give the following three paragraphs to explain "a pecuniary or other benefit not authorized by law" in element #4. Czajkowski v. State, 178 So. 3d 498 (Fla. 4th DCA 2015). § 838.014(1), Fla. Stat.

"Pecuniary" means in the form of money. "Benefit" means gain or advantage or anything regarded by the person to be benefited as a gain or advantage, including the doing of an act beneficial to any person in whose welfare he or she is interested, including any commission, gift, gratuity, property, commercial interest, or any other thing of economic value not authorized by law.

§ 112.313(2), Fla. Stat.

According to Florida law, no public officer, employee of an agency, local government attorney, or candidate for nomination or election shall solicit or accept anything of value to the recipient, including a gift, loan, reward, promise of future employment, favor, or service, based upon any understanding that the vote, official action, or judgment of the public officer, employee, local government attorney, or candidate would be influenced thereby.

§ 112.313(4), Fla. Stat.

According to Florida law, no public officer, employee of an agency, or local government attorney or his or her spouse or minor child shall, at any time, accept any compensation, payment, or thing of value when such public officer, employee, or local government attorney knows, or, with the exercise of reasonable care, should know, that it was given to influence a vote or other action in which the officer, employee, or local government attorney was expected to participate in his or her official capacity.

Give if applicable.

§ 838.016(3), Fla. Stat.

It is not necessary for the State to prove that the exercise of official discretion or violation of a public duty or performance of a public duty for which the bribe was requested or solicited was accomplished or was within the official discretion or public duty of the defendant.

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comments

§ 838.016(1), Fla. Stat.

There is no prohibition against a public servant accepting a reward for services performed in apprehending a criminal. Therefore, if the evidence presents a factual issue on this point, an appropriate instruction should be given.

This instruction was adopted in 1981 and amended in 2005 [911 So. 2d 766], 2013 [131 So. 3d 720], and 2017.

19.5 UNLAWFUL COMPENSATION OR REWARD TO PUBLIC SERVANT FOR OFFICIAL BEHAVIOR

§ 838.016(2), Fla. Stat.

To prove the crime of Unlawful Compensation or Reward to a Public Servant for Official Behavior, the State must prove the following five elements beyond a reasonable doubt:

1. (Name of public servant) **was a public servant.**

2. (Defendant) **knew that** (name of public servant) **was a public servant.**

3. (Defendant) **knowingly and intentionally [gave] [offered] [promised] a pecuniary or other benefit to** (name of public servant)**.**

4. The [gift] [offer] [promise] was made for the past, present or future exertion of any influence upon or with (name of public servant) **regarding any act or omission that**

Give 4a or 4b as applicable.

a. [(defendant) **believed to be**

[within the official discretion of (name of public servant)**].]**

[in violation of a public duty of (name of public servant)**].]**

[in performance of a public duty of (name of public servant)**].]**

b. [was represented to (defendant) **as being**

[within the official discretion of (name of public servant)**].]**

[in violation of the public duty of (name of public servant)**].]**

[in performance of the public duty of (name of public servant)**].]**

The pecuniary or other benefit was not authorized by law.

Definitions.

§ 838.014(7)(a), Fla. Stat.

"Public servant" means any officer or employee of a governmental entity, including any executive, legislative, or judicial branch officer or employee.

Give if applicable. § 838.014(7)(b) and (7)(c), Fla. Stat.

"Public servant" also includes any person, except a witness, who acts as a general or special magistrate, receiver, auditor, arbitrator, umpire, referee, consultant, or hearing officer while performing a governmental function or a candidate for election or appointment to any of these officer positions; or an individual who has been elected to, but has yet to officially assume the responsibilities of, public office.

§ 838.014(4), Fla. Stat.

"Governmental entity" means an agency or entity of the state, a county, municipality, or special district or any other public entity created or authorized by law.

Give the following three paragraphs to explain "a pecuniary or other benefit which was not authorized by law" in element #5. Czajkowski v. State, 178 So. 3d 498 (Fla. 4th DCA 2015). § 838.014(1), Fla. Stat.

"Pecuniary" means in the form of money. "Benefit" means gain or advantage or anything regarded by the person to be benefited as a gain or advantage, including the doing of an act beneficial to any person in whose welfare he or she is interested, including any commission, gift, gratuity, property, commercial interest, or any other thing of economic value not authorized by law.

§ 112.313(2), Fla. Stat.

According to Florida law, no public officer, employee of an agency, local government attorney, or candidate for nomination or election shall solicit or accept anything of value to the recipient, including a gift, loan, reward, promise of future employment, favor, or service, based upon any understanding that the vote, official action, or judgment of the public officer, employee, local government attorney, or candidate would be influenced thereby.

§ 112.313(4), Fla. Stat.

According to Florida law, no public officer, employee of an agency, or local government attorney or his or her spouse or minor child shall, at any time, accept any compensation, payment, or thing of value when such public officer, employee, or local government attorney knows, or, with the exercise of reasonable care, should know, that it was given to influence a vote or other action in which the officer, employee, or local government attorney was expected to participate in his or her official capacity.

Give if applicable.

§ 838.016(3), Fla. Stat.

It is not necessary for the State to prove that the exercise of influence for which the bribe was [given] [offered] [promised] was accomplished or was within the influence of the public servant whose action or omission was sought to be rewarded or compensated.

Lesser Included Offenses

19.5 UNLAWFUL COMPENSATION OR REWARD TO PUBLIC SERVANT FOR OFFICIAL BEHAVIOR — 838.016(2)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempt if only "gave" is charged	777.04(1)	5.1

Comments

§ 838.016(1), Fla. Stat.

There is no prohibition against a public servant accepting a reward for services performed in apprehending a criminal. Therefore, if the evidence presents a factual issue on this point, an appropriate instruction should be given.

This instruction was adopted in 1981 and amended in 2005 [911 So. 2d 766], 2013 [131 So. 3d 720], and 2017.

19.6 UNLAWFUL COMPENSATION OR REWARD BY PUBLIC SERVANT FOR OFFICIAL BEHAVIOR

§ 838.016(2), Fla. Stat.

To prove the crime of Unlawful Compensation or Reward by a Public Servant for Official Behavior, the State must prove the following four elements beyond a reasonable doubt:

1. (Defendant) **was a public servant.**

2. (Defendant**) knowingly and intentionally [requested] [solicited] [agreed to accept or accepted] a pecuniary or other benefit from** (person making bribe)**.**

3. **The [request] [solicitation] [agreement to accept or acceptance] was made for the past, present, or future exertion of any influence upon or with** (person sought to be influenced) **regarding any act or omission which**

   Give 3a or 3b as applicable.

   a. **[**(Person making bribe) **believed to be**

      [within the official discretion of (name of public servant)**].]**

      [in violation of a public duty of (name of public servant)**].]**

      [in performance of a public duty of (name of public servant)**].]**

   b. **[was represented to** (person making bribe) **as being**

      [within the official discretion of (name of public servant)**].]**

      [in violation of the public duty of (name of public servant)**].]**

      [in performance of the public duty of (name of public servant)**].]**

4. **The pecuniary or other benefit was not authorized by law.**

Definitions.

§ 838.014(7)(a), Fla. Stat.

"Public servant" means any officer or employee of a governmental entity, including any executive, legislative, or judicial branch officer or employee.

Give if applicable. § 838.014(7)(b) and (7)(c), Fla. Stat.

"Public servant" also includes any person, except a witness, who acts as a general or special magistrate, receiver, auditor, arbitrator, umpire, referee, consultant, or hearing officer while performing a governmental function or a candidate for election or appointment to any of these officer positions; or an individual who has been elected to, but has yet to officially assume the responsibilities of, public office.

§ 838.014(4), Fla. Stat.

"Governmental entity" means an agency or entity of the state, a county, municipality, or special district or any other public entity created or authorized by law.

Give the following three paragraphs to explain "a pecuniary or other benefit which was not authorized by law" in element #5. Czajkowski v. State, 178 So. 3d 498 (Fla. 4th DCA 2015). § 838.014(1), Fla. Stat.

"Pecuniary" means in the form of money. "Benefit" means gain or advantage or anything regarded by the person to be benefited as a gain or advantage, including the doing of an act beneficial to any person in whose welfare he or she is interested, including any commission, gift, gratuity, property, commercial interest, or any other thing of economic value not authorized by law.

§ 112.313(2), Fla. Stat.

According to Florida law, no public officer, employee of an agency, local government attorney, or candidate for nomination or election shall solicit or accept anything of value to the recipient, including a gift, loan, reward, promise of future employment, favor, or service, based upon any understanding that the vote, official action, or judgment of the public officer, employee, local government attorney, or candidate would be influenced thereby.

§ 112.313(4), Fla. Stat.

According to Florida law, no public officer, employee of an agency, or local government attorney or his or her spouse or minor child shall, at any time, accept any compensation, payment, or thing of value when such public officer, employee, or local government attorney knows, or, with the exercise of reasonable care, should know, that it was given to influence a vote or other action in which the officer, employee, or local government attorney was expected to participate in his or her official capacity.

Give if applicable.

§ 838.016(3), Fla. Stat.

It is not necessary for the State to prove that the exercise of influence for which the bribe was [given] [offered] [promised] was accomplished or was within the influence of the public servant whose action or omission was sought to be rewarded or compensated.

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comments

§ 838.016(1), Fla. Stat.

There is no prohibition against a public servant accepting a reward for services performed in apprehending a criminal. Therefore, if the evidence presents a factual issue on this point, an appropriate instruction should be given.

This instruction was adopted in 1981 and amended in 2005 [911 So. 2d 766], 2013 [131 So. 3d 720], and 2017.

19.7 OFFICIAL MISCONDUCT

§ 838.022, Fla. Stat.

To prove the crime of Official Misconduct, the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) **was a [public servant] [public contractor].**

2. While a [public servant] [public contractor], (defendant) **knowingly and intentionally [obtained a benefit for a person] [caused unlawful harm to another] by**

Give as applicable.

a. [falsifying] [causing another person to falsify] an [official record] [official document].

b. [concealing] [covering up] [destroying] [mutilating] [altering] an [official record] [official document] except as authorized by law or contract [or causing another person to perform such an act].

c. [obstructing] [delaying] [preventing] the communication of information relating to the commission of a felony that directly involved or affected the government entity served by (defendant)**.**

Definitions. Give as applicable.
§ 838.014(1), Fla. Stat.

"Benefit" means gain or advantage or anything regarded by the person to be benefited as a gain or advantage, including the doing of an act beneficial to any person in whose welfare he or she is interested, including any commission, gift, gratuity, property, commercial interest, or any other thing of economic value not authorized by law.

Give the following three paragraphs to explain "not authorized by law" in the definition of "benefit." Czajkowski v. State, 178 So. 3d 498 (Fla. 4th DCA 2015). § 838.014(1), Fla. Stat.

§ 112.313(2), Fla. Stat.

According to Florida law, no public officer, employee of an agency, local government attorney, or candidate for nomination or election shall solicit or accept anything of value to the recipient, including a gift, loan, reward, promise of future employment, favor, or service, based upon any understanding that the vote, official action, or judgment of the public

officer, employee, local government attorney, or candidate would be influenced thereby.

§ 112.313(4), Fla. Stat.

According to Florida law, no public officer, employee of an agency, or local government attorney or his or her spouse or minor child shall, at any time, accept any compensation, payment, or thing of value when such public officer, employee, or local government attorney knows, or, with the exercise of reasonable care, should know, that it was given to influence a vote or other action in which the officer, employee, or local government attorney was expected to participate in his or her official capacity.

§ 838.014(7)(a) Fla. Stat.

"Public servant" means any officer or employee of a governmental entity, including any executive, legislative, or judicial branch officer or employee.

§ 838.014(7)(b), Fla. Stat.

"Public servant" also includes any person, except a witness, who acts as a general or special magistrate, receiver, auditor, arbitrator, umpire, referee, consultant, or hearing officer while performing a governmental function.

§ 838.022(2)(a), Fla. Stat.

"Public servant" does not include a candidate who does not otherwise qualify as a public servant.

§ 838.014(6), Fla. Stat.

"Public contractor" means any person, who has entered into a contract with a governmental entity or any officer or employee of a person, who has entered into a contract with a governmental entity.

§ 838.014(4), Fla. Stat.

"Governmental entity" means an agency or entity of the state, a county, municipality, or special district or any other public entity created or authorized by law.

§ 1.01(3), Fla. Stat.

The terms "person" and "officer or employee of a person" as used in the definition of "public contractor" include individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations.

§ 838.014(5), Fla. Stat.

"Harm" means pecuniary or other loss, disadvantage, or injury to the person affected. "Pecuniary" means in the form of money.

§ 838.022(2)(b), Fla. Stat.

"Official Record" or "Official Document" includes only public records.

§ 119.011(12), Fla. Stat.

"Public Records" means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

§ 775.08(1), Fla. Stat.

"Felony" means any criminal offense punishable by death or imprisonment in excess of one year. The Court instructs you that the crime of (insert name of felony) **is a felony.**

Lesser Included Offenses

OFFICIAL MISCONDUCT — 838.022			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
None			
	Attempt	777.04(1)	5.1

Comment

This instruction was adopted in 2013 [123 So. 3d 54] and amended in 2017.

CHAPTER 20 — FRAUD

20.1 FRAUDULENT PRACTICES ACT [§§ 817.03–817.49 RESERVED]

20.2 FRAUD IN OBTAINING DRUGS [§ 831.30 RESERVED]

20.3 WELFARE FRAUD — FAILURE TO DISCLOSE A MATERIAL FACT

§ 414.39(1)(a), Fla. Stat.

To prove the crime of Welfare Fraud — Failure to Disclose a Material Fact, the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) **knowingly failed to disclose a material fact by false statement, misrepresentation, impersonation, or other fraudulent means.**

2. **The fact was [used] [to be used] to determine** (defendant's) **qualification to receive public assistance from any state or federally funded public assistance program.**

§ 414.39(5), Fla. Stat.

If you find (Defendant) **guilty of Welfare Fraud, you must also determine if the State proved beyond a reasonable doubt whether the value of the public assistance wrongfully [received] [retained] [misappropriated] [sought] [used] was:**

a. **less than an aggregate value of $200 in any 12 consecutive months.**

b. **an aggregate value of $200 or more, but less than $20,000 in any 12 consecutive months.**

c. **an aggregate value of $20,000 or more, but less than $100,000 in any 12 consecutive months.**

d. **$100,000 or more in any 12 consecutive months.**

§ 414.39(5)(e), Fla. Stat.

The value of a food assistance authorization benefit is the cash or exchange value unlawfully obtained by the fraudulent act.

Definitions. Give as applicable.

"Fraudulent" means the intent or purpose of suppressing the truth or perpetrating a deception.

§ 414.39(5)(f), Fla. Stat.

"Fraud" includes the introduction of fraudulent records into a computer system, the unauthorized use of computer facilities, the

intentional or deliberate alteration or destruction of computerized information or files, and the stealing of financial instruments, data, and other assets.

"Aid or abet" means help, assist, or facilitate.

"Knowingly" means with actual knowledge and understanding of the facts or the truth.

Optional Definition

"Knowingly" means an act done voluntarily and intentionally and not because of mistake or accident or other innocent reason. (Devitt & Blackmar — Federal Jury Practice and Instructions, Sec. 16.07)

Give if applicable. § 414.39(7), Fla. Stat.

It is not a defense that the defendant repaid the assistance or services obtained.

Inferences. Give as applicable. § 414.39(8)(a), Fla. Stat.

You may conclude that (defendant) **did receive public assistance from the state if you find that there was a paid state warrant made to the order of the defendant.**

§ 414.39(8)(b), Fla. Stat.

You may conclude that an identified recipient received public assistance from the state if you find that a transaction history generated by a Personal Identification Number (PIN) established a purchase or withdrawal by electronic benefit transfer.

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comment

This instruction was adopted in 1981 and amended in 2015.

20.4 WELFARE FRAUD — AIDING OR ABETTING

§ 414.39(1)(c), Fla. Stat.

To prove the crime of Welfare Fraud — Aiding or Abetting, the State must prove the following element beyond a reasonable doubt:

Give 1a and/or 1b as applicable.

1. (Defendant) **knowingly aided or abetted another person in failing to disclose:**

a. a change in circumstances in order to obtain or continue to receive state or federally funded public assistance to which [the other person was not entitled] [or in an amount larger than the other person was entitled].

b. a material fact, by false statement, misrepresentation, impersonation, or other fraudulent means, and the fact was [used] [to be used] to determine the person's qualification to receive state or federally funded public assistance.

§ 414.39(5), Fla. Stat.

If you find (Defendant) **guilty of Welfare Fraud, you must also determine if the State proved beyond a reasonable doubt whether the value of the public assistance wrongfully [received] [retained] [misappropriated] [sought] [used] was:**

a. less than an aggregate value of $200 in any 12 consecutive months.

b. an aggregate value of $200 or more, but less than $20,000 in any 12 consecutive months.

c. an aggregate value of $20,000 or more, but less than $100,000 in any 12 consecutive months.

d. $100,000 or more in any 12 consecutive months.

§ 414.39(5)(e), Fla. Stat.

The value of a food assistance authorization benefit is the cash or exchange value unlawfully obtained by the fraudulent act.

Definitions. Give as applicable.

"Fraudulent" means the intent or purpose of suppressing the truth or perpetrating a deception.

§ 414.39(5)(f), Fla. Stat.

"Fraud" includes the introduction of fraudulent records into a computer system, the unauthorized use of computer facilities, the intentional or deliberate alteration or destruction of computerized information or files, and the stealing of financial instruments, data, and other assets.

"Aid or abet" means help, assist, or facilitate.

"Knowingly" means with actual knowledge and understanding of the facts or the truth.

Optional Definition

"Knowingly" means an act done voluntarily and intentionally and not because of mistake or accident or other innocent reason. (Devitt & Blackmar — Federal Jury Practice and Instructions, Sec. 16.07)

Give if applicable. § 414.39(7), Fla. Stat.

It is not a defense that the defendant repaid the assistance or services obtained.

Inferences. Give as applicable.

§ 414.39(8)(a), Fla. Stat.

You may conclude that (defendant) **did receive public assistance from the state if you find that there was a paid state warrant made to the order of the defendant.**

§ 414.39(8)(b), Fla. Stat.

You may conclude that an identified recipient received public assistance from the state if you find that a transaction history generated by a Personal Identification Number (PIN) established a purchase or withdrawal by electronic benefit transfer.

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comment

This instruction was adopted in 1981 and amended in 2015.

20.5 WELFARE FRAUD — CHANGE IN CIRCUMSTANCES

§ 414.39(1)(b), Fla. Stat.

To prove the crime of Welfare Fraud — Change in Circumstances, the State must prove the following element beyond a reasonable doubt:

1. (Defendant) **knowingly failed to disclose a change in circumstances in order to obtain or continue to receive state or federally funded public assistance to which [he] [she] was not entitled [or in an amount larger than [he] [she] was entitled].**

§ 414.39(5), Fla. Stat.

If you find (Defendant) **guilty of Welfare Fraud, you must also determine if the State proved beyond a reasonable doubt whether the value of the public assistance wrongfully [received] [retained] [misappropriated] [sought] [used] was:**

a. less than an aggregate value of $200 in any 12 consecutive months.

b. an aggregate value of $200 or more, but less than $20,000 in any 12 consecutive months.

c. an aggregate value of $20,000 or more, but less than $100,000 in any 12 consecutive months.

d. $100,000 or more in any 12 consecutive months.

§ 414.39(5)(e), Fla. Stat.

The value of a food assistance authorization benefit is the cash or exchange value unlawfully obtained by the fraudulent act.

Definition.

"Knowingly" means with actual knowledge and understanding of the facts or the truth.

Optional Definition

"Knowingly" means an act done voluntarily and intentionally and not because of mistake or accident or other innocent reason. (Devitt & Blackmar Federal Jury Practice and Instructions, Sec. 16.07)

Give if applicable. § 414.39(7), Fla. Stat.

It is not a defense that the defendant repaid the assistance or services obtained.

Inferences. Give as applicable.

§ 414.39(8)(a), Fla. Stat.

You may conclude that (defendant) **did receive public assistance from the state if you find that there was a paid state warrant made to the order of the defendant.**

§ 414.39(8)(b), Fla. Stat.

You may conclude that an identified recipient received public assistance from the state if you find that a transaction history generated by a Personal Identification Number (PIN) established a purchase or withdrawal by electronic benefit transfer.

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comment

This instruction was adopted in 1981 and amended in 2015.

20.6 WELFARE FRAUD — [FOOD ASSISTANCE IDENTIFICATION CARD] [AUTHORIZATION] [CERTIFICATE OF ELIGIBILITY FOR MEDICAL SERVICES] [MEDICAID IDENTIFICATION CARD]

§ 414.39(2), Fla. Stat.

To prove the crime of Welfare Fraud — [Food Assistance Identification Card] [Authorization] [Certificate of Eligibility for Medical Services] [Medicaid Identification Card], the State must prove the following two elements beyond a reasonable doubt:

Give 1a, 1b, and/or 1c as applicable.

1. (Defendant) **knowingly:**

a. used, transferred, acquired, trafficked, altered, forged or possessed

b. attempted to use, transfer, acquire, traffic, alter, forge, or possess

c. aided and abetted another person in the use, transfer, acquisition, traffic, alteration, forgery or possession of [a food assistance identification card] [an authorization for the expenditure of food assistance benefits] [a certificate of eligibility for medical services] [a Medicaid identification card].

2. The use, transfer, acquisition, traffic, alteration, forgery, or possession was not authorized by law.

The law requires (*insert the appropriate law pertaining to the relevant item*).

§ 414.39(5), Fla. Stat.

If you find (Defendant) **guilty of Welfare Fraud, you must also determine if the State proved beyond a reasonable doubt whether the value of the public assistance or identification wrongfully [received] [retained] [misappropriated] [sought] [used] was:**

a. less than an aggregate value of $200 in any 12 consecutive months.

b. an aggregate value of $200 or more, but less than $20,000 in any 12 consecutive months.

c. an aggregate value of $20,000 or more, but less than $100,000 in any 12 consecutive months.

d. $100,000 or more in any 12 consecutive months.

§ 414.39(5)(e), Fla. Stat.

The value of a food assistance authorization benefit is the cash or exchange value unlawfully obtained by the fraudulent act.

Definitions. Give as applicable.

"Aid or abet" means help, assist, or facilitate.

§ 414.39(2)(b)

"Traffic" means

1. **Buying, selling, stealing, or otherwise effecting an exchange of food assistance benefits issued and accessed via electronic benefits transfer (EBT) cards, electronic benefits transfer (EBT) card numbers and personal identification numbers (PINs), or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone;**

2. **Attempting to buy, sell, steal, or otherwise effect an exchange of food assistance benefits issued and accessed via electronic benefits transfer (EBT) cards, electronic benefits transfer (EBT) card numbers and personal identification numbers (PINs), or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone;**

3. **Exchanging firearms, ammunition, explosives, or controlled substances for food assistance benefits;**

4. **Purchasing with food assistance benefits a product with the intent of obtaining cash or consideration other than eligible food by reselling the product, and subsequently intentionally reselling the product purchased with food assistance benefits in exchange for cash or consideration other than eligible food; or**

5. **Intentionally purchasing products originally purchased with food assistance benefits in exchange for cash or consideration other than eligible food.**

An "attempt" to commit a crime is the formation of an intent to commit that crime and the doing of some act toward the commission of the crime other than mere preparation to commit the crime.

"Knowingly" means with actual knowledge and understanding of the facts or the truth.

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.

Optional Definition

"Knowingly" means an act done voluntarily and intentionally and not because of mistake or accident or other innocent reason. (Devitt & Blackmar – Federal Jury Practice and Instructions, Sec. 16.07)

Give if applicable. § 414.39(7), Fla. Stat.

It is not a defense that the defendant repaid the assistance or services obtained [or returned the authorization or identification wrongfully obtained].

Inferences. Give as applicable.

§ 414.39(8)(a), Fla. Stat.

You may conclude that (defendant) **did receive public assistance from the state if you find that there was a paid state warrant made to the order of the defendant.**

§ 414.39(8)(b), Fla. Stat.

You may conclude that an identified recipient received public assistance from the state if you find that a transaction history generated by a Personal Identification Number (PIN) established a purchase or withdrawal by electronic benefit transfer.

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comment

This instruction was adopted in 1981 and amended in 2015 [175 So. 3d 782] and 2017.

20.6(a) WELFARE FRAUD — [SELLING] [ATTEMPTING TO SELL] AN EBT CARD

§ 414.39(2)(c), Fla. Stat.

To prove the crime of Welfare Fraud — [Selling] [Attempting to Sell] an EBT card, the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **possessed two or more electronic benefits transfer (EBT) cards.**

2. **The EBT cards were issued to someone other than** (defendant)**.**

3. (Defendant) **[sold] [attempted to sell] one or more of these EBT cards.**

Definitions.

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.

To "possess" an EBT card means the defendant was aware of the presence of the EBT card and exercised control over the EBT card.

Give if applicable.

An "attempt" to commit a crime is the formation of an intent to commit that crime and the doing of some act toward the commission of the crime other than mere preparation to commit the crime.

Enhancement. Give if applicable if the jury finds the defendant guilty of Welfare Fraud — [Selling] [Attempting to Sell] an EBT card. § 414.39(2)(c), Fla. Stat.

Now that you have found the defendant guilty of Welfare Fraud — [Selling] [Attempting to Sell] an EBT card, you must further determine whether the State has proven beyond a reasonable doubt that the defendant was previously convicted of the same crime.

"Conviction" means a determination of guilt which is the result of a plea or a trial, regardless of whether adjudication is withheld or a plea of nolo contendere is entered.

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comments

If a party requests a more complete instruction on the concept of possession, the trial judge can insert language from Instruction 25.7 (Possession of a Controlled Substance).

This instruction can be used for Welfare Fraud — [Selling] [Attempting to Sell] an EBT Card based on a prior conviction. For Felony Welfare Fraud — [Selling] [Attempting to Sell] an EBT Card based on a prior conviction, it is error to inform the jury of prior convictions until the verdict on the underlying Welfare Fraud — [Selling] [Attempting to Sell] an EBT Card is rendered. Therefore, if the information or indictment contains an allegation of a prior Welfare Fraud — [Selling] [Attempting to Sell] an EBT Card conviction, do not read that allegation and do not send the information or indictment into the jury room. If the defendant is found guilty of Welfare Fraud — [Selling] [Attempting to Sell] an EBT Card, the historical fact of prior convictions shall be determined separately by the jury in a bifurcated proceeding. *See State v. Harbaugh, 754 So. 2d 691 (Fla. 2000).*

This instruction was adopted in 2017.

20.7 WELFARE FRAUD — ADMINISTRATOR MISAPPROPRIATING

§§ 414.39(3)(a) and (3)(b), Fla. Stat.

To prove the crime of Welfare Fraud — Administrator Misappropriating, the State must prove the following [two] [three] elements beyond a reasonable doubt:

§ 414.39(3)(a), Fla. Stat.

1. (Defendant) **had duties [in the administration of a state or federally funded assistance program] [in the distribution of state or federally funded public assistance] [or] [in the authorizations or identifications of those to obtain public assistance under a state or federally funded public assistance program].**

2. (Defendant), **by virtue of [his] [her] position, [had been entrusted with] [gained possession of] [food assistance] [an authorization for food assistance] [a certificate of eligibility for prescribed medicine] [a Medicaid identification card] [or] [public assistance from any state or federally funded program].**

3. (Defendant) **[fraudulently misappropriated] [attempted to misappropriate] [or] [aided and abetted another in the misappropriation of] [food assistance] [an authorization for food assistance] [a certificate of eligibility for prescribed medicine] [a Medicaid identification card] [or] [public assistance from any state or federally funded program].**

§ 414.39(3)(b), Fla. Stat.

1. (Defendant) **had duties [in the administration of a state or federally funded assistance program] [in the distribution of state or federally funded public assistance] [or] [in the authorizations or identifications of those to obtain public assistance under a state or federally funded public assistance program].**

2. (Defendant) **knowingly [misappropriated] [attempted to misappropriate] [aided or abetted another in the misappropriation of] [funds given in exchange for food assistance program benefits] [any form of food assistance benefits authorization].**

§ 414.39(5), Fla. Stat.

If you find (Defendant) **guilty of Welfare Fraud, you must also determine if the State proved beyond a reasonable doubt whether the value of the public assistance or identification wrongfully [received] [retained] [misappropriated] [sought] [used] was:**

a. less than an aggregate value of $200 in any 12 consecutive months.

b. an aggregate value of $200 or more, but less than $20,000 in any 12 consecutive months.

c. an aggregate value of $20,000 or more, but less than $100,000 in any 12 consecutive months.

d. $100,000 or more in any 12 consecutive months.

§ 414.39(5)(e), Fla. Stat.

The value of a food assistance authorization benefit is the cash or exchange value unlawfully obtained by the fraudulent act.

Definitions. Give as applicable.

"Fraudulently" means purposely or intentionally suppressing the truth and/or perpetrating a deception.

§ 414.39(5)(f), Fla. Stat.

"Fraud" includes the introduction of fraudulent records into a computer system, the unauthorized use of computer facilities, the intentional or deliberate alteration or destruction of computerized information or files, and the stealing of financial instruments, data, and other assets.

An "attempt" to commit a crime is the formation of an intent to commit that crime and the doing of some act toward the commission of the crime other than mere preparation to commit the crime.

"Aid or abet" means help, assist or facilitate.

"Knowingly" means with actual knowledge and understanding of the facts or the truth.

Optional Definition

"Knowingly" means an act done voluntarily and intentionally and not because of mistake or accident or other innocent reason. (Devitt & Blackmar Federal Jury Practice and Instructions, Sec. 16.07)

Give if applicable. § 414.39(7), Fla. Stat.

It is not a defense that the defendant repaid the assistance or services obtained [or returned the authorization or identification wrongfully obtained].

Inferences. Give as applicable.

§ 414.39(8)(a), Fla. Stat.

You may conclude that (defendant) **did receive public assistance from the state if you find that there was a paid state warrant made to the order of the defendant.**

§ 414.39(8)(b), Fla. Stat.

You may conclude that an identified recipient received public assistance from the state if you find that a transaction history generated by a Personal Identification Number (PIN) established a purchase or withdrawal by electronic benefit transfer.

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comment

This instruction was adopted in 1981 and amended in 2015.

20.8 WELFARE FRAUD — ADMINISTRATOR FAILURE TO DISCLOSE

§ 414.39(3)(a), Fla. Stat.

To prove the crime of Welfare Fraud — Administrator Failure to Disclose, the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **had duties [in the administration of a state or federally funded assistance program] [in the distribution of state or federally funded public assistance] [or] [in the authorizations or identifications of those to obtain public assistance under a state or federally funded public assistance program].**

2. (Defendant) **knew that someone had misappropriated, attempted to misappropriate, or aided or abetted another in the misappropriation of [food assistance] [an authorization for food assistance] [a food assistance identification card] [a certificate of eligibility for prescribed medicine] [a Medicaid identification card] [public assistance from any state or federally funded program].**

3. (Defendant) **failed to disclose this fraudulent activity.**

§ 414.39(5), Fla. Stat.

If you find (Defendant) **guilty of Welfare Fraud, you must also determine if the State proved beyond a reasonable doubt whether the value of the public assistance or identification wrongfully [received] [retained] [misappropriated] [sought] [used] was:**

a. less than an aggregate value of $200 in any 12 consecutive months.

b. an aggregate value of $200 or more, but less than $20,000 in any 12 consecutive months.

c. an aggregate value of $20,000 or more, but less than $100,000 in any 12 consecutive months.

d. 100,000 or more in any 12 consecutive months.

§ 414.39(5)(e), Fla. Stat.

The value of a food assistance authorization benefit is the cash or exchange value unlawfully obtained by the fraudulent act.

Definitions. Give as applicable.

"Fraudulently" means purposely or intentionally suppressing the truth and/or perpetrating a deception.

§ 414.39(5)(f), Fla. Stat.

"Fraud" includes the introduction of fraudulent records into a computer system, the unauthorized use of computer facilities, the intentional or deliberate alteration or destruction of computerized information or files, and the stealing of financial instruments, data, and other assets.

"Aid or abet" means help, assist or facilitate.

An "attempt" to commit a crime is the formation of an intent to commit that crime and the doing of some act toward the commission of the crime other than mere preparation to commit the crime.

Give if applicable. § 414.39(7), Fla. Stat.

It is not a defense that the defendant repaid the assistance or services obtained [or returned the authorization or identification wrongfully obtained].

Inferences. Give as applicable.

§ 414.39(8)(a), Fla. Stat.

You may conclude that (defendant) **did receive public assistance from the state if you find that there was a paid state warrant made to the order of the defendant.**

§ 414.39(8)(b), Fla. Stat.

You may conclude that an identified recipient received public assistance from the state if you find that a transaction history generated by a Personal Identification Number (PIN) established a purchase or withdrawal by electronic benefit transfer.

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comment

This instruction was adopted in 1981 and amended in 2015.

20.9 WELFARE FRAUD — RECEIVING UNAUTHORIZED PAYMENTS

§ 414.39(4)(c), Fla. Stat.

To prove the crime of Welfare Fraud — Receiving Unauthorized Payments, the State must prove the following element beyond a reasonable doubt:

(Defendant) **knowingly received, attempted to receive, or aided and abetted in the receipt of unauthorized payment or other unauthorized public assistance or authorization or identification to obtain public assistance under any state or federally funded assistance program.**

§ 414.39(5), Fla. Stat.

If you find (Defendant) **guilty of Welfare Fraud, you must also determine if the State proved beyond a reasonable doubt whether the value of the public assistance or identification wrongfully [received] [retained] [misappropriated] [sought] [used] was:**

a. less than an aggregate value of $200 in any 12 consecutive months.

b. an aggregate value of $200 or more, but less than $20,000 in any 12 consecutive months.

c. an aggregate value of $20,000 or more, but less than $100,000 in any 12 consecutive months.

d. $100,000 or more in any 12 consecutive months.

§ 414.39(5)(e), Fla. Stat.

The value of a food assistance authorization benefit is the cash or exchange value unlawfully obtained by the fraudulent act.

Definitions. Give as applicable.

"Aid or abet" means help, assist, or facilitate.

An "attempt" to commit a crime is the formation of an intent to commit that crime and the doing of some act toward the commission of the crime other than mere preparation to commit the crime.

"Knowingly" means with actual knowledge and understanding of the facts or the truth.

Optional Definition

"Knowingly" means an act done voluntarily and intentionally and not because of mistake or accident or other innocent reason. (Devitt & Blackmar — Federal Jury Practice and Instructions, Sec. 16.07)

Give if applicable. § 414.39(7), Fla. Stat.

It is not a defense that the defendant repaid the assistance or services obtained [or returned the authorization or identification wrongfully obtained].

Inferences. Give as applicable.

§ 414.39(8)(a), Fla. Stat.

You may conclude that (defendant) **did receive public assistance from the state if you find that there was a paid state warrant made to the order of the defendant.**

§ 414.39(8)(b), Fla. Stat.

You may conclude that an identified recipient received public assistance from the state if you find that a transaction history generated by a Personal Identification Number (PIN) established a purchase or withdrawal by electronic benefit transfer.

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comment

This instruction was adopted in 1981 and amended in 2015.

20.10 WELFARE FRAUD — FILING WITHOUT CREDITING

§ 414.39(4)(b), Fla. Stat.

To prove the crime of Welfare Fraud — Filing Without Crediting, the State must prove the following element beyond a reasonable doubt:

(Defendant) **knowingly filed a claim for services to a recipient of benefits under a state or federally funded assistance program without crediting the state or its agents for payments received from social security, insurance, or other sources.**

§ 414.39(5), Fla. Stat.

If you find (Defendant) **guilty of Welfare Fraud, you must also determine if the State proved beyond a reasonable doubt whether the value of the public assistance wrongfully [received] [retained] [misappropriated] [sought] [used] was:**

a. less than an aggregate value of $200 in any 12 consecutive months.

b. an aggregate value of $200 or more, but less than $20,000 in any 12 consecutive months.

c. an aggregate value of $20,000 or more, but less than $100,000 in any 12 consecutive months.

d. $100,000 or more in any 12 consecutive months.

§ 414.39(5)(e), Fla. Stat.

The value of a food assistance authorization benefit is the cash or exchange value unlawfully obtained by the fraudulent act.

Definitions. Give as applicable.

"Knowingly" means with actual knowledge and understanding of the facts or the truth.

Optional Definition

"Knowingly" means an act done voluntarily and intentionally and not because of mistake or accident or other innocent reason. (Devitt & Blackmar — Federal Jury Practice and Instructions, Sec. 16.07)

Repayment not a defense. § 414.39(7), Fla. Stat.

It is not a defense that the defendant repaid the assistance or services obtained.

Inferences. Give as applicable.

§ 414.39(8)(a), Fla. Stat.

You may conclude that (defendant) **did receive public assistance from the state if you find that there was a paid state warrant made to the order of the defendant.**

§ 414.39(8)(b), Fla. Stat.

You may conclude that an identified recipient received public assistance from the state if you find that a transaction history generated by a Personal Identification Number (PIN) established a purchase or withdrawal by electronic benefit transfer.

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comment

This instruction was adopted in 1981 and amended in 2015.

20.11 WELFARE FRAUD — BILLING IN EXCESS

§ 414.39(4)(a), Fla. Stat.

To prove the crime of Welfare Fraud — Billing in Excess, the State must prove the following element beyond a reasonable doubt:

(Defendant) **knowingly billed the recipient of benefits under a state or federally funded assistance program, or [his] [her] family, for an amount in excess of that provided for by law or regulation.**

§ 414.39(5), Fla. Stat.

If you find (Defendant) **guilty of Welfare Fraud, you must also determine if the State proved beyond a reasonable doubt whether the amount wrongfully billed was:**

a. less than $200 in any 12 consecutive months.

b. $200 or more, but less than $20,000 in any 12 consecutive months.

c. $20,000 or more, but less than $100,000 in any 12 consecutive months.

d. $100,000 or more in any 12 consecutive months.

Definition.

"Knowingly" means with actual knowledge and understanding of the facts or the truth.

Optional Definition

"Knowingly" means an act done voluntarily and intentionally and not because of mistake or accident or other innocent reason. (Devitt & Blackmar — Federal Jury Practice and Instructions, Sec. 16.07)

Give if applicable. § 414.39(7), Fla. Stat.

It is not a defense that the defendant repaid assistance or services obtained.

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comment

This instruction was adopted in 1981 and amended in 2015.

20.12 WELFARE FRAUD — FILING FOR SERVICES NOT RENDERED

§ 414.39(4)(a), Fla. Stat.

To prove the crime of Welfare Fraud — Filing for Services not Rendered, the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) **knowingly filed, attempted to file, or aided and abetted in filing a claim for services to a recipient of benefits under a state or federally funded assistance program.**

2. **The claim was for services which were false, not rendered, or for unauthorized items or services.**

§ 414.39(5), Fla. Stat.

If you find (Defendant) **guilty of Welfare Fraud, you must also determine if the State proved beyond a reasonable doubt whether the value of the public assistance wrongfully [received] [retained] [misappropriated] [sought] [used] was:**

a. **less than an aggregate value of $200 in any 12 consecutive months.**

b. **an aggregate value of $200 or more, but less than $20,000 in any 12 consecutive months.**

c. **an aggregate value of $20,000 or more, but less than $100,000 in any 12 consecutive months.**

d. **$100,000 or more in any 12 consecutive months.**

§ 414.39(5)(e), Fla. Stat.

The value of a food assistance authorization benefit is the cash or exchange value unlawfully obtained by the fraudulent act.

Definitions. Give as applicable.

"Aid or abet" means help, assist or facilitate.

An "attempt" to commit a crime is the formation of an intent to commit that crime and the doing of some act toward the commission of the crime other than mere preparation to commit the crime.

"Knowingly" means with actual knowledge and understanding of the facts or the truth.

Optional Definition

"Knowingly" means an act done voluntarily and intentionally and not because of mistake or accident or other innocent reason. (Devitt & Blackmar — Federal Jury Practice and Instructions, Sec. 16.07)

Give if applicable. § 414.39(7), Fla. Stat.

It is not a defense that the defendant repaid the assistance or services obtained.

Inferences. Give as applicable.

§ 414.39(8)(a), Fla. Stat.

You may conclude that (defendant) **did receive public assistance from the state if you find that there was a paid state warrant made to the order of the defendant.**

§ 414.39(8)(b), Fla. Stat.

You may conclude that an identified recipient received public assistance from the state if you find that a transaction history generated by a Personal Identification Number (PIN) established a purchase or withdrawal by electronic benefit transfer.

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comment

This instruction was adopted in 1981 and amended in 2015.

20.13 [FRAUDULENT USE OF] [OR] [POSSESSION WITH INTENT TO FRAUDULENTLY USE] PERSONAL IDENTIFICATION INFORMATION

§ 817.568(2), Fla. Stat.

To prove the crime of [Fraudulent Use of] [Possession with Intent to Fraudulently Use] Personal Identification Information, the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) **willfully and without authorization [fraudulently used] [possessed with intent to fraudulently use] personal identification information concerning** (victim)**.**

2. [He] [She] did so without first obtaining the consent of (victim)**.**

Definitions. Give as applicable.

"Willfully" means intentionally, knowingly, and purposely.

"Fraudulently" means purposely or intentionally suppressing the truth or perpetrating a deception or both.

§ 817.568(1)(b), Fla. Stat.

"Authorization" means empowerment, permission, or competence to act.

§ 817.568(1)(f), Fla. Stat.

"Personal identification information" means any name or number that may be used, alone or in conjunction with any other information, to identify a specific person, including any name, postal or electronic mail address, telephone number, social security number, date of birth, mother's maiden name, official state or United States issued driver's license or identification number, alien registration number, government passport number, employer or taxpayer's identification number, Medicaid or food stamp account number, bank account number, credit or debit card number or personal identification number or code assigned to the holder of a debit card by the issuer to permit authorized use of such card, unique biometric data such as fingerprint, voice print, retina or iris image, or other unique physical representation, unique electronic identification number, address, or routing code, medical record, telecommunication identifying information or access device, or other number or information that can be used to access a person's financial resources.

§ 817.568(1)(e), Fla. Stat.

The word "person" includes individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations.

Possession.

To prove (defendant) "possessed personal identification information," the State must prove beyond a reasonable doubt that [he] [she] a) knew of the existence of the personal identification information and b) intentionally exercised control over that personal identification information.

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

Joint Possession.

Possession of personal identification information may be sole or joint, that is, two or more persons may possess the personal identification information.

Reclassifications.

Give only if applicable and only if Fraudulent Use is charged.

§ 817.568(2)(b) and (2)(c), Fla. Stat.

If you find (defendant) **guilty of Fraudulent Use of Personal Identification Information, you must then determine whether the State has further proved beyond a reasonable doubt that:**

a. the pecuniary benefit, the value of the services received, the payment sought to be avoided, or the amount of the injury or fraud perpetrated was $5,000 or more.

b. the pecuniary benefit, the value of the services received, the payment sought to be avoided, or the amount of the injury or fraud perpetrated was $50,000 or more.

c. the pecuniary benefit, the value of the services received, the payment sought to be avoided, or the amount of the injury or fraud perpetrated was $100,000 or more.

d. [he] [she] fraudulently used the personal identification information of 10 or more but fewer than 20 persons without their consent.

e. [he] [she] fraudulently used the personal identification information of 20 or more but fewer than 30 persons without their consent.

f. [he] [she] fraudulently used the personal identification information of 30 or more persons without their consent.

Give only if applicable but may be used if either Fraudulent Use or Possession with Intent to Fraudulently Use is charged.

§ 817.568(5), Fla. Stat. and § 119.011, Fla. Stat.

If you find (defendant) **guilty of [Fraudulent Use of] [Possession with Intent to Fraudulently Use] Personal Identification Information, you must then determine whether the State has further proved beyond a reasonable doubt that the crime was facilitated or furthered by the use of a public record. "Public record" means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.**

Give a. and/or b. only if applicable but may be used if either Fraudulent Use or Possession with Intent to Fraudulently Use is charged.

§ 817.568(10), Fla. Stat.

If you find (defendant**) guilty of [Fraudulent Use of] [Possession with Intent to Fraudulently Use] Personal Identification Information, you must then determine whether the State has further proved beyond a reasonable doubt that [he] [she], for the purpose of obtaining or using personal identification information,**

a. misrepresented [himself] [herself] to be [a law enforcement officer] [an employee or representative of a bank, credit card company, credit counseling company or credit reporting agency].

b. wrongfully represented that [he] [she] was seeking to assist (victim) **with** (victim's) **credit history.**

Lesser Included Offenses

[FRAUDULENT USE OF] [OR] [POSSESSION WITH INTENT TO FRAUDULENTLY USE] PERSONAL IDENTIFICATION INFORMATION — 817.568(2)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
*Unlawful Possession of the Personal Identification Information of Another Person		817.5685*	20.18(a)*
	Attempt	777.04(1)	5.1
	Harassment by use of personal identification information	817.568(4)	20.14
	Unauthorized possession of and other unlawful acts in relation to driver's license or identification card	322.212	

Comments

*It is unclear whether the courts will hold that a person charged solely with fraudulent use of personal identification information is necessarily charged with unlawful possession of personal identification information. In an abundance of caution, the Committee on Standard Jury Instructions in Criminal Cases put § 817.5685, Florida Statutes, in the Category One box.

This instruction was adopted in 2008 [980 So. 2d 1056] and amended in 2016 [202 So. 3d 830], and 2018.

20.14 HARASSMENT BY USE OF PERSONAL IDENTIFICATION INFORMATION

§ 817.568(4), Fla. Stat.

To prove the crime of Harassment by Use of Personal Identification Information, the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **willfully and without authorization [possessed] [used] [attempted to use] personal identification information concerning** (victim)**.**

2. **[He] [She] did so without first obtaining the consent of** (victim)**.**

3. **[He] [She] did so with the purpose of harassing** (victim)**.**

Definitions. Give as applicable.

"Willfully" means intentionally, knowingly, and purposely.

§ 817.568(1)(b), Fla. Stat.

"Authorization" means empowerment, permission, or competence to act.

§ 817.568(1)(f), Fla. Stat.

"Personal identification information" means any name or number that may be used, alone or in conjunction with any other information, to identify a specific person, including any name, postal or electronic mail address, telephone number, social security number, date of birth, mother's maiden name, official state or United States issued driver's license or identification number, alien registration number, government passport number, employer or taxpayer's identification number, Medicaid or food stamp account number, bank account number, credit or debit card number or personal identification number or code assigned to the holder of a debit card by the issuer to permit authorized use of such card, unique biometric data such as fingerprint, voice print, retina or iris image, or other unique physical representation, unique electronic identification number, address, or routing code, medical record, telecommunication identifying information or access device, or other number or information that can be used to access a person's financial resources.

§ 817.568(1)(e), Fla. Stat.

The word "person" includes individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations.

§ 817.568(1)(c), Fla. Stat.

"Harass" means to engage in conduct directed at a specific person that is intended to cause substantial emotional distress to such person and serves no legitimate purpose. "Harass" does not mean to use personal identification information for accepted commercial purposes and does not include constitutionally protected conduct such as organized protests.

Possession.

To prove (defendant) "possessed personal identification information," the State must prove beyond a reasonable doubt that [he] [she] a) knew of the existence of the personal identification information and b) intentionally exercised control over that personal identification information.

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

Joint Possession.

Possession of personal identification information may be sole or joint, that is, two or more persons may possess the personal identification information.

Reclassification. § 817.568(5), Fla. Stat. and § 119.011, Fla. Stat.

If you find (defendant) **guilty of Harassment by Use of Personal Identification Information, you must then determine whether the State has further proved beyond a reasonable doubt that the crime was facilitated or furthered by the use of a public record. "Public record" means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission,**

made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

Reclassification. § 817.568(10), Fla. Stat. Give a. and/or b. as applicable.

If you find (defendant) **guilty of Harassment by Use of Personal Identification Information, you must then determine whether the State has further proved beyond a reasonable doubt that [he] [she], for the purpose of obtaining or using personal identification information,**

a. misrepresented [himself] [herself] to be [a law enforcement officer] [an employee or representative of a bank, credit card company, credit counseling company or credit reporting agency].

b. wrongfully represented that [he] [she] was seeking to assist (victim) **with** (victim's) **credit history.**

Lesser Included Offense

HARASSMENT BY USE OF PERSONAL IDENTIFICATION INFORMATION — 817.568(4)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO
Unlawful Possession of Personal Identification Information of Another Person*		817.5685	20.18(a)
	Attempt (possession only)	777.04(1)	5.1
	Unauthorized possession of and other unlawful acts in relation to driver's license or identification card	322.212	

Comments

*It is unclear whether the courts will hold that a person charged solely with using personal identification information of another without consent is necessarily charged with unlawful possession of personal identification information. Also, if a person is charged solely with attempted use of personal identification information, unlawful possession of personal identification

information may or may not be a Category One lesser depending on the facts of the case. In an abundance of caution, the Committee on Standard Jury Instructions in Criminal Cases put § 817.5685, Florida Statutes, in the Category One box.

This instruction was adopted in 2007 [962 So. 2d 310] and amended in 2016 [202 So. 3d 830], and 2018.

20.15 FRAUDULENT USE OF PERSONAL IDENTIFICATION INFORMATION OF A [MINOR] [PERSON SIXTY YEARS OF AGE OR OLDER]

§ 817.568(6), Fla. Stat.

To prove the crime of Fraudulent Use of Personal Identification Information of a [Minor] [Person Sixty Years of Age or Older], the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **willfully and without authorization fraudulently used personal identification information concerning** (victim)**.**

2. **At the time,** (victim) **was [younger than 18 years of age] [60 years of age or older].**

3. (Defendant) **did so without first obtaining the consent of** (victim) **[or [his] [her] legal guardian].**

Definitions.

"Willfully" means intentionally, knowingly, and purposely.

"Fraudulently" means purposely or intentionally suppressing the truth or perpetrating a deception.

§ 817.568(1)(b), Fla. Stat.

"Authorization" means empowerment, permission, or competence to act.

§ 817.568(1)(f), Fla. Stat.

"Personal identification information" means any name or number that may be used, alone or in conjunction with any other information, to identify a specific person, including any name, postal or electronic mail address, telephone number, social security number, date of birth, mother's maiden name, official state or United States issued driver's license or identification number, alien registration number, government passport number, employer or taxpayer's identification number, Medicaid or food stamp account number, bank account number, credit or debit card number or personal identification number or code assigned to the holder of a debit card by the issuer to permit authorized use of such card, unique biometric data such as fingerprint, voice print, retina or iris image, or other unique physical representation, unique electronic identification number, address, or routing code, medical record, telecommunication identifying information or access device, or other number or information that can be used to access a person's financial resources.

§ 817.568(1)(e), Fla. Stat.

The word "person" includes individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations.

Reclassification. § 817.568(5), Fla. Stat. and § 119.011, Fla. Stat.

If you find (defendant) **guilty of Fraudulent Use of Personal Identification Information of a [Minor] [Person Sixty Years of Age or Older], you must then determine whether the State has further proved beyond a reasonable doubt that the crime was facilitated or furthered by the use of a public record. "Public record" means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.**

Reclassification. § 817.568(10), Fla. Stat. Give a. and/or b. as applicable.

If you find (defendant) **guilty of Fraudulent Use of Personal Identification Information of a [Minor] [Person Sixty Years of Age or Older], you must then determine whether the State has further proved beyond a reasonable doubt that [he] [she], for the purpose of obtaining or using personal identification information,**

a. misrepresented [himself] [herself] to be [a law enforcement officer] [an employee or representative of a bank, credit card company, credit counseling company or credit reporting agency].

b. wrongfully represented that [he] [she] was seeking to assist (victim) **with** (victim's) **credit history.**

Lesser Included Offense

FRAUDULENT USE OF PERSONAL IDENTIFICATION INFORMATION OF A [MINOR] [PERSON SIXTY YEARS OF AGE OR OLDER — 817.568(6)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
*Fraudulent Use of Personal Identification Information		817.568(2)(a)	20.13
*Unlawful Possession of the Personal Identification Information of Another Person		817.5685	20.18(a)
	Attempt	777.04(1)	5.1
	Unauthorized possession of and other unlawful acts in relation to driver's license or identification card	322.212	

Comments

*The part of § 817.568(2)(a), Fla. Stat., that covers the defendant willfully and without authorization fraudulently using the victim's personal identification information is a necessary lesser included offense of this crime. However, it is unclear whether the courts will hold that someone charged solely with fraudulent use of personal identification information is necessarily charged with possession with intent to fraudulently use personal identification information or unlawful possession of personal identification information. In an abundance of caution, the Committee on Standard Jury Instructions in Criminal Cases put all of § 817.568(2)(a), Fla. Stat., and § 817.5685, Fla. Stat., in the Category One box.

This instruction was adopted in 2007 [962 So. 2d 310] and amended in 2015 [176 So. 3d 938], 2016 [202 So. 3d 830], and 2018.

20.16 FRAUDULENT USE OF PERSONAL IDENTIFICATION INFORMATION OF A [MINOR] [PERSON 60 YEARS OF AGE OR OLDER] BY A PARENT, LEGAL GUARDIAN, OR PERSON WHO EXERCISED CUSTODIAL AUTHORITY

§ 817.568(7), Fla. Stat.

To prove the crime of Fraudulent Use of Personal Identification Information of a [Minor] [Person 60 Years of Age or Older] by a [Parent] [Legal Guardian] [or] [Person who Exercised Custodial Authority], the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **willfully and fraudulently used personal identification information concerning** (victim)**.**

2. At the time, (victim) **was [younger than 18 years of age] [60 years of age or older].**

3. (Defendant) **was [the parent of] [the legal guardian of] [exercised custodial authority over]** (victim) **at the time.**

Definitions.

"Willfully" means intentionally, knowingly, and purposely.

"Fraudulently" means purposely or intentionally suppressing the truth or perpetrating a deception.

§ 817.568(1)(f), Fla. Stat.

"Personal identification information" means any name or number that may be used, alone or in conjunction with any other information, to identify a specific person, including any name, postal or electronic mail address, telephone number, social security number, date of birth, mother's maiden name, official state or United States issued driver's license or identification number, alien registration number, government passport number, employer or taxpayer's identification number, Medicaid or food stamp account number, bank account number, credit or debit card number or personal identification number or code assigned to the holder of a debit card by the issuer to permit authorized use of such card, unique biometric data such as fingerprint, voice print, retina or iris image, or other unique physical representation, unique electronic identification number, address, or routing code, medical record, telecommunication identifying information or access device, or other number or information that can be used to access a person's financial resources.

§ 817.568(1)(e), Fla. Stat.

The word "person" includes individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations.

Reclassification. § 817.568(5), Fla. Stat. and § 119.011, Fla. Stat.

If you find (defendant) **guilty of Fraudulent Use of Personal Identification Information of a [Minor] [Person Sixty Years of Age or Older] By A [Parent] [Legal Guardian] [Person Who Exercised Custodial Authority], you must then determine whether the State has further proved beyond a reasonable doubt that the crime was facilitated or furthered by the use of a public record. "Public record" means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.**

Reclassification. § 817.568(10), Fla. Stat. Give a. and/or b. as applicable.

If you find (defendant) **guilty of Fraudulent Use of Personal Identification Information of a [Minor] [Person Sixty Years of Age or Older] By A [Parent] [Legal Guardian] [Person Who Exercised Custodial Authority], you must then determine whether the State has further proved beyond a reasonable doubt that [he] [she], for the purpose of obtaining or using personal identification information,**

a. misrepresented [himself] [herself] to be [a law enforcement officer] [an employee or representative of a bank, credit card company, credit counseling company or credit reporting agency].

b. wrongfully represented that [he] [she] was seeking to assist (victim) **with** (victim's) **credit history.**

Lesser Included Offense

FRAUDULENT USE OF PERSONAL IDENTIFICATION INFORMATION OF A [MINOR] [PERSON 60 YEARS OF AGE OR OLDER] BY A [PARENT] [LEGAL GUARDIAN] [PERSON WHO EXERCISED CUSTODIAL AUTHORITY] — 817.568(7)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Fraudulent Use of Personal Identification Information	817.568(2)(a)	20.13
	Unlawful Possession of Personal Identification Information of Another	817.5685	20.18(a)
	Unauthorized possession of and other unlawful acts in relation to driver's license or identification card	322.212	
	Attempt	777.04(1)	5.1

Comment

This instruction was adopted in 2007 [962 So. 2d 310] and amended in 2015 [176 So. 3d 938], 2016 [202 So. 3d 830], and 2018.

20.17 [FRAUDULENT USE OF] [OR] [POSSESSION WITH INTENT TO FRAUDULENTLY USE] PERSONAL IDENTIFICATION INFORMATION CONCERNING A [DECEASED INDIVIDUAL] [DISSOLVED BUSINESS ENTITY]

§ 817.568(8), Fla. Stat.

To prove the crime of [Fraudulent Use of] [Possession with Intent to Fraudulently Use] Personal Identification Information Concerning a [Deceased Individual] [Dissolved Business Entity], the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) **[willfully and fraudulently used] [possessed with intent to fraudulently use] personal identification information concerning** (victim)**.**

2. **At the time,** (victim) **was a [deceased individual] [dissolved business entity].**

Definitions. Give as applicable.

"Willfully" means intentionally, knowingly, and purposely.

"Fraudulently" means purposely or intentionally suppressing the truth or perpetrating a deception or both.

§ 817.568(1)(d), Fla. Stat.

"Individual" means a single human being and does not mean a firm, association of individuals, corporation, partnership, joint venture, sole proprietorship, or any other entity.

§ 817.568(1)(f), Fla. Stat.

"Personal identification information" means any name or number that may be used, alone or in conjunction with any other information, to identify a specific person or dissolved business entity, including any name, postal or electronic mail address, telephone number, social security number, date of birth, mother's maiden name, official state or United States issued driver's license or identification number, alien registration number, government passport number, employer or taxpayer's identification number, Medicaid or food stamp account number, bank account number, credit or debit card number or personal identification number or code assigned to the holder of a debit card by the issuer to permit authorized use of such card, unique biometric data such as fingerprint, voice print, retina or iris image, or other unique physical representation, unique electronic identification number, address, or routing code, medical record, telecommunication identifying

information or access device, or other number or information that can be used to access a person's financial resources.

Possession.

To prove (defendant) "possessed personal identification information," the State must prove beyond a reasonable doubt that [he] [she] a) knew of the existence of the personal identification information and b) intentionally exercised control over that personal identification information.

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

Joint Possession.

Possession of personal identification information may be sole or joint, that is, two or more persons may possess the personal identification information.

Reclassifications.

Give only if applicable and only if Fraudulent Use is charged.

§ 817.568(8)(b) and (8)(c), Fla. Stat.

If you find (defendant) **guilty of Fraudulent Use of Personal Identification Information of a [Deceased Individual] [Dissolved Business Entity], you must then determine whether the State has further proved beyond a reasonable doubt that:**

a. **the pecuniary benefit, the value of the services received, the payment sought to be avoided, or the amount of the injury or fraud perpetrated was $5,000 or more.**

b. **the pecuniary benefit, the value of the services received, the payment sought to be avoided, or the amount of the injury or fraud perpetrated was $50,000 or more.**

c. the pecuniary benefit, the value of the services received, the payment sought to be avoided, or the amount of the injury or fraud perpetrated was $100,000 or more.

d. [he] [she] fraudulently used the personal identification information of 10 or more but fewer than 20 [deceased individuals] [dissolved business entities].

e. [he] [she] fraudulently used the personal identification information of 20 or more but fewer than 30 [deceased individuals] [dissolved business entities].

f. [he] [she] fraudulently used the personal identification information of 30 or more [deceased individuals] [dissolved business entities]

Give only if applicable but may be used if either Fraudulent Use or Possession with Intent to Fraudulently Use is charged.

§ 817.568(5), Fla. Stat. and § 119.011, Fla. Stat.

If you find (defendant) **guilty of [Fraudulent Use of] [Possession with Intent to Fraudulently Use] Personal Identification Information, you must then determine whether the State has further proved beyond a reasonable doubt that the crime was facilitated or furthered by the use of a public record. "Public record" means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.**

Give a. and/or b. only if applicable but may be used if either Fraudulent Use or Possession with Intent to Fraudulently Use is charged.

§ 817.568(10), Fla. Stat.

If you find (defendant) **guilty of [Fraudulent Use of] [Possession with Intent to Fraudulently Use] Personal Identification Information, you must then determine whether the State has further proved beyond a reasonable doubt that [he] [she], for the purpose of obtaining or using personal identification information,**

a. misrepresented [himself] [herself] to be [a law enforcement officer] [an employee or representative of a bank, credit card

company, credit counseling company or credit reporting agency].

b. wrongfully represented that [he] [she] was seeking to assist (victim) **with** (victim's) **credit history.**

Lesser Included Offense

[FRAUDULENT USE OF] [OR] [POSSESSION WITH INTENT TO FRAUDULENTLY USE] PERSONAL IDENTIFICATION INFORMATION CONCERNING A [DECEASED INDIVIDUAL] [DISSOLVED BUSINESS ENTITY] — 817.568(8)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Unlawful Possession of Personal Identification Information of Another	817.5685	20.18(a)
	Unauthorized possession of and other unlawful acts in relation to driver's license or identification card	322.212	
	Attempt	777.04(1)	5.1

Comment

This instruction was adopted in 2008 [980 So. 2d 1056] and amended in 2016 [202 So. 3d 830] and 2018.

20.18 [FRAUDULENT CREATION OF] [FRAUDULENT USE OF] [POSSESSION WITH INTENT TO FRAUDULENTLY USE] COUNTERFEIT PERSONAL IDENTIFICATION INFORMATION

§ 817.568(9), Fla. Stat.

To prove the crime of [Fraudulent Creation of] [Fraudulent Use of] [Possession with Intent to Fraudulently Use] Counterfeit Personal Identification Information, the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **willfully and fraudulently [created] [used] [possessed with intent to fraudulently use] counterfeit or fictitious personal identification information.**

Give 2a or 2b as applicable.

2. a. The personal identification information concerned a fictitious individual.

b. The personal identification information concerned a real individual whose consent had not first been obtained.

3. [He] [She] did so with intent to use the counterfeit or fictitious personal identification information to commit or to facilitate the commission of a fraud on another person.

Definitions. Give as applicable.

"Willfully" means intentionally, knowingly, and purposely.

"Fraudulently" means purposely or intentionally suppressing the truth or perpetrating a deception.

§ 817.568(1)(f), Fla. Stat.

"Personal identification information" means any name or number that may be used, alone or in conjunction with any other information, to identify a specific person, including any name, postal or electronic mail address, telephone number, social security number, date of birth, mother's maiden name, official state or United States issued driver's license or identification number, alien registration number, government passport number, employer or taxpayer's identification number, Medicaid or food stamp account number, bank account number, credit or debit card number or personal identification number or code assigned to the holder of a debit card by the issuer to permit authorized use of such card, unique

biometric data such as fingerprint, voice print, retina or iris image, or other unique physical representation, unique electronic identification number, address, or routing code, medical record, telecommunication identifying information or access device, or other number or information that can be used to access a person's financial resources.

§ 817.568(1)(g), Fla. Stat.

"Counterfeit or fictitious personal identification information" means any counterfeit, fictitious or fabricated information in the similitude of the data just defined to you that, although not truthful or accurate, would in context lead a reasonably prudent person to credit its truthfulness and accuracy.

§ 817.568(1)(e), Fla. Stat.

The word "person" includes individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations.

Possession.

To prove (defendant) **"possessed counterfeit or fictitious personal identification information," the State must prove beyond a reasonable doubt that [he] [she] a) knew of the existence of the personal identification information and b) intentionally exercised control over that personal identification information.**

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

Joint Possession.

Possession of personal identification information may be sole or joint, that is, two or more persons may possess the personal identification information.

Reclassification. § 817.568(5), Fla. Stat. and § 119.011, Fla. Stat.

If you find (defendant) **guilty of [Fraudulent Creation of] [Fraudulent Use of] [Possession with Intent to Fraudulently Use] Counterfeit Personal Identification Information, you must then determine whether the State has further proved beyond a reasonable doubt that the crime was facilitated or furthered by the use of a public record. "Public record" means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.**

Reclassification. § 817.568(10), Fla. Stat. Give a. and/or b. as applicable.

If you find (defendant) **guilty of [Fraudulent Creation of] [Fraudulent Use of] [Possession with Intent to Fraudulently Use] Counterfeit Personal Identification Information, you must then determine whether the State has further proved beyond a reasonable doubt that [he] [she], for the purpose of obtaining or using personal identification information,**

a. misrepresented [himself] [herself] to be [a law enforcement officer] [an employee or representative of a bank, credit card company, credit counseling company or credit reporting agency].

b. wrongfully represented that [he] [she] was seeking to assist (victim) **with** (victim's) **credit history.**

Lesser Included Offense

FRAUDULENT CREATION, USE OR POSSESSION OF COUNTERFEIT PERSONAL IDENTIFICATION INFORMATION —817.568(9)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Unlawful Possession of Personal Identification Information of Another Person	817.5685	
	Unauthorized possession of and other unlawful acts in relation to driver's license or identification card	322.212	
	Attempt	777.04(1)	5.1

Comment

This instruction was adopted in 2007 [962 So. 2d 310] and amended in 2016 [202 So. 3d 830] and 2018.

20.18(a) UNLAWFUL POSSESSION OF THE PERSONAL IDENTIFICATION INFORMATION OF ANOTHER PERSON

§ 817.5685, Fla. Stat.

To prove the crime of Unlawful Possession of the Personal Identification Information of Another Person, the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) **[intentionally] [or] [knowingly] possessed the personal identification information of** (victim)**.**

2. (Defendant) **did not have authorization to do so.**

Possession.

To prove (defendant) **"possessed personal identification information," the State must prove beyond a reasonable doubt that [he] [she] a) knew of the existence of the personal identification information; and b) intentionally exercised control over that personal identification information.**

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

Joint Possession.

Possession of personal identification information may be sole or joint, that is, two or more persons may possess the personal identification information.

Enhancement. Give if applicable. § 817.5685(3)(b)2, Fla. Stat.

If you find (defendant) **guilty of Unlawful Possession of the Personal Identification Information of Another Person, you must then determine whether the State proved beyond a reasonable doubt that [he] [she] [intentionally] [or] [knowingly], and without authorization, possessed the personal identification information of five or more persons.**

Definitions.

§ 817.5685(1), Fla. Stat.

"Personal identification information" means a person's social security number, official state-issued or United States-issued driver license or identification number, alien registration number, government passport number, employer or taxpayer identification number, Medicaid or food assistance account number, bank account number, credit or debit card number, and medical records.

Give if applicable. § 817.5685(2), Fla. Stat.

The personal identification information can be in any form, including, but not limited to, mail, physical documents, identification cards, or information stored in digital form.

Give if applicable. Personal identification of five or more individuals. § 817.5685(3)(b)1., Fla. Stat.

Proof that (defendant) **used or was in possession of the personal identification information of five or more individuals, unless satisfactorily explained, gives rise to an inference that** (defendant) **used or was in possession of the personal identification information knowingly and intentionally without authorization.**

Affirmative defenses. Give as applicable. § 817.5685(4) and § 817.5685(5), Fla. Stats.

§ 817.5685, Fla. Stat., and case law are silent as to (1) which party bears the burden of persuasion of the affirmative defenses and (2) the standard for the burden of persuasion. Under the common law, defendants had both the burden of production and the burden of persuasion on affirmative defenses by a preponderance of the evidence.

The Florida Supreme Court has often decided, however, that once a defendant meets the burden of production on an affirmative defense, the burden of persuasion is on the State to disprove the affirmative defense beyond a reasonable doubt (e.g., self-defense and consent to enter in a burglary prosecution). In the absence of case law, trial judges must resolve the issue via a special instruction. See the opinion in Dixon v. United States, 548 U.S. 1 (2006), for further guidance.

It is a defense to the crime of Unlawful Possession of the Personal Identification Information of Another Person if, at the time of the possession, (defendant)**:**

a. **was under the reasonable belief that such possession was authorized by law or by the consent of** (victim)**.**

b. **obtained** (victim's) **personal identification information from a forum or resource that was open or available to the general public or from a public record.**

c. **was the parent or legal guardian of** (victim) **and** (victim) **was a child.**

d. **was appointed by a court to act as the guardian of** (victim) **and was authorized to possess** (victim's) **personal identification information and make decisions regarding access to that personal identification information.**

e. **was an employee of a governmental agency and possessed** (victim's) **personal identification information in the ordinary course of business.**

f. **was a person engaged in a lawful business and possessed** (victim's) **personal identification information in the ordinary course of business.**

g. **was a person who found a card or document issued by a governmental agency that contained** (victim's) **personal identification information and [he] [she] took reasonably prompt action to return that card or document to its owner, to the governmental agency that issued the card or document, or to a law enforcement agency.**

Lesser Included Offense

UNLAWFUL POSSESSION OF THE PERSONAL IDENTIFICATION INFORMATION OF ANOTHER PERSON — 817.5685

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempt	777.04(1)	5.1

Comment

This instruction was adopted in 2016 [190 So. 3d 614] and amended in 2018.

20.19 ORGANIZED FRAUD

817.034(4)(a), Fla. Stat.

To prove the crime of Organized Fraud, the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) **engaged in a scheme to defraud.**

2. (Defendant) **thereby obtained [property] [**(specify property if alleged in the information)**].**

Definitions. Give if applicable.

"Scheme to Defraud" means a systematic, ongoing course of conduct with intent to defraud one or more persons, or with intent to obtain property from one or more persons by false or fraudulent pretenses, representations, endorsements of nonconsenting parties, or promises or willful misrepresentations of a future act.

"Willful" means intentional, purposeful, and with knowledge.

"Obtain" means to temporarily or permanently deprive any person of the right to property or a benefit therefrom, or to appropriate the property to one's own use or to the use of any other person not entitled thereto.

"Property" means anything of value, and includes:

1. Real property, including things growing on, affixed to, or found in land;

2. Tangible or intangible personal property, including rights, privileges, interests, and claims; and

3. Services.

Degrees. Give as applicable.

If you find the defendant guilty of Organized Fraud, you must also determine if the State has proved beyond a reasonable doubt whether:

a. The aggregate value of the property obtained was $50,000 or more.

b. The aggregate value of the property obtained was $20,000 or more but less than $50,000.

c. The aggregate value of the property obtained was less than 20,000.

"Value" means value determined according to any of the following: The market value of the property at the time and place of the offense, or, if such cannot be satisfactorily ascertained, the cost of replacement of the property within a reasonable time after the offense.

If the exact value cannot be determined, you should attempt to determine a minimum value. If the minimum value of the property cannot be determined, you must find the value is less than $20,000.

Note to Judge. If the property obtained is a written instrument or trade secret that does not have a readily ascertainable market value, give the definition of "value" in s. 817.034(3)(e)1.b or1.c.

Reclassification. Give if § 817.034(4)(c), Fla. Stat. is charged.

If you find the defendant committed Organized Fraud, you must further determine whether the State proved beyond a reasonable doubt that the victim of the Organized Fraud was [65 years or older] [less than 18 years of age] [or] [a person with a mental or physical disability].

Give if applicable. § 775.0863, Fla. Stat.

"Mental or physical disability" means a condition of mental or physical incapacitation due to a developmental disability, organic brain damage, or mental illness, and one or more mental or physical limitations that restrict a person's ability to perform the normal activities of daily living.

Lesser Included Offenses

ORGANIZED FRAUD — 817.034(4)(a)			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
Grand theft – second degree		812.014(2)(b)1	14.1
Grand theft – third degree		812.014(2)(c)1, 2, 3	14.1
Petit theft – first degree		812.014(2)(e)	14.1
Petit theft – second degree		812.014(3)(a)	14.1
	Attempt	777.04(1)	5.1

Comment

This instruction was adopted in 2012 [87 So. 3d 679 (Fla. 2012)] and amended in 2013 [131 So. 3d 720], and on June 27, 2025.

20.19(a) COMMUNICATIONS FRAUD
817.034(4)(b), Fla. Stat.

To prove the crime of Communications Fraud, the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) **engaged in a scheme to defraud.**

2. **As part of the scheme to defraud,** (defendant) **communicated with** (victim) **with the intent to obtain property from** (victim)**.**

"Scheme to Defraud" means a systematic, ongoing course of conduct with intent to defraud one or more persons, or with intent to obtain property from one or more persons by false or fraudulent pretenses, representations, endorsements of nonconsenting parties, or promises or willful misrepresentations of a future act.

"Willful" means intentional, purposeful, and with knowledge.

Give relevant portions of definition as needed.

"Communicate" means to transmit or transfer or to cause another to transmit or transfer signs, signals, writing, images, sounds, data, or intelligences of any nature in whole or in part by mail, or by wire, radio, electromagnetic, photoelectronic, or photooptical system.

"Obtain" means to temporarily or permanently deprive any person of the right to property or a benefit therefrom, or to appropriate the property to one's own use or to the use of any other person not entitled thereto.

If you find the defendant guilty of Communications Fraud, you must also determine if the State proved beyond a reasonable doubt that the value of property obtained or endeavored to be obtained by the communication was [$300 or more] [less than $300].

§ 817.034(1) has additional definitions of value that should be added if applicable.

"Value" means the market value of the property at the time and place of the offense, or, if such cannot be satisfactorily ascertained, the cost of replacement of the property within a reasonable time after the offense.

If the exact value cannot be determined, you should attempt to determine a minimum value. If the minimum value of the property cannot be determined, you must find the value is less than $300.

"Property" means anything of value, and includes:

1. **Real property, including things growing on, affixed to, or found in land;**

2. **Tangible or intangible personal property, including rights, privileges, interests, and claims; and**

3. **Services.**

"Endeavor" means to attempt or try.

Reclassification. Give if § 817.034(4)(c), Fla. Stat. is charged.

If you find the defendant committed Communications Fraud, you must further determine whether the State proved beyond a reasonable doubt that (victim) **was [65 years or older] [less than 18 years of age] [or] [a person with a mental or physical disability].**

Give if applicable. § 775.0863, Fla. Stat.

"Mental or Physical Disability" means a condition of mental or physical incapacitation due to a developmental disability, organic brain damage, or mental illness, and one or more mental or physical limitations that restrict a person's ability to perform the normal activities of daily living.

Lesser Included Offenses

COMMUNICATIONS FRAUD — 817.034(4)(b)			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
Grand theft – third degree		812.014(2)(c)1, 2, 3	14.1
Petit theft – first degree		812.014(2)(e)	14.1
Petit theft – second degree		812.014(3)(a)	14.1
	Scheme to defraud	817.034(4)(a)3.	20.19

Comment

This instruction was adopted on June 27, 2025.

20.20 MORTGAGE FRAUD

§ 817.545(2) & (5), Fla. Stat.

In order to prove the crime of Mortgage Fraud, the State must prove the following element beyond a reasonable doubt:

(Defendant)**, with intent to defraud, knowingly:**

Give a, b, c, d, and/or e as applicable.

a. made any material [misstatement] [misrepresentation] [omission] during the mortgage lending process with the intent that the [misstatement] [misrepresentation] [omission] would be relied on by [a mortgage lender] [a borrower] [or] [any other person or entity] involved in the mortgage lending process];

b. used or facilitated the use of any material [misstatement] [misrepresentation] [omission] during the mortgage lending process with the intent that the material [misstatement] [misrepresentation] [omission] would be relied on by [a mortgage lender][a borrower] or [any other person or entity] involved in the mortgage lending process;

c. received any [proceeds] [or other funds] in connection with the mortgage lending process that [he] [she] knew resulted from the making of any material [misstatement] [misrepresentation] [omission] during the mortgage lending process that was made with the intent that the [misstatement] [misrepresentation] [omission] would be relied on by [a mortgage lender] [a borrower] [or] [any other person or entity] involved in the mortgage lending process];

d. received any [proceeds] [or other funds] in connection with the mortgage lending process that [he] [she] knew resulted from the use of any material [misstatement] [misrepresentation] [omission] during the mortgage lending process that was made with the intent that the material [misstatement] [misrepresentation] [omission] would be relied on by [a mortgage lender] [a borrower] or [any other person or entity] involved in the mortgage lending process];

e. filed or caused to be filed with the clerk of the circuit court for any Florida county a document involved in the mortgage lending process which contained a material [misstatement] [misrepresentation] [or] [omission].

Give if applicable. § 817.545(5)(b), Fla. Stat.

If you find that the defendant guilty of Mortgage Fraud, you must also determine if the State proved beyond a reasonable doubt whether the loan value stated on documents used in the mortgage lending process exceeded $100,000.

§ 817.545(2)(a) & (b), Fla. Stat.

Omissions on a loan application regarding employment, income, or assets for a loan which does not require this information are not considered material omissions for purposes of Mortgage Fraud.

§ 817.545(1), Fla. Stat.

Documents involved in the mortgage lending process include, but are not limited to, mortgages, deeds, surveys, inspection reports, uniform residential loan applications, or other loan applications; appraisal reports; HUD-1 settlement statements; supporting personal documentation for loan applications such as W-2 forms, verifications of income and employment, credit reports, bank statements, tax returns, and payroll stubs; and any required disclosures.

§ 817.545(1), Fla. Stat.

"Mortgage lending process" means the process through which a person seeks or obtains a residential mortgage loan, including, but not limited to, the solicitation, application or origination, negotiation of terms, third-party provider services, underwriting, signing and closing, and funding of the loan.

"Knowingly" means that the defendant is aware of the act and is not acting through ignorance, mistake or accident.

"Material" means a fact a reasonable person would use to decide whether to do or not to do something. A fact is material if it has the capacity or natural tendency to influence a person's decision. Any misrepresentation or concealment must be reasonably calculated to deceive persons of ordinary prudence and comprehension.

Lesser Included Offenses

MORTGAGE FRAUD — 817.545			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
None			
	Attempt	777.04(1)	5.1

Comment

The crime of Mortgage Fraud may not be predicated solely upon information lawfully disclosed under federal disclosure laws, regulations, or interpretations related to the mortgage lending process. See § 817.545(3), Fla. Stat.

This instruction was adopted in 2014.

20.21 FRAUDULENT USE OF PERSONAL IDENTIFICATION INFORMATION OF A [DISABLED ADULT] [PUBLIC SERVANT] [VETERAN] [FIRST RESPONDER] [STATE EMPLOYEE] [FEDERAL EMPLOYEE]

§ 817.568(11), Fla. Stat.

To prove the crime of Fraudulent Use of Personal Identification Information of a [Disabled Adult] [Public Servant] [Veteran] [First Responder] [State Employee] [Federal Employee], the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **willfully and without authorization fraudulently used personal identification information concerning** (victim)**.**

2. At the time, (victim) **was [a disabled adult] [a public servant] [a veteran] [a first responder] [a state employee] [a federal employee].**

3. (Defendant) **did so without first obtaining consent of** (victim)**.**

Definitions.

"Willfully" means intentionally, knowingly, and purposely.

"Fraudulently" means purposely or intentionally suppressing the truth or perpetrating a deception.

§ 817.568(1)(b), Fla. Stat.

"Authorization" means empowerment, permission, or competence to act.

§ 817.568(1)(f), Fla. Stat.

"Personal identification information" means any name or number that may be used, alone or in conjunction with any other information, to identify a specific person, including any name, postal or electronic mail address, telephone number, social security number, date of birth, mother's maiden name, official state or United States issued driver's license or identification number, alien registration number, government passport number, employer or taxpayer's identification number, Medicaid or food stamp account number, bank account number, credit or debit card number or personal identification number or code assigned to the holder of a debit card by the issuer to permit authorized use of such card, unique biometric data such as fingerprint, voice print, retina or iris image, or other unique physical representation, unique electronic identification number, address, or routing code, medical record, telecommunication

identifying information or access device, or other number or information that can be used to access a person's financial resources.

Give as applicable.

§ 825.101(3), Fla. Stat.

"Disabled adult" means a person 18 years of age or older who suffers from a condition of physical or mental incapacitation due to a developmental disability, organic brain damage, or mental illness, or who has one or more physical or mental limitations that restrict the person's ability to perform the normal activities of daily living.

§ 838.014(7), Fla. Stat.

"Public servant" means any officer or employee of a governmental entity, including any executive, legislative, or judicial branch officer or employee.

Give if applicable. § 838.014(7)(b) and (7)(c), Fla. Stat.

"Public servant" also includes any person, except a witness, who acts as a general or special magistrate, receiver, auditor, arbitrator, umpire, referee, consultant, or hearing officer while performing a governmental function or a candidate for election or appointment to any of these officer positions; or an individual who has been elected to, but has yet to officially assume the responsibilities of, public office.

§ 838.014(4), Fla. Stat.

"Governmental entity" means an agency or entity of the state, a county, municipality, or special district or any other public entity created or authorized by law.

§ 1.01(14), Fla. Stat.

"Veteran" means a person who served in the active military, naval, or air service and who was discharged or released under honorable conditions only or who later received an upgraded discharge under honorable conditions, notwithstanding any action by the United States Department of Veterans Affairs on individuals discharged or released with other than honorable discharges.

§ 125.01045(2), Fla. Stat.

"First responder" means a law enforcement officer, a firefighter, or an emergency medical technician or paramedic who is employed by the state or a local government. [A volunteer law enforcement officer, firefighter, or emergency medical technician or paramedic engaged by the state or a local government is also considered a first responder of the state or local government for purposes of this section.]

§ 943.10(10), Fla. Stat.

"Law enforcement officer" means any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.

§ 633.102(9), Fla. Stat.

"Firefighter" means an individual who holds a current and valid Firefighter Certificate of Compliance or Special Certificate of Compliance issued by the Division of State Fire Marshal within the Department of Financial Services.

§ 401.23(17), Fla. Stat.

"Paramedic" means a person who is certified by the Department of Health to perform basic and advanced life support.

Reclassification. § 817.568(5), Fla. Stat. and § 119.011, Fla. Stat.

If you find (defendant) **guilty of Fraudulent Use of Personal Identification Information of a [Disabled Adult] [Public Servant] [Veteran] [First Responder] [State Employee] [Federal Employee], you must then determine whether the State has further proved beyond a reasonable doubt that the crime was facilitated or furthered by the use of a public record. "Public record" means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.**

Reclassification. § 817.568(10), Fla. Stat. Give a. and/or b. as applicable.

If you find (defendant) **guilty of Fraudulent Use of Personal Identification Information of a [Disabled Adult] [Public Servant] [Veteran] [First Responder] [State Employee] [Federal Employee], you must then determine whether the State has further proved beyond a reasonable doubt that [he] [she], for the purpose of obtaining or using personal identification information,**

a. misrepresented [himself] [herself] to be [a law enforcement officer] [an employee or representative of a bank, credit card company, credit counseling company or credit reporting agency].

b. wrongfully represented that [he] [she] was seeking to assist (victim) **with** (victim's) **credit history.**

Lesser Included Offenses

FRAUDULENT USE OF PERSONAL IDENTIFICATION INFORMATION OF A [DISABLED ADULT] [PUBLIC SERVANT] [VETERAN] [FIRST RESPONDER] [STATE EMPLOYEE] [FEDERAL EMPLOYEE] — 817.568(11)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
*Fraudulent Use of Personal Identification Information		817.568(2)(a)	20.13
*Unlawful Possession of Personal Identification Information of Another		817.5685	20.18(a)
	Unauthorized possession of and other unlawful acts in relation to driver's license or identification card	322.212	
	Attempt	777.04(1)	5.1

Comments

*The part of § 817.568(2)(a), Fla. Stat., that covers the defendant willfully and without authorization fraudulently using the victim's personal identification information is a necessary lesser included offense of this crime. However, it is unclear whether the courts will hold that someone charged with fraudulent use of personal identification information is necessarily charged with possession with intent to fraudulently use personal identification information or unlawful possession of personal identification information. In an abundance of caution, the Committee on Standard Jury Instructions in Criminal Cases put all of § 817.568(2)(a), Fla. Stat., and § 817.5685, Fla. Stat., in the Category One box.

Both § 817.568(6), Fla. Stat., and § 817.568(11), Fla. Stat., criminalize Fraudulent Use of Personal Identification Information of a Person 60 Years of Age or Older. While both are second degree felonies, § 817.568(6), Fla. Stat., is listed in level 8 and § 817.568(11), Fla. Stat., is unlisted, which would make it a level 4, according to § 921.0023, Fla. Stat. If the State alleges that the defendant violated § 817.568(11), Fla. Stat., and that the victim was 60 years of age or older, the trial judge should instruct using the appropriate parts of Instruction 20.15.

This instruction was adopted in 2015 [176 So. 3d 938] and amended in 2016 [202 So. 3d 830] and 2018.

20.22 UNLAWFUL FILING OF FALSE [DOCUMENTS] [RECORDS] AGAINST [REAL] [PERSONAL] PROPERTY

§ 817.535(2), Fla. Stat.

To prove the crime of Unlawful Filing of False [Documents] [Records] Against [Real] [Personal] Property, the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **[filed] [or] [directed a filer to file] an instrument.**

2. **At the time,** (defendant) **had the intent to defraud or harass another.**

3. **The instrument contained a materially false, fictitious or fraudulent statement or representation that purported to affect an owner's interest in the property described in the instrument.**

Enhancements. Give if applicable.

§ 817.535(3), Fla. Stat.

If you find (defendant) **guilty of Unlawful Filing of False [Documents] [Records] Against [Real] [Personal] Property, you must also determine if the State proved beyond a reasonable doubt that the owner of the property subject to the false instrument was a public officer or employee.**

§ 817.535(4), Fla. Stat.

If you find (defendant) **guilty of Unlawful Filing of False [Documents] [Records] Against [Real] [Personal] Property, you must also determine if the State proved beyond a reasonable doubt that** (defendant) **committed the crime while [incarcerated in a jail or correctional institution] [participating in a pretrial diversion program under any form of pretrial release or bond] [on probation or parole] [under any postrelease supervision].**

§ 817.535(5), Fla. Stat.

If you find (defendant) **guilty of Unlawful Filing of False [Documents] [Records] Against [Real] [Personal] Property, you must also determine if the State proved beyond a reasonable doubt that the owner of the property covered by the false instrument incurred financial loss as a result of the instrument being recorded in the official record. Financial loss includes costs and attorney fees incurred in correcting, sealing, or removing the false instrument from the official record.**

Definitions. Give as applicable.

§ 817.535(1)(a), Fla. Stat.

"File" means to present an instrument for recording in an official record or to cause an instrument to be presented for recording in an official record.

§ 817.535(1)(b), Fla. Stat.

"Filer" means the person who presents an instrument for recording in an official record or causes an instrument to be presented for recording in an official record.

§ 817.535(1)(c), Fla. Stat.

"Instrument" means any judgment, mortgage, assignment, pledge, lien, financing statement, encumbrance, deed, lease, bill of sale, agreement, mortgage, notice of claim of lien, notice of levy, promissory note, mortgage note, release, partial release or satisfaction of any of the foregoing, or any other document that relates to or attempts to restrict the ownership, transfer, or encumbrance of or claim against real or personal property, or any interest in real or personal property.

§ 817.535(1)(d), Fla. Stat.

"Official Record" means the series of instruments, regardless of how they are maintained, which a clerk of the circuit court, or any person or entity designated by general law, special law, or county charter is required or authorized by law to record. The term also includes a series of instruments pertaining to the Uniform Commercial Code filed with the Secretary of State or with any entity under contract with the Secretary of State to maintain Uniform Commercial Code records and a database of judgment liens maintained by the Secretary of State.

§ 817.535(1)(e), Fla. Stat.

"Public officer or employee" means, but is not limited to:

1. **A person elected or appointed to a local, state, or federal office, including any person serving on an advisory body, board, commission, committee, council, or authority.**

2. **An employee of a state, county, municipal, political subdivision, school district, educational institution, special district agency or entity, including judges, attorneys, law enforcement officers, deputy clerks of court, and marshals.**

3. **A state or federal executive, legislative, or judicial officer, employee or volunteer authorized to perform actions or services for any state or federal executive, legislative or judicial office or agency.**

4. **A person who acts as a general or special magistrate, auditor, arbitrator, umpire, referee, hearing officer, or consultant to any state or local governmental entity.**

5. **A person who is a candidate for public office or judicial position.**

§ 817.535(2)(b), Fla. Stat.; State v. Harbaugh, 754 So. 2d 691 (Fla. 2000).

Give in the second part of a bifurcated proceeding if the defendant is charged with having a prior violation of § 817.535(2)(a), Fla. Stat.

Now that you have found (defendant) **guilty of Unlawful Filing of False [Documents] [Records] Against [Real] [Personal] Property, you must determine whether the State proved beyond a reasonable doubt that [he] [she] has committed the offense of Unlawful Filing of False [Documents] [Records] Against [Real] [Personal Property] a second or subsequent time.**

Lesser Included Offenses

UNLAWFUL FILING OF FALSE [DOCUMENTS] [RECORDS] AGAINST [REAL] [PERSONAL] PROPERTY — 817.535(2)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempt	777.04(1)	5.1

Comments

A special instruction will be necessary in the event the position held by the alleged public officer or employee is not listed within § 817.535(1)(e), Fla. Stat.

According to § 817.535(6), Fla. Stat., a person who fraudulently records a claim of lien in the official records pursuant to part I of chapter 713 is subject to the fraud provisions of § 713.31, Fla. Stat., and not § 817.535(6), Fla. Stat.

This instruction was adopted in 2016.

20.23 INSURANCE FRAUD (KNOWING MATERIAL FALSE STATEMENT IN SUPPORT OF A CLAIM)

§ 817.234(1)(a)1., Fla. Stat. or § 817.234(1)(a)2., Fla. Stat.

To prove the crime of Insurance Fraud, the State must prove the following four elements beyond a reasonable doubt:

Give 1a or 1b or both as applicable.

1. (Defendant)

a. presented or caused to be presented a written or oral statement to an insurer.

b. prepared or made a written or oral statement that [he] [she] intended to be presented to an insurer.

2. The written or oral statement was [a part of or in support of] [or] [in connection with*] a claim for payment [or other benefit] pursuant to an insurance policy [or a health maintenance organization subscriber or provider contract].

3. (Defendant) **did so knowing the written or oral statement contained false, incomplete, or misleading information concerning any fact or thing material to the claim.**

4. (Defendant) **did so with the intent to injure, defraud, or deceive the insurer.**

The intent with which an act is done is an operation of the mind and, therefore, is not always capable of direct and positive proof. It may be established by circumstantial evidence like any other fact in a case.

Definitions.

"Statement" includes, but is not limited to, any [notice] [statement] [proof of loss] [bill of lading] [invoice] [account] [estimate of property damages] [bill for services] [diagnosis] [prescription] [hospital or doctor records] [X ray], [test result] [or other evidence of loss, injury, or expense].

"Insurer" means any insurer, health maintenance organization, self-insurer, self-insurance fund, or similar entity or person regulated under chapter 440 or chapter 641 or by the Office of Insurance Regulation under the Florida Insurance Code.

"Material" means a fact a reasonable person would use to decide whether to do or not to do something. A fact is material if it has the capacity or natural tendency to influence a person's decision.

If you find the defendant guilty of Insurance Fraud, you must determine whether the State proved beyond a reasonable doubt that the value of the property involved was:

a. $100,000 or more.

b. $20,000 or more but less than $100,000.

c. less than $20,000

§ 812.012, Fla. Stat.

"Property" means anything of value, and includes real property, including things growing on, affixed to and found in land; and tangible or intangible personal property, including rights, privileges, interests and claims; and services.

"Value" means the market value of the property at the time and place of the offense, or if that value cannot be satisfactorily ascertained, the cost of replacement of the property within a reasonable time after the offense.

In the case of a written instrument that does not have a readily ascertainable market value, such as a check, draft, or promissory note, the value is the amount due or collectible, or is, in the case of any other instrument that creates, releases, discharges or otherwise affects any valuable legal right, privilege, or obligation, the greatest amount of economic loss that the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

If the value of the property cannot be ascertained, you should attempt to determine a minimum value. If you cannot determine the minimum value, you must find the value is less than $100.

Amounts of value of separate properties pursuant to one scheme or course of conduct may be totaled.

Lesser Included Offense

INSURANCE FRAUD — 817.234(1)(a)			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
None			
	Theft	812.014	14.1

Comments

* § 817.234, Fla. Stat., contains many ways to commit the crime of Insurance Fraud. This instruction is designed solely for § 817.234(1)(a)1. or § 817.234(1)(a)2., Fla. Stat. However, the alternative of "in connection with" in element #2 applies only to § 817.234(1)(a)2., Fla. Stat., and not to § 817.234(1)(a)1., Fla. Stat.

This instruction was adopted on February 21, 2025.

20.24 INSURANCE FRAUD (FALSE STATEMENT IN SUPPORT OF AN INSURANCE APPLICATION)

§ 817.234(1)(a)3.a., Fla. Stat.

To prove the crime of Insurance Fraud, the State must prove the following four elements beyond a reasonable doubt:

Give 1a or 1b or both as applicable.

1. (Defendant)

a. knowingly presented or knowingly caused to be presented a written or oral statement to any

b. prepared or made a written or oral statement knowing or believing it would be presented to any

[insurer]

[purported insurer]

[servicing corporation]

[insurance broker]

[insurance agent]

[an employee or agent of an [insurer] [purported insurer] [servicing corporation] [insurance broker] [insurance agent]].

2. The written or oral statement was a part of or in support of an application for the issuance of [or rating of] any insurance policy [or a health maintenance organization subscriber or provider contract].

3. The written or oral statement contained false, incomplete, or misleading information.

4. (Defendant) **did so with the intent to injure, defraud, or deceive an insurer.**

The intent with which an act is done is an operation of the mind and, therefore, is not always capable of direct and positive proof. It may be established by circumstantial evidence like any other fact in a case.

Definitions. § 817.234, Fla. Stat.

"Statement" includes, but is not limited to, any [notice] [statement] [proof of loss] [bill of lading] [invoice] [account] [estimate of property damages] [bill for services] [diagnosis] [prescription] [hospital or doctor records] [X ray], [test result] [or other evidence of loss, injury, or expense].

"Insurer" means any insurer, health maintenance organization, self-insurer, self-insurance fund, or similar entity or person regulated under chapter 440 or chapter 641 or by the Office of Insurance Regulation under the Florida Insurance Code.

If you find the defendant guilty of Insurance Fraud, you must determine whether the State proved beyond a reasonable doubt that the value of the property involved was:

a. $100,000 or more.

b. $20,000 or more but less than $100,000.

c. less than $20,000

§ 812.012, Fla. Stat.

"Property" means anything of value, and includes real property, including things growing on, affixed to and found in land; and tangible or intangible personal property, including rights, privileges, interests and claims; and services.

"Value" means the market value of the property at the time and place of the offense, or if that value cannot be satisfactorily ascertained, the cost of replacement of the property within a reasonable time after the offense.

In the case of a written instrument that does not have a readily ascertainable market value, such as a check, draft, or promissory note, the value is the amount due or collectible, or is, in the case of any other instrument that creates, releases, discharges or otherwise affects any valuable legal right, privilege, or obligation, the greatest amount of economic loss that the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

If the value of the property cannot be ascertained, you should attempt to determine a minimum value. If you cannot determine the minimum value, you must find the value is less than $100.

Amounts of value of separate properties pursuant to one scheme or course of conduct may be totaled.

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comments

§ 817.234, Fla. Stat. contains many ways to commit the crime of Insurance Fraud. This instruction is designed solely for § 817.234(1)(a)3.a., Fla. Stat.

This instruction was adopted on February 21, 2025.

20.25 INSURANCE FRAUD (KNOWINGLY CONCEALING MATERIAL INFORMATION)

§ 817.234(1)(a)3.b., Fla. Stat.

To prove the crime of Insurance Fraud, the State must prove the following three elements beyond a reasonable doubt:

Give 1a or 1b or both as applicable.

1. (Defendant)

a. knowingly presented or knowingly caused to be presented a written or oral statement to any

b. prepared or made a written or oral statement knowing or believing it would be presented to any

[insurer]

[purported insurer]

[servicing corporation]

[insurance broker]

[insurance agent]

[an employee or agent of an [insurer] [purported insurer] [servicing corporation] [insurance broker] [insurance agent]].

2. The written or oral statement was a part of or in support of an application for the issuance of [or rating of] any insurance policy [or a health maintenance organization subscriber or provider contract].

3. (Defendant) **did so with the intent to injure, defraud, or deceive an insurer by knowingly concealing information concerning any fact material to the application.**

The intent with which an act is done is an operation of the mind and, therefore, is not always capable of direct and positive proof. It may be established by circumstantial evidence like any other fact in a case.

Definitions. § 817.234, Fla. Stat.

"Statement" includes, but is not limited to, any [notice] [statement] [proof of loss] [bill of lading] [invoice] [account] [estimate of property damages] [bill for services] [diagnosis] [prescription] [hospital or doctor records] [X ray], [test result] [or other evidence of loss, injury, or expense].

"Insurer" means any insurer, health maintenance organization, self-insurer, self-insurance fund, or similar entity or person regulated under chapter 440 or chapter 641 or by the Office of Insurance Regulation under the Florida Insurance Code.

"Material" means a fact a reasonable person would use to decide whether to do or not to do something. A fact is material if it has the capacity or natural tendency to influence a person's decision.

If you find the defendant guilty of Insurance Fraud, you must determine whether the State proved beyond a reasonable doubt that the value of the property involved was:

a. $100,000 or more.

b. $20,000 or more but less than $100,000.

c. less than $20,000

§ 812.012, Fla. Stat.

"Property" means anything of value, and includes real property, including things growing on, affixed to and found in land; and tangible or intangible personal property, including rights, privileges, interests and claims; and services.

"Value" means the market value of the property at the time and place of the offense, or if that value cannot be satisfactorily ascertained, the cost of replacement of the property within a reasonable time after the offense.

In the case of a written instrument that does not have a readily ascertainable market value, such as a check, draft, or promissory note, the value is the amount due or collectible, or is, in the case of any other instrument that creates, releases, discharges or otherwise affects any valuable legal right, privilege, or obligation, the greatest amount of economic loss that the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

If the value of the property cannot be ascertained, you should attempt to determine a minimum value. If you cannot determine the minimum value, you must find the value is less than $100.

Amounts of value of separate properties pursuant to one scheme or course of conduct may be totaled.

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comments

§ 817.234, Fla. Stat. contains many ways to commit the crime of Insurance Fraud. This instruction is designed solely for § 817.234(1)(a)3.b., Fla. Stat.

This instruction was adopted on February 21, 2025.

20.26 FRAUDULENT [SALE] [LEASE] OF REAL PROPERTY

§ 817.0311, Fla. Stat.

To prove the crime of Fraudulent [Sale] [Lease] of Real Property, the State must prove the following element beyond a reasonable doubt:

Give as applicable.

(Defendant)

a. listed or advertised real property for sale knowing that the purported seller had no legal title or authority to sell the property.

b. rented or leased real property to another person knowing that [he] [she] had no lawful ownership or leasehold interest in the property.

Lesser Included Offense

FRAUDULENT [SALE] [LEASE] OF REAL PROPERTY — 817.0311

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS.NO.
None			
	Theft	812.014	14.1

Comment

This instruction was adopted on February 21, 2025, and amended on September 5, 2025.

20.27 PRESENTING A FALSE DOCUMENT TO DETAIN OR REMAIN UPON REAL PROPERTY

§ 817.03(2), Fla. Stat.

To prove the crime of Presenting a False Document to Obtain or Detain Upon Real Property, the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) k**nowingly and willfully presented a false document to** (victim) **that purported to be a valid [lease agreement] [deed] [or] [other instrument conveying a real property right].**

2. (Defendant) **did so with the intent to detain or remain upon real property.**

The intent with which an act is done is an operation of the mind and, therefore, is not always capable of direct and positive proof. It may be established by circumstantial evidence like any other fact in a case.

"Knowingly" means that the defendant was aware of the fact and was not acting through ignorance, mistake, or accident.

"Willfully" means intentionally and purposely.

§ 192.001, Fla. Stat.

"Real property" means land, buildings, fixtures, and all other improvements to land. The terms "land," "real estate," "realty," and "real property" may be used interchangeably.

Lesser Included Offense

PRESENTING A FALSE DOCUMENT TO DETAIN OR REMAIN UPON RAEAL PROPERTY — 817.03(2)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempt	777.04(1)	5.1

Comment

This instruction was adopted on February 21, 2025.

20.28 [FAILURE TO SECURE] [FRAUDULENT ACTS PERTAINING TO] WORKER'S COMPENSATION INSURANCE

§ 440.105 (4)(a)1., and (4)(a)3., Fla. Stat.

To prove the crime of [Failing to Secure] [Fraudulent Acts Pertaining to] Worker's Compensation Insurance, the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) **was an employer.**

2. (Defendant) **knowingly**

Give as applicable.

a. presented or caused to be presented any false, fraudulent, or misleading oral or written statement to any person as evidence of compliance with Florida Statute 440.38.

b. failed to secure worker's compensation insurance coverage when required to do so.

If you find the defendant guilty of [Failure to Secure] [Fraudulent Acts Pertaining to] Worker's Compensation Insurance, you must determine whether the State proved beyond a reasonable doubt that the monetary value involved was:

a. $100,000 or more.

b. $20,000 or more but less than $100,000.

c. less than $20,000

"Knowingly" means that the defendant was aware of the fact and was not acting through ignorance, mistake, or accident.

The intent with which an act is done is an operation of the mind and, therefore, is not always capable of direct and positive proof. It may be established by circumstantial evidence like any other fact in a case.

Additional language from the definition of "employer" in § 440.02, Fla. Stat may need to be added.

"Employer" means all public and quasi-public corporations therein, and every person carrying on any employment. [If the employer is a corporation, parties in actual control of the corporation, including, but not limited to, the president, officers who exercise broad corporate

powers, directors, and all shareholders who directly or indirectly own a controlling interest in the corporation, are considered the employer.]

The Court instructs you that Florida Statute 440.38 requires that 1) every employer must secure and pay for workmen's compensation insurance; and 2) the employer must provide satisfactory proof to the Florida Self-Insurance Guaranty Association that it has the necessary financial strength to ensure timely payment of all current and future claims.

Lesser Included Offense

[FAILURE TO SECURE] [FRAUDULENT ACTS PERTAINING TO] WORKER'S COMPENSATION INSURANCE — § 440.105(4)(a)1., AND (4)(a)3.

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempt	777.04	5.1

Comments

This instruction will need additional language from Chapter 440 if the case involves independent contractors or sub-contractors or other exemptions.

This instruction was adopted on June 27, 2025.

20.29 FRAUDULENT ACTS PERTAINING TO WORKER'S COMPENSATION INSURANCE

§ 440.105(4)(b), Fla. Stat.

To prove the crime of Fraudulent Acts Pertaining to Worker's Compensation Insurance, the State must prove the following element beyond a reasonable doubt:

Give as applicable.

(Defendant):

a. knowingly made or caused to be made, any false, fraudulent, or misleading oral or written statement for the purpose of obtaining or denying any benefit or payment for worker's compensation.

b. presented or caused to be presented any written or oral statement as part of, or in support of, a claim for payment or other benefit for worker's compensation knowing that such statement contained any false, incomplete, or misleading information concerning any fact or thing material to such claim.

c. prepared or caused to be prepared any written or oral statement that was intended to be presented to any employer, insurance company, or self-insured program in connection with, or in support of, any claim for payment or other benefit for worker's compensation, knowing that such statement contained any false, incomplete, or misleading information concerning any fact or thing material to such claim.

d. [knowingly made any false, fraudulent, or misleading oral or written statement] [or] [knowingly omitted or concealed material information required by Florida Statute [440.185] [440.381]], for the purpose of obtaining worker's compensation coverage or for the purpose of avoiding, delaying, or diminishing the amount of payment of any worker's compensation premiums.

e. knowingly misrepresented or concealed payroll, classification of workers, or information regarding an employer's loss history which would be material to the computation and application of an experience rating modification factor for the purpose of avoiding or diminishing the amount of payment of any worker's' compensation premiums.

f. knowingly presented or caused to be presented any false, fraudulent, or misleading oral or written statement to any person as evidence of [compliance with Florida Statute 440.38] [eligibility for a certificate of exemption under Florida Statute 440.05].

g. knowingly violated a stop-work order issued by the Department of Financial Services pursuant to Florida Statute 440.107.

h. knowingly presented or caused to be presented any false, fraudulent, or misleading oral or written statement to any person as evidence of identity for the purpose of [obtaining employment or filing or supporting a claim for worker's' compensation benefits.

i. knowingly assisted, or conspired with, or urged any person to engage in the following activity: (insert prohibited activity).

If you find the defendant guilty of [Failure to Secure] [Fraudulent Acts Pertaining to] Workman's Compensation Insurance, you must determine whether the State proved beyond a reasonable doubt that the monetary value involved was:

a. $100,000 or more.

b. $20,000 or more but less than $100,000.

c. less than $20,000

Give as applicable. Additional definitions from § 440.02, Fla. Stat., may be necessary.

"Knowingly" means that the defendant was aware of the fact and was not acting through ignorance, mistake, or accident.

The intent with which an act is done is an operation of the mind and, therefore, is not always capable of direct and positive proof. It may be established by circumstantial evidence like any other fact in a case.

The Court instructs you that Florida Statute 440.38 requires that 1) every employer must secure and pay for workmen's compensation insurance; and 2) the employer must provide satisfactory proof to the Florida Self-Insurance Guaranty Association that it has the necessary financial strength to ensure timely payment of all current and future claims.

"Material" means a fact a reasonable person would use to decide whether to do or not to do something. A fact is material if it has the capacity or natural tendency to influence a person's decision.

"Statement" includes, but is not limited to, any [notice] [statement] [proof of loss] [bill of lading] [invoice] [account] [estimate of property damages] [bill for services] [diagnosis] [prescription] [hospital or doctor records] [X ray], [test result] [or other evidence of loss, injury, or expense].

Lesser Included Offense

FRAUDULENT ACTS PERTAINING TO WORKER'S COMPENSATION INSURANCE § 440.105(4)(b)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempt	777.04	5.1

Comments

This instruction will need additional language from Chapter 440 if the case involves independent contractors or sub-contractors or other exemptions, or defenses.

This instruction was adopted on June 27, 2025.

20.30 FRAUDULENT USE OF A GIFT CARD

§ 817.091(2), Fla. Stat.

To prove the crime of Fraudulent Use of a Gift Card, the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant)

Give as applicable:

a. acquired or retained possession of a [gift card] [gift card redemption information] without the consent of the [cardholder] [card issue] [gift card seller].

b. altered or tampered with a gift card or its packaging.

c. devised a scheme to obtain a [gift card] [gift card redemption information] from [a] [cardholder] [card issuer] [gift card seller] by means of false or fraudulent pretenses, representations, or promises.

d. used, for the purpose of obtaining [money] [goods] [services] or anything else of value, a [gift card] [gift card redemption information] that had been obtained (insert the way that § 817.091(2), Fla. Stat. had been violated)**.**

2. [He] [She] did so with the intent to defraud.

The intent with which an act is done is an operation of the mind and, therefore, is not always capable of direct and positive proof. It may be established by circumstantial evidence like any other fact in a case.

Give if applicable.

If you find the defendant guilty of Fraudulent Use of a Gift Card, you must also determine if the State proved beyond a reasonable doubt that the value of any [gift card(s)] [gift card redemption information] [money] [goods] [services] [or other thing of value] obtained exceeded $750.

"Value" means the greatest amount of economic loss the card issuer, gift card seller, or cardholder might reasonably suffer, including the full or maximum monetary face or load value of the gift card, regardless of whether the gift card has been activated.

The value of any [gift card] [gift card redemption information] [money] [goods] [services] [or other thing of value] obtained may be aggregated to determine the total value.

"Defraud" means to obtain something from another by deception.

Give definitions below as applicable.

"Cardholder" means a person to whom a physical or virtual gift card is sold, gifted, or issued following the authorized sale of the gift card.

"Card issuer" means a person that issues a gift card or the agent of that person with respect to that card.

"Gift card" means a physical or virtual card, code, or device that may be issued to a consumer on a prepaid basis primarily for personal, family, or household purposes in a specified amount, regardless of whether that amount may be increased or reloaded in exchange for payment, and that is redeemable upon presentation by a consumer at a single merchant, a group of affiliated merchants, or a group of unaffiliated merchants.

"Gift card redemption information" means information unique to each gift card which allows the cardholder to access, transfer, or spend the funds on that gift card.

"Gift card seller" means a merchant that is engaged in the business of selling gift cards to consumers.

"Possession" of an item means the State must prove beyond a reasonable doubt that the defendant a) knew of the existence of the item and b) intentionally exercised control over that item.

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

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

Lesser Included Offense

20.30 FRAUDULENT USE OF A GIFT CARD – 817.091(2)			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS.NO.**
None			
	Theft	812.014	14.1

Comments

Fraudulent Use of a Gift Card becomes a third degree felony if the defendant had previously been convicted of violating § 817.091(2), Fla. Stat.

As of February 2026, it was undecided whether a prior conviction is an element of the crime that must be proven to the jury beyond a reasonable doubt or is a recidivist factor that can be proven to the judge at sentencing under the preponderance of the evidence standard. If treated as an element, it is error to inform the jury of the prior conviction prior to a verdict. If the charging document contains an allegation of a prior conviction, do not read that allegation and do not send the charging document into the jury room. If the defendant is found guilty of Fraudulent Use of a Gift Card, the historical fact of a prior conviction should be determined in a bifurcated proceeding.

As of February 2026, it was also unclear whether a prior conviction requires an adjudication of guilt.

This instruction was adopted on March 20, 2026.

CHAPTER 21 — OBSTRUCTION OF JUSTICE

21.1 RESISTING OFFICER WITH VIOLENCE

§ 843.01, Fla. Stat.

To prove the crime of Resisting Officer with Violence, the State must prove the following four elements beyond a reasonable doubt:

Note to Judge: An issue arises when the State charges that the defendant resisted more than one officer in one count. Under the current law, a defendant can commit only one count of Resisting With Violence even if several officers are involved in the same event. See Wallace v. State, 724 So. 2d 1176 (Fla. 1998). One possible remedy for this problem would be to instruct:

To prove the crime of Resisting Officer with Violence, the State must prove all of the following four elements beyond a reasonable doubt as to at least one of the alleged victims named below:

1. (Defendant) **knowingly and willfully [resisted] [obstructed] [opposed]** (victim) **by [offering to do [him] [her] violence] [doing violence to [him] [her]].**

2. **At the time,** (victim) **was engaged in the [execution of legal process] [lawful execution of a legal duty].**

3. **At the time,** (victim) **was [an officer] [a person legally authorized to execute process].**

4. **At the time,** (Defendant) **knew** (victim) **was [an officer] [a person legally authorized to execute process].**

In giving the instruction below, insert the class of officer to which the victim belongs, e.g., law enforcement officer, correctional officer. See Wright v. State, 586 So. 2d 1024 (Fla. 1991). See §843.01 Fla. Stat. for the type of officer covered by this statute.

The court now instructs you that every (name of official position of victim designated in charge) **is an officer within the meaning of this law.**

Note to Judge:

A special instruction incorporating § 776.051(1) Fla. Stat. should be given when the defendant is charged with resisting an arrest by a law enforcement officer or with resisting a law enforcement officer and the defense claims the officer was acting unlawfully.

A special instruction incorporating instructions 3.6(f); 3.6(g); and/or 3.6(h) should be given when the defense claims the police used excessive force.

Definition. Give if applicable.

"Offering" to do violence means threatening to do violence.

Walker v. State, 965 So. 2d 1281 (Fla. 2nd DCA 2007).

Lesser Included Offenses

RESISTING OFFICER WITH VIOLENCE — 843.01			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
None			
	Resisting officer without violence	843.02	21.2

Comment

This instruction was adopted in 1981 and amended in 1995 [657 So. 2d 1152], 2008 [996 So. 2d 851], and 2014.

21.1(a) RESISTING A POLICE [CANINE] [HORSE] WITH VIOLENCE

§ 843.01(2), Fla. Stat.

To prove the crime of Resisting a Police [Canine] [Horse] with Violence, the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **knowingly and willfully [resisted] [obstructed] [opposed] a police [canine] [horse] by [offering to do violence] [or] [doing violence] to the animal.**

2. **At the time, the [canine] [horse] was [working at the direction of] [or] [in tandem with] [an officer] [a legally authorized person] who was engaged in the [lawful execution of a legal duty] [execution of legal process].**

3. **At the time,** (Defendant) **knew the animal was a police [canine] [horse].**

In giving the instruction below, insert the class of officer to which the victim belongs, e.g., law enforcement officer, correctional officer. See Wright v. State, 586 So. 2d 1024 (Fla. 1991). See § 843.01(1) Fla. Stat. for the type of officer covered by this statute.

The court now instructs you that every (name of official position of officer or legally authorized person the animal was working at the direction of or in tandem with) **is an officer within the meaning of this law.**

Definitions. Give as applicable.

Walker v. State, 965 So. 2d 1281 (Fla. 2nd DCA 2007).

"Offering" to do violence means threatening to do violence.

§ 843.19, Fla. Stat.

"Police canine" means any canine that is owned, or the service of which is employed, by a law enforcement agency or a correctional agency for the principal purpose of aiding in the detection of criminal activity, enforcement of laws, or apprehension of offenders.

"Police horse" means any horse, that is owned, or the service of which is employed, by a law enforcement agency or a correctional agency for the principal purpose of aiding in the detection of criminal activity, enforcement of laws, or apprehension of offenders.

Lesser Included Offenses

RESISTING A POLICE [CANINE] [HORSE] WITH VIOLENCE — 843.01(2)			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
None			
	Aggravated Animal Cruelty	828.12(2)	29.13
	Animal Cruelty	828.12(1)	29.13(a)

Comments

In *Wallace v. State*, 724 So. 2d 1176 (Fla. 1998), the Court held that a defendant commits only one count of Resisting with Violence even if several officers are involved in the incident because the statute refers to "any officer." § 843.01(2), Fla. Stat., however, refers to "a police canine or police horse." Pursuant to *Wallace*, the unit of prosecution appears to be each animal the defendant resists, not the event.

This instruction was adopted on March 8, 2024.

21.2 RESISTING AN OFFICER WITHOUT VIOLENCE

§ 843.02, Fla. Stat.

To prove the crime of Resisting an Officer Without Violence, the State must prove the following four elements beyond a reasonable doubt:

1. (Defendant) **[resisted] [obstructed] [opposed]** (victim)**.**

2. **At the time,** (victim) **was engaged in the [execution of legal process] [lawful execution of a legal duty].**

3. **At the time,** (victim) **was [an officer] [a person legally authorized to execute process].**

4. **At the time, (**defendant) **knew (**victim) **was [an officer] [a person legally authorized to execute process].**

*In giving the instruction below, insert the class of officer to which the victim belongs, e.g., law enforcement officer, correctional officer. Wright v. State, 586 So. 2d 1024 (Fla. 1991). See § 843.02 Fla. Stat. for the type of officer covered by this statute.**

The Court instructs you that every (name of official position of victim designated in charge) **is an officer within the meaning of this law.**

Lesser Included Offense

RESISTING AN OFFICER WITHOUT VIOLENCE — 843.02

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempt	777.04(1)	5.1

Comments

An issue arises when the State charges the defendant resisted Officer X *or* Officer Y in one count. Under the current law, a defendant can commit only one count of Resisting an Officer Without Violence even if several officers are involved in the same event. *See Wallace v. State*, 724 So. 2d 1176 (Fla. 1998). One remedy for this problem would be for the judge to instruct the following as the initial paragraph: To prove the crime of Resisting an Officer Without Violence, the State must prove all of the following four elements beyond a reasonable doubt as to at least one of the alleged victims named below.

*Any person who resists or obstructs an animal control authority in enforcing § 767.12, Fla. Stat., commits a misdemeanor of the first degree. A

special instruction will be needed if the State charged the defendant under § 767.12(7), Fla. Stat.

This instruction was adopted in 1981 [431 So. 2d 594] and amended in 1989 [543 So. 2d 1205], 1995 [657 So.2d 1152], 2008 [996 So. 2d 851], 2014 [143 So. 3d 893], and on September 5, 2025.

21.3 OBSTRUCTION BY DISGUISED PERSON

§ 843.03, Fla. Stat.

To prove the crime of Obstruction by a Disguised Person, the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **disguised [himself] [herself].**

2. By disguising [himself] [herself], the defendant, (name) **intended:**

Give a or b as applicable.

a. [to obstruct the due execution of the law].

b. [to intimidate, hinder, or interrupt (name of officer)**].**

3. (Name of person) **was an officer engaged in the legal performance of [his] [her] duties or the exercise of [his] [her] rights under the constitution or laws of this state.**

Give only if 2b alleged.

4. The defendant knew or should have known (name of officer) **was a law enforcement officer.**

Definition

"**Disguise" is physical concealment in dress or appearance.** *Hartly v. State*, 372 So.2d 1180 (Fla. 2d DCA 1979).

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comment

The definition of officer is contained in § 843.01, Fla. Stat.

This instruction was adopted in 1981.

21.4 FALSE REPORT OF COMMISSION OF A CRIME

§ 817.49, Fla. Stat.

To prove the crime of False Report of Commission of a Crime, the State must prove the following four elements beyond a reasonable doubt:

1. (Defendant) **willfully [imparted] [conveyed] [or] [caused to be imparted or conveyed] false information or a report about the alleged commission of a crime under Florida law to** (name of law enforcement officer or name of employee of a public safety agency)**.**

2. (Defendant) **knew the information or report was false because [he] [she] knew that no such crime had actually been committed.**

3. (Name of law enforcement officer or name of employee of a public safety agency) **was a [law enforcement officer] [or] [an employee of a public safety agency].**

4. (Defendant) **knew** (name of law enforcement officer or name of employee of a public safety agency) **was a [law enforcement officer] [or] [an employee of a public safety agency].**

If requested, read elements of the crime that was falsely reported but do not instruct on the burden of proof for those elements.

The Court instructs you that (insert name of crime) **is a crime under Florida law.**

Patterson v. State, 512 So. 2d 1109 (Fla. 1st DCA 1987).

"Willfully" means intentionally, knowingly, and purposely.

Give if applicable. § 817.49(2)(a), Fla. Stat.

"Public safety agency" means a law enforcement agency, professional or volunteer fire department, emergency medical service, ambulance service, or other public entity that dispatches or provides first responder services to respond to crimes, to assist victims of crimes, or to apprehend offenders.

Enhanced penalties. Give only if applicable. § 817.49(2)(b), Fla. Stat.

If you find (defendant) **guilty of False Report of Commission of a Crime, you must further find whether the State proved beyond a reasonable doubt that:**

1. **The false report of a crime resulted in a response by a federal, state, district, municipal, or other public safety agency; and**

2. **The response resulted in [death] [great bodily harm] [permanent disfigurement] [or] [permanent disability] to any person; and**

3. **The [death] [great bodily harm] [permanent disfigurement] [or] [permanent disability] was the proximate result of lawful conduct arising out of the response to the false report.**

Give if applicable.

"Great bodily harm" means great as distinguished from slight, trivial, minor, or moderate harm, and as such does not include mere bruises.

Jones v. Utica Mut. Ins. Co., 463 So.2d 1153 (Fla. 1985).

"Proximate result" means that there must be such a natural, direct, and continuous sequence between the act and the injury that it can reasonably be said that but for the act, the injury would not have occurred.

Lesser Included Offenses

FALSE REPORT OF COMMISSION OF A CRIME – DEATH IS PROXIMATE RESULT OF LAWFUL CONDUCT ARISING FROM RESPONSE TO THE FALSE REPORT — 817.49(2)(b)2.

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
False Report of Commission of Crime – Great bodily harm, etc. is proximate result of lawful conduct arising from response to the false report		817.49(2)(b)1.	21.4
False Report Commission of a Crime		817.49(1)	21.4
	Attempt	777.04(1)	5.1

Comments

"Law enforcement officer" is not defined in chapter 817, Florida Statutes, or in case law interpreting and applying section 817.49. Trial judges may consult sections 790.001, 934.02, and 943.10 in deciding whether and how to define "law enforcement officer" for the jury.

This instruction was adopted in 1981 and amended in 2014 [143 So. 3d 893], and on December 15, 2021.

21.5 GIVING FALSE INFORMATION CONCERNING THE COMMISSION OF A CRIME

§ 837.05(1), Fla. Stat.

To prove the crime of Giving False Information Concerning the Commission of a Crime, the State must prove the following five elements beyond a reasonable doubt:

1. (Defendant) **knowingly gave information about the alleged commission of a crime.**

2. (Defendant) **knew the information was false.**

3. (Defendant) **gave the false information to** (name of law enforcement officer)**.**

4. (Name of law enforcement officer) **was a law enforcement officer.**

5. (Defendant**) knew that** (name of law enforcement officer) **was a law enforcement officer.**

The court now instructs you that (crime alleged) **is a crime and that a** (*do not name the officer, instead insert his or her official position, such as deputy sheriff or police officer)* **is a law enforcement officer.**

Unless the false information concerns a capital offense (see Instruction 21.6), this crime is a misdemeanor of the first degree. However, if the defendant was previously convicted of this crime and if certain conditions were met, the crime becomes a third degree felony. See § 837.05(1)(b), Fla. Stat.

If the State has alleged the third degree felony, do not read the allegation of a prior conviction and do not send the charging document into the jury room. If the defendant is found guilty of Giving False Information Concerning the Commission of a Crime, the historical fact of a prior conviction shall be determined in a bifurcated proceeding. State v. Harbaugh, 754 So. 2d 691 (Fla. 2000).

Give if applicable.

You have found (defendant) **guilty of Giving False Information Concerning the Commission of a Crime. You must now determine whether the State has proven beyond a reasonable doubt the following two elements:**

1. (Defendant) **was previously convicted of Giving False Information Concerning the Commission of a Crime in violation of Florida Statute 837.05(1).**

Give 2a and/or 2b as applicable.

2. a. The information (defendant) **gave to** (name of law enforcement officer) **was communicated orally and** (name of law enforcement officer's) **account of that information was corroborated by [an audio recording or audio recording in a video of that information] [a written or recorded statement made by** (defendant)**] [another person who was present and who heard** (defendant) **give the information to** (name of law enforcement officer)**].**

b. The information (defendant) **gave to** (name of law enforcement officer) **was communicated in writing.**

Lesser Included Offenses

No lesser included offenses have been identified for this offense. *See Silvestri v. State*, 332 So.2d 351, 354 (Fla. 4th DCA 1976).

Comment

"Law enforcement officer" is not defined in chapter 837, Florida Statutes, or in case law interpreting and applying section 837.05. Trial judges may consult sections 790.001, 934.02, and 943.10 in deciding whether and how to define "law enforcement officer" for the jury.

For the enhancement section, there is no case law about whether an adjudication of guilt is necessary for there to be a prior conviction.

This instruction was adopted in 2007 [965 So. 2d 811] and amended in 2014.

21.6 GIVING FALSE INFORMATION CONCERNING THE COMMISSION OF A CAPITAL FELONY

§ 837.05(2), Fla. Stat.

To prove the crime of Giving False Information Concerning the Commission of a Capital Felony, the State must prove the following six elements beyond a reasonable doubt:

1. (Defendant) **knowingly gave information about the alleged commission of a crime.**

2. (Defendant) **knew the information was false.**

3. **The crime alleged was a capital felony.**

4. (Defendant) **gave the false information to** (name of the law enforcement officer)**.**

5. (Name of law enforcement officer) **was a law enforcement officer.**

6. (Defendant) **knew that** (name of law enforcement) **was a law enforcement officer.**

The court now instructs you that (crime alleged) **is a capital felony and that a** *(do not name the officer, instead insert his or her official position, such as deputy sheriff or police officer)* **is a law enforcement officer.**

Lesser Included Offenses

GIVING FALSE INFORMATION CONCERNING THE COMMISSION OF A CAPITAL FELONY — 837.05(2)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Giving False Information Concerning A Crime		837.05(1)	21.5
	False Report of Commission of Crime	817.49	21.4

Comment

"Law enforcement officer" is not defined in chapter 837, Florida Statutes, or in case law interpreting and applying section 837.05. Trial judges may consult sections 790.001, 934.02, and 943.10 in deciding whether and how to define "law enforcement officer" for the jury.

Attempt is not a lesser included offense. See *Silvestri v. State*, 332 So.2d 351, 354 (Fla. 4th DCA 1976).

This instruction was adopted in 2007 [965 So. 2d 811] and amended in 2014.

21.7 GIVING FALSE NAME OR IDENTIFICATION TO LAW ENFORCEMENT OFFICER ADVERSELY AFFECTING ANOTHER

§ 901.36(2), Fla. Stat.

To prove the crime of Giving False Name or Identification to Law Enforcement Officer Adversely Affecting Another, the State must prove the following four elements beyond a reasonable doubt.

1. (Defendant) **was [arrested] [lawfully detained] by a law enforcement officer.**

2. (Defendant) **[gave a false name] [falsely identified [himself] [herself] in any way] as** (victim) **to** (name of officer or county jail personnel)**.**

3. At the time, (name of officer or county jail personnel) **was [a law enforcement officer] [personnel of a county jail].**

4. (Victim) **was adversely affected by the unlawful use of [his] [her] [name] [identification].**

The court now instructs you that every (name of official position of **[officer] [county jail personnel]**) **is [an officer] [personnel of a county jail] within the meaning of this law.**

In giving this instruction, do not refer to the [officer] [county jail personnel] by name. The instruction must state the class of officer or personnel to which the individual named in the charge belongs, e.g., deputy sheriff, correctional officer, booking officer. See Wright v. State, 586 So. 2d 1024 (Fla. 1991).

Give if lawfully detained is charged.

A person may be lawfully detained if the officer reasonably suspects that person violated or was about to violate the law.

Lesser Included Offenses

21.7 GIVING FALSE NAME OR IDENTIFICATION TO LAW ENFORCEMENT OFFICER ADVERSELY AFFECTING ANOTHER — § 901.36(2)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
False Name or ID to LEO*		901.36(1)*	21.7*
	None		

Comments

*The difference between the third degree felony in § 901.36(2), Fla. Stat., and the first degree misdemeanor in § 901.36(1), Fla. Stat., is that the felony requires the state to prove element #4. Accordingly, the first three elements in this instruction can be used for the misdemeanor lesser-included offense.

This instruction was adopted in 2008 [995 So. 2d 489] and amended in 2017.

21.8 TAMPERING WITH OR FABRICATING PHYSICAL EVIDENCE

§ 918.13 Fla. Stat.

To prove the crime of [Tampering with] [Fabricating] Physical Evidence, the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) **knew that a criminal trial, proceeding, or investigation by a duly constituted prosecuting authority, law enforcement agency, grand jury or legislative committee of Florida was pending or was about to be instituted.**

Give 2a or 2b or both as applicable.

2. **a.** (Defendant) **[altered] [destroyed] [concealed] [removed] any record, document, or other item, with the purpose to impair its [verity] [availability] in such proceeding or investigation.**

   b. (Defendant) **[made] [presented] [used] any record, document, or other item, knowing it to be false.**

Give if § 918.13(2)(b), Fla. Stat. is charged.

If you find the defendant guilty of [Tampering with] [Fabricating] Physical Evidence, you must further determine whether the State has proven beyond a reasonable doubt that the [tampering] [fabricating] related to a criminal trial, proceeding, or investigation related to a capital felony.

The Court instructs you that (name of capital felony) **is a capital felony.** *If necessary, define elements of the capital felony but do not instruct on the State's burden of proof when defining that crime.*

Lesser Included Offense

21.8 [TAMPERING WITH] [FABRICATING] PHYSICAL EVIDENCE — 918.13

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempt	777.04(1)	5.1

Comment

This instruction was adopted in 2010 [44 So. 3d 565] and amended in 2013 [131 So. 3d 755], and on December 21, 2022.

21.9 [ATTEMPTED] RETALIATING AGAINST A [WITNESS] [VICTIM] [INFORMANT]

§ 914.23, Fla. Stat.

To prove the crime of [Attempted] Retaliating Against a [Witness] [Victim] [Informant], the State must prove the following two elements beyond a reasonable doubt:

Give as applicable.

1. (Defendant) **knowingly**

a. [attempted] [threatened] to [cause bodily injury to (victim)**] [damage the tangible property of** (victim)**].**

b. caused [bodily injury to (victim)**] [damage to the tangible property of** (victim)**].**

Give as applicable.

2. (Defendant) **did so, with intent to retaliate against [any person] [(name of person)] for**

a. the attendance of a [witness] [party] at an official proceeding.

b. any [testimony given] [record, document, or object produced] by a witness in an official proceeding.

c. information given by [a person] [(name of person)**] to a law enforcement officer relating to the commission or possible commission of [an offense] [a violation of a condition of [probation] [parole] [release pending a judicial proceeding].**

Define "attempt" using instruction 5.1, if appropriate.

Definitions.

§ 914.21(1), Fla. Stat.

1. "Bodily injury" means:

a. A cut, abrasion, bruise, burn, or disfigurement;

b. Physical pain;

c. Illness;

d. Impairment of the function of a bodily member, organ, or mental faculty; or

e. Any other injury to the body, no matter how temporary.

§ 914.21(4), Fla. Stat.

2. "Official proceeding" means:

a. A proceeding before a judge or court or a grand jury;

b. A proceeding before the Legislature;

c. A proceeding before a federal agency that is authorized by law;

d. A proceeding before the Commission on Ethics.

Lesser Included Offenses

[ATTEMPTED] RETALIATING AGAINST A [WITNESS] [VICTIM] [INFORMANT]—914.23

CATEGORY ONE	CATEGORY TWO	FLA. STAT	INS. NO.
None			
	Aggravated Battery	784.045	8.4/8.4(a)
	Felony Battery	784.041	8.5
	Battery	784.03	8.3
	Aggravated Assault	784.021	8.2
	Assault	784.011	8.1
	Criminal Mischief	806.13	12.4

Comments

It is not necessary for the State to prove that the defendant had the intent to communicate his or her threat(s) to the witness nor that the defendant had the intent to carry out his or her threat(s). *State v. Jones*, 642 So. 2d 804 (Fla. 5th DCA 1994).

Pursuant to § 914.23, Fla. Stat., the defendant is guilty of a second degree felony only if the victim suffered bodily injury as a result of the defendant's conduct. Otherwise, the defendant is guilty of a third degree felony. Therefore, a specific finding of bodily injury caused by the defendant is necessary when appropriate.

This instruction was adopted in 2013.

21.10 TAMPERING WITH A [WITNESS] [VICTIM] [INFORMANT]

§ 914.22(1), Fla. Stat.

To prove the crime of Tampering with a [Witness] [Victim] [Informant], the State must prove the following three elements beyond a reasonable doubt:

Give as applicable.

1. (Defendant) **knowingly**

a. used or attempted to use intimidation or physical force against (name of person)**.**

b. threatened or attempted to threaten (name of person)**.**

c. engaged in misleading conduct toward (name of person)**.**

d. offered pecuniary benefit or gain to (name of person)**.**

2. (Defendant) **did so, with intent to cause or induce [any person] [**(name of person)**] to**

a. withhold testimony or withhold a record, document, or other object, from an official [investigation] [proceeding].

b. alter, destroy, mutilate, or conceal an object with intent to impair the integrity or availability of the object for use in an official [investigation] [proceeding]..

c. evade legal process summoning [him] [her] to appear as a witness, or to produce a record, document, or other object, in an official [investigation] [proceeding]..

d. be absent from an official proceeding to which [he] [she] has been summoned by legal process.

e. hinder, delay, or prevent the communication to a law enforcement officer or judge of information relating to the commission or possible commission of [an offense] [a violation of a condition of [probation] [parole] [release pending a judicial proceeding].

f. testify untruthfully in an official [investigation] [proceeding].

3. The official [investigation] [proceeding] involved the

[investigation] [or] [prosecution] of (insert appropriate type of investigation or proceeding, e.g., first degree murder, non-criminal offense, etc.)**.**

The Court instructs you that an official [investigation] [proceeding] involving the [investigation] [or] [prosecution] of (insert relevant information from element #3) **is** (insert appropriate information from § 914.22(2)(a)-(f)**.**

Give if requested and if applicable. § 914.22, Fla. Stat.

The State does not have to prove that an official proceeding was pending or about to be instituted at the time of this alleged offense.

The State does not have to prove that the testimony or the record, document, or other thing was admissible in evidence [or free from a claim of privilege].

The State does not have to prove that the defendant knew or should have known that the official proceeding before a judge, court, grand jury, or government agency, was before a judge or court of the state, a state or local grand jury, or a state agency.

The State does not have to prove that the defendant knew or should have known that the judge is a judge of the state or that the law enforcement officer is an officer or employee of the state or a person authorized to act for or on behalf of the state or serving the state as an adviser or consultant.

§ 914.21, Fla. Stat. Give as applicable.

"Misleading conduct" means:

a. Knowingly making a false statement;

b. Intentionally omitting information from a statement and thereby causing a portion of such statement to be misleading, or intentionally concealing a material fact and thereby creating a false impression by such statement;

c. With intent to mislead, knowingly submitting or inviting reliance on a writing or recording that is false, forged, altered, or otherwise lacking in authenticity;

d. With intent to mislead, knowingly submitting or inviting reliance on a sample, specimen, map, photograph, boundary

mark, or other object that is misleading in a material respect; or

e. Knowingly using a trick, scheme, or device with intent to mislead.

"Official investigation" means any investigation instituted by a law enforcement agency or prosecuting officer of the state or a political subdivision of the state or the Commission on Ethics.

"Official proceeding" means:

a. A proceeding before a judge or court or a grand jury;

b. A proceeding before the Legislature;

c. A proceeding before a federal agency that is authorized by law; or

d. A proceeding before the Commission on Ethics.

"Physical force" means physical action against another and includes confinement.

Lesser Included Offense

The degree of this crime depends on the severity of the underlying offense that is the subject of the tampering. *See* § 914.22(2), Fla. Stat.

Comment

This instruction was adopted in 2013 [131 So. 2d 720] and amended in 2018 [238 So. 3d 192], on April 25, 2023, and on October 9, 2026.

21.11 HARASSING A [WITNESS] [VICTIM] [INFORMANT]

§ 914.22(3), Fla. Stat.

To prove the crime of Harassing a [Witness] [Victim] [Informant] [Person], the State must prove the following three elements beyond a reasonable doubt:

Give as applicable.

1. (Defendant) **intentionally [harassed] [attempted to harass]** (name of person)**.**

2. (Defendant) **thereby [hindered] [attempted to hinder] [delayed] [attempted to delay] [prevented] [attempted to prevent] [dissuaded] [attempted to dissuade] [a person] [**(name of person)**] from**

a. attending or testifying in an official proceeding or cooperating in an official investigation.

b. reporting to a law enforcement officer or judge the commission or possible commission of [an offense] [a violation of a condition of [probation] [parole] [release pending a judicial proceeding]].

c. arresting or seeking the arrest of another person in connection with an offense.

d. causing a [criminal prosecution] [[parole] [probation] revocation proceeding] to be sought or instituted or from assisting in such [prosecution] [proceeding].

3. The official [investigation] [proceeding] involved the [investigation] [or] [prosecution] of (insert appropriate type of investigation or proceeding, e.g., first degree murder, non-criminal offense, etc.)**.**

The Court instructs you that an official [investigation] [proceeding] involving the [investigation] [or] [prosecution] of (insert relevant information from element #3) **is** (insert appropriate information from § 914.22(2)(a)-(f)**.**

Give if requested and if applicable. § 914.22, Fla. Stat.

The State does not have to prove that an official proceeding was pending or about to be instituted at the time of this alleged offense.

The State does not have to prove that the testimony or the record, document, or other thing was admissible in evidence [or free from a claim of privilege].

The State does not have to prove that the defendant knew or should have known that the official proceeding before a judge, court, grand jury, or government agency, was before a judge or court of the state, a state or local grand jury, or a state agency.

The State does not have to prove that the defendant knew or should have known that the judge is a judge of the state or that the law enforcement officer is an officer or employee of the state or a person authorized to act for or on behalf of the state or serving the state as an adviser or consultant.

§ 914.21, Fla. Stat. Give as applicable.

"Official investigation" means any investigation instituted by a law enforcement agency or prosecuting officer of the state or a political subdivision of the state or the Commission on Ethics.

"Official proceeding" means:

a. A proceeding before a judge or court or a grand jury;

b. A proceeding before the Legislature;

c. A proceeding before a federal agency that is authorized by law; or

d. A proceeding before the Commission on Ethics.

Lesser Included Offense

The degree of this crime depends on the severity of the underlying offense that is the subject of the harassment. § 914.22(4), Fla. Stat.

Comment

This instruction was adopted in 2013 [131 So. 3d 720] and amended in 2018 [260 So. 3d 1024], on April 25, 2023, and on October 9, 2026.

21.12 CORRUPTION BY [HARM] [THREAT OF HARM] AGAINST A PUBLIC SERVANT

§ 838.021, Fla. Stat.

To prove the crime of Corruption by [Harm] [Threat of Harm] Against a Public Servant, the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **unlawfully [harmed] [threatened unlawful harm] to [**(victim)**] [**(victim's) **immediate family member] [a person with whose welfare** (victim) **was interested in].**

2. At the time, (victim) **was a public servant.**

Give as applicable.

3. (Defendant) **did so, with the intent or purpose to:**

a. influence the performance of any act or omission which the defendant believed to be [or (victim) **represented as being,] within the official discretion of** (victim), **in violation of a public duty, or in performance of a public duty.**

b. cause or induce (victim) **to [use] [exert] [procure the use or exertion of] any influence [upon] [with] any other public servant regarding any act or omission which the defendant believed to be [or** (victim) **represented as being,] within the official discretion of** (victim)**, in violation of a public duty, or in performance of a public duty.**

Give if requested and if applicable. § 838.021(2), Fla. Stat.

The State does not have to prove that the public servant ultimately sought to be unlawfully influenced was qualified to act in the desired way, that the public servant had assumed office, that the matter was properly pending before [him] [her] or might by law properly be brought before [him] [her], that the public servant possessed jurisdiction over the matter, or that [his] [her] official action was necessary to achieve the defendant's purpose.

Definitions.

§ 838.014(5), Fla. Stat.

"Harm" means pecuniary or other loss, disadvantage, or injury to the person affected.

§ 838.014(7)(a) Fla. Stat.

"Public servant" means any officer or employee of a governmental entity, including any executive, legislative, or judicial branch officer or employee.

Give if applicable. § 838.014(7)(b) and (7)(c), Fla. Stat.

"Public servant" also includes any person, except a witness, who acts as a general or special magistrate, receiver, auditor, arbitrator, umpire, referee, consultant, or hearing officer while performing a governmental function or a candidate for election or appointment to any of these officer positions; or an individual who has been elected to, but has yet to officially assume the responsibilities of, public office.

Lesser Included Offense

No lesser included offenses have been identified for these offenses. There is no crime of Attempt to Corrupt Public Servant by Threat. *See Pagano v. State*, 387 So. 2d 349 (Fla. 1980).

Unlawfully harming a public servant is a second degree felony. Threatening unlawful harm is a third degree felony. *See* § 838.021(3)(a) and (b), Fla. Stat.

Comment

This instruction was adopted in 2013 [131 So. 3d 720] and amended in 2018.

21.13 DEPRIVING AN OFFICER OF MEANS OF [PROTECTION] [COMMUNICATION]

§ 843.025, Fla. Stat.

To prove the crime of Depriving an Officer of Means of [Protection] [Communication], the State must prove the following two elements beyond a reasonable doubt:

Give 1a or 1b or both as applicable.

1. **a.** (Defendant) **deprived** (victim) **of [his] [her] [weapon] [radio] [digital recording device, including a body camera] [restraint device, including handcuffs] [means to defend [himself] [herself]] [means to summon assistance]**.

b. (Defendant) **rendered useless** (victim's) **[weapon] [radio] [digital recording device, including a body camera] [restraint device, including handcuffs] [means to defend [himself] [herself]] [means to summon assistance].**

2. **At the time,** (victim) **was a [law enforcement officer] [correctional officer] [correctional probation officer].**

Give as applicable. § 943.10, Fla. Stat. See § 943.10, Fla. Stat. for definitions for "employing agency," "part-time law enforcement officer," "part-time correctional officer," "auxiliary law enforcement officer," "auxiliary correctional officer," "support personnel," "officer," "auxiliary correctional probation officer," and "part-time correctional probation officer."

"Law enforcement officer" means any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. [This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.] [The term also includes a special officer employed by a Class I, Class II, or Class III railroad pursuant to s. 354.01, Florida Statutes.]

"Correctional officer" means any person who is employed full time by the state or any political subdivision thereof; or by any private entity which has contracted with the state or county, and whose primary

responsibility is the supervision, protection, care, custody, and control, or investigation, of inmates within a correctional institution; however, the term "correctional officer" does not include any secretarial, clerical, or professionally trained personnel.

"Correctional probation officer" means any person who is employed full time by the state whose primary responsibility is the supervised custody, surveillance, and control of assigned inmates, probationers, parolees, or community controllees within institutions of the Department of Corrections or within the community. The term includes supervisory personnel whose duties include, in whole or in part, the supervision, training, and guidance, of correctional probation officers, but excludes management and administrative personnel above, but not including the probation and parole regional administrator level.

§ 943.1718, Fla. Stat. Give only if applicable and only for a law enforcement officer.

"Body camera" means a portable electronic recording device that is worn on a law enforcement officer's person that records audio and video data of the officer's law enforcement-related encounters and activities.

Lesser Included Offense

DEPRIVING AN OFFICER OF MEANS OF [PROTECTION] [COMMUNICATION] —843.025

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempt	777.04(1)	5.1

Comment

This instruction was adopted in 2013 [131 So. 3d 720] and was amended on September 5, 2025.

21.14 FALSE INFORMATION TO LAW ENFORCEMENT INVESTIGATING A MISSING PERSON 16 YEARS OF AGE OR YOUNGER WHO SUFFERS [GREAT BODILY HARM] [PERMANENT DISABILITY] [PERMANENT DISFIGUREMENT] [DEATH]

§ 837.055(2), Fla. Stat.

To prove the crime of False Information to Law Enforcement Investigating a Missing Person 16 Years of Age or Younger Who Suffers [Great Bodily Harm] [Permanent Disability] [Permanent Disfigurement] [Death], the State must prove the following six elements beyond a reasonable doubt:

1. (Name of law enforcement officer) **was conducting a missing person investigation involving a child 16 years of age or younger.**

2. (Name of law enforcement officer) **was a law enforcement officer.**

3. (Defendant) **knew** (name of law enforcement officer) **was a law enforcement officer.**

4. (Defendant) **knowingly and willfully gave false information to** (name of law enforcement officer)**.**

5. (Defendant) **intended to mislead** (name of law enforcement officer) **or impede the investigation.**

6. **The child who was the subject of the investigation suffered [great bodily harm] [death] [permanent [disability] [disfigurement]].**

Definitions.

Patterson v. State, 512 So. 2d 1109 (Fla. 1st DCA 1987).

"Willfully" means knowingly, intentionally, and purposely.

Wheeler v. State, 203 So. 3d 1007 (Fla. 4th DCA 2016).

"Great bodily harm" means great as distinguished from slight, trivial, minor, or moderate harm, and as such does not include mere bruises.

Lesser Included Offenses

FALSE INFORMATION TO LAW ENFORCEMENT INVESTIGATING A MISSING PERSON 16 YEARS OF AGE OR YOUNGER WHO SUFFERS [GREAT BODILY HARM] [DEATH] [PERMANENT [DISABILITY] [DISFIGUREMENT] - § 837.055(2)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Knowingly Giving False Information Concerning a Missing Person Investigation		837.055(1)	21.15
	Knowingly Giving False Information Concerning a Felony Criminal Investigation	837.055(1)	21.15
	Attempt	777.04(1)	5.1

Comments

As of November 2018, it is undetermined whether an element of this crime is that the defendant knew that the missing person investigation involved a child 16 years of age or younger.

As of November 2018, there is no case law regarding the definition of "law enforcement officer.

This instruction was adopted in 2013 [131 So. 3d 755], and amended in 2019.

21.15 FALSE INFORMATION TO LAW ENFORCEMENT

§ 837.055(1), Fla. Stat.

To prove the crime of False Information to Law Enforcement, the State must prove the following five elements beyond a reasonable doubt:

1. (Name of law enforcement officer) **was conducting a [missing person investigation] [felony criminal investigation].**

2. (Name of law enforcement officer) **was a law enforcement officer.**

3. (Defendant) **knew that** (name of law enforcement officer) **was a law enforcement officer.**

4. (Defendant) **knowingly and willfully gave false information to** (name of law enforcement officer)**.**

5. (Defendant) **intended to mislead** (name of law enforcement officer) **or impede the investigation.**

Definition.

Patterson v. State, 512 So. 2d 1109 (Fla. 1st DCA 1987).

"Willfully" means intentionally, knowingly and purposely.

Give if applicable. Felony criminal investigation.

The court instructs you that (name of crime) **is a felony.**

Lesser Included Offenses

FALSE INFORMATION TO LAW ENFORCEMENT — 837.055(1)			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
None			
	Attempt	777.04(1)	5.1

Comments

If there is a dispute about whether the law enforcement officer was investigating a felony as opposed to a misdemeanor, the court might consider instructing jurors on the elements of the felony.

As of November 2016, there was no case law regarding the definition of "law enforcement officer."

This instruction was adopted in 2008 [995 So. 2d 489] and amended in 2013 [131 So. 3d 755] and 2017.

21.16 FALSELY PERSONATING AN OFFICER

§ 843.08, Fla. Stat.

To prove the crime of Falsely Personating An Officer, the State must prove the following [two] [three] elements beyond a reasonable doubt:

1. (Defendant) **falsely assumed or pretended to be a[n] [police officer] [deputy sheriff] [sheriff] [firefighter] [officer of the Florida Highway Patrol] [officer of the Fish and Wildlife Conservation Commission] [officer of the Department of Environmental Protection] [fire or arson investigator of the Department of Financial Services] [officer of the Department of Financial Services] [officer of the Department of Corrections] [correctional probation officer] [state attorney] [assistant state attorney] [statewide prosecutor] [assistant statewide prosecutor] [state attorney investigator] [coroner] [lottery special agent] [lottery investigator] [beverage enforcement agent] [school guardian] [a security officer licensed under Chapter 493, Florida Statutes] [member of the Florida Commission on Offender Review] [administrative aide to the Florida Commission on Offender Review] [supervisor employed by the Florida Commission on Offender Review] [representative or personnel of the Department of Law Enforcement] [federal law enforcement officer].**

2. **While doing so,** (defendant) **[took it upon [himself] [herself] to act as such an officer] [required [someone] [**(name of person)**] to aid or assist [him] [her] in a matter pertaining to the duty of such an officer].**

Give if applicable.

3. **The impersonation occurred during the commission of a felony.**

The court instructs you that (name of felony) **is a felony. A[n]** (name of felony) **is defined as** (insert elements of felony)**.**

Definitions. Give if applicable.

§ 901.1505, Fla. Stat.

A federal law enforcement officer is a person who is employed by the Federal Government as a full-time law enforcement officer, who is empowered to effect an arrest for violations of the United States Code, who is authorized to carry firearms in the performance of her or his duties, and who has received law enforcement training equivalent to training for Florida law enforcement officers.

See § 30.15(1)(k), Fla. Stat. for description of school guardian.

See other statutes for definitions of other officers, if needed.

Give if applicable.

If you find the defendant guilty of Falsely Personating an Officer and that the impersonation occurred during the commission of a felony, you must then determine whether the State has proven beyond a reasonable doubt that the commission of the felony resulted in [death] [or] [personal injury] to another human being.

Lesser Included Offense

FALSELY PERSONATING AN OFFICER — 843.08			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
None			
	Attempt	777.04(1)	5.1

Comment

This instruction was adopted in 2013 [122 So. 3d 302] and amended in 2016 [194 So. 3d 1007], and 2020.

21.17 COMPOUNDING A FELONY

§ 843.14, Fla. Stat.

To prove the crime of Compounding a Felony, the State must prove the following four elements beyond a reasonable doubt:

1. (Defendant) **knew that a[n]** (felony alleged) **had been committed.**

2. (Felony alleged) **was a felony.**

Give 3a and/or 3b as applicable.

3. (Defendant)

   a. **took [money] [or] [a gratuity] [or] [a reward].**

   b. **entered into an engagement to take [money] [or] [a gratuity] [or] [a reward].**

4. (Defendant) **did so upon an agreement or understanding to [conceal] [or] [not prosecute] [or] [not give evidence of] [or] [compound] that** (felony alleged)**.**

The Court instructs you that on the date[s] alleged in the charging document, (felony alleged) **was a felony.**

The Court should define the felony alleged.

Give if applicable.

The agreement or understanding in element number 4 can be express or implied.

Lesser Included Offense

COMPOUNDING A FELONY — 843.14			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
Compounding a felony (misdemeanor) [i.e., if (felony alleged) is not a capital felony, life felony, or first degree felony punishable by life]		843.14	21.17
	Attempt	777.04(1)	5.1

Comments

§ 843.14, Fla. Stat. links the degree of the felony that was concealed to the degree of the crime that the defendant committed. If the felony that the defendant concealed was a capital felony, a life felony, or a first-degree felony punishable by life, the crime of Compounding a Felony is a third-degree felony. However, if the felony that the defendant concealed was a first, second, or third-degree felony, the crime of Compounding a Felony is a first-degree misdemeanor. Although there is no case law directly on point, the Committee on Standard Jury Instructions in Criminal Cases relied on the logic in *Bowen v. State*, 791 So. 2d 44 (Fla. 2d DCA 2001) to conclude that the State must specify the felony that the defendant knew about and concealed.

This instruction was adopted in 2018.

21.18 ACCESSORY AFTER THE FACT

§ 777.03(1) Fla. Stat.

To prove the crime of Accessory After the Fact, the State must prove the following [four] [five] elements beyond a reasonable doubt:

1. **A** (felony alleged) **was committed by** (name of person committing felony).

2. **After the** (felony alleged) **was committed,** (defendant) **[maintained] [assisted] [aided or attempted to aid]** (name of person committing felony).

3. **At that time,** (defendant) **knew that** (name of person committing felony) **had committed the** (felony alleged)**.**

4. (Defendant) **did so with the intent that** (name of person committing felony) **avoid or escape detection, arrest, trial, or punishment.**

If the felony alleged is a third degree felony, give element #5.

5. (Defendant) **was not related to** (name of person committing felony) **by blood or marriage as husband, wife, parent, grandparent, child, grandchild, brother, or sister.**

Define the felony alleged.

It is not necessary for the State to prove that (defendant's) **assistance was successful in allowing** (name of person committing felony) **to avoid or escape detection, arrest, trial or punishment, nor is it necessary for the State to prove that** (name of person committing felony) **was convicted.**

The intent with which an act is done is an operation of the mind and, therefore, is not always capable of direct and positive proof. It may be established by circumstantial evidence like any other fact in a case.

Comments

The degree and offense level of "Accessory After the Fact" depends on the severity of the underlying felony. Accordingly, lesser included offenses must be tailored depending on the felony alleged.

In cases involving proof of knowledge by circumstantial evidence, *see Bowen v. State,* 791 So. 2d 44 (Fla. 2nd DCA 2001).

If the felony alleged is child abuse, neglect of a child, aggravated child abuse, aggravated manslaughter of a child under 18 years of age, or murder of a child under 18 years of age, the court may need to determine whether the defendant is a victim of domestic violence. *See* § 777.03(1)(b), Fla. Stat. If a court determines that the defendant was not a victim of domestic violence, it is unclear whether the courts will require a jury finding on that issue.

This instruction was adopted in 1987 [508 So. 2d 1221] and amended in 2008 [995 So. 2d 489], and 2018.

21.19(a) [CAUSING [GREAT BODILY HARM] [PERMANENT DISABILITY] [DEATH] TO] [OR] [USING A DEADLY WEAPON UPON] A [POLICE] [FIRE] [SEARCH AND RESCUE] [CANINE] [HORSE]

§ 843.19(2), Fla. Stat.

To prove the crime of [Causing [Great Bodily Harm] [Permanent Disability] [Death] To] [or] [Using a Deadly Weapon Upon] a [Police] [Fire] [Search and Rescue] [Canine] [Horse], the State must prove the following three elements beyond a reasonable doubt:

Give 1a or 1b or both as applicable.

1. **a.** (Defendant) **intentionally and knowingly caused [great bodily harm] [permanent disability] [death] to a [canine] [horse].**

   b. (Defendant) **intentionally and knowingly used a deadly weapon upon a [canine] [horse].**

2. **The [canine] [horse] was a [police] [fire] [search and rescue] [canine] [horse].**

3. (Defendant) **knew the [canine] [horse] was a [police] [fire] [search and rescue] [canine] [horse].**

Definitions. Give as applicable.

§ 843.19(1), Fla. Stat.

"Police canine" means any canine that is owned, or the service of which is employed, by a law enforcement agency or a correctional agency for the principal purpose of aiding in the detection of criminal activity, enforcement of laws, or apprehension of offenders.

"Fire canine" means any canine that is owned, or the service of which is employed, by a fire department, a special fire district, or the State Fire Marshal for the principal purpose of aiding in the detection of flammable materials or the investigation of fires.

A "search and rescue canine" is a canine that is owned, or the service of which is employed by a fire department, a law enforcement agency, a correctional agency, a special fire district, or the State Fire Marshal for the principal purpose of aiding in the detection of missing persons, including, but not limited to, persons who are lost, who are trapped under debris as the result of a natural, manmade, or technological disaster, or who are drowning victims.

"Police horse" means any horse, that is owned, or the service of which is employed, by a law enforcement agency or a correctional agency for the principal purpose of aiding in the detection of criminal activity, enforcement of laws, or apprehension of offenders.

A "deadly weapon" is defined as: 1) any object that is readily capable of inflicting death or great bodily harm if used in the ordinary manner contemplated by its design and construction, or 2) any other object that was used to inflict death or great bodily harm.

T.W. v. State, 98 So. 3d 238 (Fla. 4th DCA 2012).

"Great bodily harm" means great as distinguished from slight, trivial, minor, or moderate harm, and as such does not include mere bruises.

Lesser Included Offenses

[CAUSING [GREAT BODILY HARM] [PERMANENT DISABILITY] [DEATH] TO] [OR] [USING A DEADLY WEAPON UPON] A [POLICE] [FIRE] [SAR] [CANINE] [HORSE] - 843.19(2)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Battery Police/Fire/SAR Canine/Horse	843.19(3)	21.19(b)
	Harass Police/Fire/SAR Canine/Horse	843.19(4)	21.19(c)
	Attempt	777.04(1)	5.1

Comments

It is unclear whether the phrase "without lawful cause or justification" is an element or an affirmative defense. Trial judges must make that determination until the case law develops.

This instruction was adopted in 2020.

21.19(b) MALICIOUSLY [TOUCHING] [STRIKING] [CAUSING BODILY HARM] TO A [POLICE] [FIRE] [SEARCH AND RESCUE] [CANINE] [HORSE]

§ 843.19(3), Fla. Stat.

To prove the crime of Maliciously [Touching] [Striking] [Causing Bodily Harm] to a [Police] [Fire] [Search and Rescue] [Canine] [Horse], the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **actually and intentionally maliciously [touched] [struck] [caused bodily harm] to a [canine] [horse].**

2. The [canine] [horse] was a [police] [fire] [search and rescue] [canine] [horse].

3. (Defendant) **knew the [canine] [horse] was a [police] [fire] [search and rescue] [canine] [horse].**

Definitions.

R.N. v. State, 257 So. 3d 507 (Fla. 4th DCA 2018).

"Maliciously" means with ill will, hatred, spite, or an evil intent.

Give as applicable.

§ 843.19(1), Fla. Stat.

"Police canine" means any canine that is owned, or the service of which is employed, by a law enforcement agency or a correctional agency for the principal purpose of aiding in the detection of criminal activity, enforcement of laws, or apprehension of offenders.

"Fire canine" means any canine that is owned, or the service of which is employed, by a fire department, a special fire district, or the State Fire Marshal for the principal purpose of aiding in the detection of flammable materials or the investigation of fires.

A "search and rescue canine" is a canine that is owned, or the service of which is employed by a fire department, a law enforcement agency, a correctional agency, a special fire district, or the State Fire Marshal for the principal purpose of aiding in the detection of missing persons, including, but not limited to, persons who are lost, who are trapped under debris as the result of a natural, manmade, or technological disaster, or who are drowning victims.

"Police horse" means any horse, that is owned, or the service of which is employed, by a law enforcement agency or a correctional agency for the principal purpose of aiding in the detection of criminal activity, enforcement of laws, or apprehension of offenders.

Lesser Included Offenses

MALICIOUSLY [TOUCHING] [STRIKING] [CAUSING BODILY HARM] TO A [POLICE] [FIRE] [SEARCH AND RESCUE] [CANINE] [HORSE] — 843.19(3)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Harass Police/Fire/SAR Canine/Horse	843.019(4)	21.19(c)
	Attempt	777.04(1)	5.1

Comments

For the crime of Battery on a Police Canine, the State is required to prove the defendant intended to commit a battery on the canine. For example, if a defendant intentionally strikes a law enforcement vehicle that contains a police canine (with sufficient force that the canine is jostled), the State must prove the defendant knew that a police canine was inside the vehicle. *See Yarn v. State*, 106 So. 3d 39 (Fla. 2d DCA 2013). In those types of cases, a special instruction will be necessary.

This instruction was adopted in 2020.

21.19(c) MALICIOUSLY [HARASSING] [TEASING] [INTERFERING WITH] [ATTEMPTING TO INTERFERE WITH] A [POLICE] [FIRE] [SEARCH AND RESCUE] [CANINE] [HORSE] WHILE IN PERFORMANCE OF ITS DUTIES

§ 843.19(4), Fla. Stat.

To prove the crime of Maliciously [Harassing] [Teasing] [Interfering with] [Attempting to Interfere With] a [Police] [Fire] [Search and Rescue] [Canine] [Horse] while in Performance of its Duties, the State must prove the following four elements beyond a reasonable doubt:

1. (Defendant) **[intentionally] [or] [knowingly] maliciously [harassed] [teased] [interfered with] [attempted to interfere with] a [canine] [horse].**

2. **The [canine] [horse] was a [police] [fire] [search and rescue] [canine] [horse].**

3. **At the time, the [canine] [horse] was engaged in the performance of its duties.**

4. (Defendant) **knew the [canine] [horse] was a [police] [fire] [search and rescue] [canine] [horse].**

Definitions.

R.N. v. State, 257 So. 3d 507 (Fla. 4th DCA 2018).

"Maliciously" means with ill will, hatred, spite, or an evil intent.

Give as applicable.

§ 843.19(1), Fla. Stat.

"Police canine" means any canine that is owned, or the service of which is employed, by a law enforcement agency or a correctional agency for the principal purpose of aiding in the detection of criminal activity, enforcement of laws, or apprehension of offenders.

"Fire canine" means any canine that is owned, or the service of which is employed, by a fire department, a special fire district, or the State Fire Marshal for the principal purpose of aiding in the detection of flammable materials or the investigation of fires.

A "search and rescue canine" is a canine that is owned, or the service of which is employed by a fire department, a law enforcement agency, a correctional agency, a special fire district, or the State Fire

Marshal for the principal purpose of aiding in the detection of missing persons, including, but not limited to, persons who are lost, who are trapped under debris as the result of a natural, manmade, or technological disaster, or who are drowning victims.

"Police horse" means any horse, that is owned, or the service of which is employed, by a law enforcement agency or a correctional agency for the principal purpose of aiding in the detection of criminal activity, enforcement of laws, or apprehension of offenders.

Lesser Included Offense

No lesser included offenses have been identified for this offense.

Comment

This instruction was adopted in 2020.

21.20 TAMPERING WITH AN ELECTRONIC MONITORING DEVICE

§ 843.23, Fla. Stat.

To prove the crime of Tampering with an Electronic Monitoring Device, the State must prove the following three elements beyond a reasonable doubt:

1. **[**(Defendant)**] [**(Name of person)**] was ordered to [wear] [use] an electronic monitoring device by [court order] [an order by the Florida Commission on Offender Review].**

2. (Defendant) **intentionally [removed] [destroyed] [altered] [tampered with] [damaged] [affirmatively acted to circumvent the operation of] [requested, authorized, or solicited a person to [remove] [destroy] [alter] [tamper with] [damage] [affirmatively act to circumvent the operation of]] that electronic monitoring device.**

3. (Defendant) **did not have authority to do so.**

An "electronic monitoring device" includes any device that is used to track the location of a person.

Give if applicable. § 777.04(2), Fla. Stat.

To "solicit" means to command, encourage, hire, or request another person to engage in specific conduct.

Give after a finding of guilt in a bifurcated proceeding.

Now that you found (defendant) **guilty of Tampering with an Electronic Monitoring Device, you must further determine whether the State proved beyond a reasonable doubt whether the person who had to wear or use the electronic monitoring device was [charged with] [serving a sentence for]:**

a. a misdemeanor or a third degree felony.

b. a second degree felony.

c. a first degree felony, or a first degree felony punishable by a term of years not exceeding life, a life felony, or a capital felony.

The Court instructs you that (name of relevant crime) **is a [misdemeanor] [[third degree felony] [second degree felony] [first degree**

felony] [first degree felony punishable by a term of years not exceeding life] [life felony] [capital felony].

Lesser Included Offense

TAMPERING WITH AN ELECTRONIC MONITORING DEVICE — 843.23			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
None			
	Criminal Mischief	806.13	12.4
	Attempt	777.04(1)	5.1

Comments

It is a third degree felony if the person who committed Tampering with an Electronic Monitoring Device was under 18 years of age at the time of commission of the crime. *See* § 843.23, Fla. Stat.

This instruction was adopted on April 3, 2020, and amended on March 20, 2026.

21.21 FAILURE TO REPORT KNOWN OR SUSPECTED UNLAWFUL ABUSE OR SEXUAL MISCONDUCT BY A STATE CORRECTIONS DEPARTMENT EMPLOYEE UPON AN [INMATE] [OFFENDER]

§ 944.35(4(a), (4)(b), and (4)(c), Fla. Stat.

To prove the crime of Failure to Report Known or Suspected Unlawful Abuse or Sexual Misconduct by a State Corrections Department Employee upon an [Inmate] [Offender], the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **was an employee of the Florida Department of Corrections.**

2. (Defendant) **had a duty to make a report because [he] [she] either witnessed or reasonably suspected unlawful abuse or sexual misconduct by an employee of the Florida Department of Corrections upon an [inmate] [offender supervised in the community].**

Give as applicable.

3. (Defendant) **knowingly and willfully**

a. failed to make and deliver such report.

b. prevented another person from making or delivering such report.

c. submitted inaccurate, incomplete, or untruthful information in such report.

d alter testimony or a written report regarding an incident where force was used or an incident of sexual misconduct.

"Willfully" means intentionally and purposely.

§ 944.35(3), Fla. Stat.

Each employee of the Florida Department of Corrections who witnessed or had reasonable cause to suspect that an [inmate] [offender under the supervision of the department in the community] had been unlawfully abused or was the subject of sexual misconduct must immediately prepare, date, and sign an independent report specifically describing the nature of the force used or the nature of the sexual misconduct, the location and time of the incident, and the persons involved. The report must be delivered to the inspector general of the

department with a copy to be delivered to the warden of the institution or the regional administrator.

§ 944.35(1), Fla. Stat.

An employee of the Florida Department of Corrections is authorized to apply physical force upon an inmate only when and to the extent that it reasonably appears necessary:

1. **To defend himself or herself or another against such other imminent use of unlawful force;**

2. **To prevent a person from escaping from a state correctional institution when the officer reasonably believes that person is lawfully detained in such institution;**

3. **To prevent damage to property;**

4. **To quell a disturbance;**

5. **To overcome physical resistance to a lawful command; or**

6. **To administer medical treatment only by or under the supervision of a physician or his or her designee and only:**

    a. **When treatment is necessary to protect the health of other persons, as in the case of contagious or venereal diseases; or**

    b. **When treatment is offered in satisfaction of a duty to protect the inmate against self-inflicted injury or death.**

§ 944.35(3), Fla. Stat.

"Sexual misconduct" means the oral, anal, or female genital penetration by, or union with, the sexual organ of another or the anal or female genital penetration of another by any other object. "Female genitals" includes the labia minora, labia majora, clitoris, vulva, hymen, and vagina.

Lakey v. State, 113 So. 3d 90 (Fla. 5th DCA 2013).

"An object" includes a finger.

Phillips v. State, 238 So. 3d 308 (Fla. 4th DCA 2018).

"Union" means contact.

§ 944.35(3), Fla. Stat.

The consent of the [inmate] [offender] to any act of sexual misconduct is not a defense.

Give only if applicable.

"Sexual misconduct" does not include an act done for a bona fide medical purpose. "Bona fide" means genuine.

Give only if applicable.

"Sexual misconduct" does not include an act done for an internal search conducted in the lawful performance of the employee's duty.

Give only if appliable.

§ 944.35(3), Fla. Stat.

The prohibition against sexual misconduct does not apply to an employee of the Florida Department of Corrections who engages in sexual misconduct and is legally married to an [inmate] [offender under the Department's supervision], or to any employee who has no knowledge, and would have no reason to believe, that the person with whom the employee has engaged in sexual misconduct is an [inmate] [offender] under the Department's supervision.

Lesser Included Offenses

FAILURE TO REPORT KNOWN OR SUSPECTED UNLAWFUL ABUSE OR SEXUAL MISCONDUCT BY A STATE CORRECTIONS DEPARTMENT EMPLOYEE UPON AN [INMATE] [OFFENDER] — 944.35(4)(c)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Failure to report or preventing another from reporting	944.35(4)(a)	21.21
	Submitting inaccurate, incomplete, or an untruthful report	944.35(4)(b)	21.21
	Attempt	777.04(1)	5.1

Comment

This instruction was adopted on April 25, 2023.

21.22 MISUSE OF 911 SERVICES

§ 365.172(14), Fla. Stat.

To prove the crime of Misuse of 911 Services, the State must prove the following element beyond a reasonable doubt:

Give as applicable.

a. (Defendant) **accessed, or caused another party to access, 911 services for the purpose of [making a false alarm] [making a false complaint] [reporting false information] that could result in the emergency response of any public safety agency.**

b. (Defendant) **knowingly used or attempted to use 911 services for a purpose other than obtaining public safety assistance.**

c. (Defendant) **knowingly used or attempted to use 911 services in an effort to avoid any charge for service.**

Give if applicable. See § 365.172, Fla. Stat., for definitions such as "Enhanced 911 services," "E911," "Next Generation 911," "NG911," "PSAP," "public safety answering point," "automatic number identification," "automatic location-identification," "wireless provider," and "order."

"911 services" includes "Enhanced 911," "E911," "Next Generation 911," and "NG911."

Give if applicable.

"Public safety agency" means a functional division of a public agency which provides firefighting, law enforcement, medical, or other emergency services.

Give only if element a. is charged and only if applicable.

If you find the defendant guilty of Misuse of 911 Services, you must also determine if the State proved beyond a reasonable doubt that the subsequent emergency response by a public safety agency resulted in great bodily harm, permanent disfigurement, or permanent disability to any person as a proximate result* of lawful conduct arising out of the emergency response.

"Great bodily harm" means harm that is more than slight, trivial, minor, or moderate.

*Give only if element a. is charged and only if applicable.**

If you find the defendant guilty of Misuse of 911 Services, you must also determine if the State proved beyond a reasonable doubt that the subsequent emergency response by a public safety agency resulted in the death of any person as a proximate result of lawful conduct arising out of the emergency response.

Lesser Included Offense

MISUSE OF 911 SYSTEM — 365.172(14)			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
None			
	Attempt	777.04(1)	5.1

Comments

*As of August 2025, the courts had not defined the term "proximate result." A special instruction will be required if either party requests a definition or if the trial judge thinks it necessary.

A person who was convicted twice for this crime commits a third degree felony upon a third violation. The term "conviction" means a determination of guilt that is the result of a plea agreement or a trial, regardless of whether adjudication was withheld or a plea of nolo contendere was entered. As of August 2025, it was unclear whether the prior convictions are a recidivist factor that can be proven to the judge at sentencing or an element of the crime that must be proven to the jury under the beyond a reasonable doubt standard. It is error to inform the jury of prior convictions. The judge must not read the allegation of prior convictions to the jury and must not send the charging document into the jury room. If the defendant is found guilty of Misuse of 911 Services, the historical fact of previous convictions must be determined in a bifurcated proceeding if the prior convictions are treated as an element. *State v. Harbaugh, 754 So. 2d 691 (Fla. 2000).*

This instruction was adopted on February 21, 2025, and was amended on September 12, 2025.

21.23 INTERFERING WITH A [LAW ENFORCEMENT OFFICER] [CORRECTIONAL PROBATION OFFICER] [FIREFIGHTER] [EMERGENCY MEDICAL CARE PROVIDER] AFTER WARNING

§ 843.31, Fla. Stat.

To prove the crime of Interfering with a [Law Enforcement Officer] [Correctional Probation Officer] [Firefighter] [Emergency Medical Care Provider] After Warning, the State must prove the following five elements beyond a reasonable doubt:

1. (Defendant) **received a verbal warning from** (victim) **not to approach [him] [her].**

2. **At the time,** (victim) **was a[n] [law enforcement officer] [correctional probation officer] [firefighter] [emergency medical care provider].**

3. **At the time,** (victim) **was engaged in the lawful performance of a legal duty as a[n] [law enforcement officer] [correctional probation officer] [firefighter] [emergency medical care provider].**

4. (Defendant) **knew or reasonably should have known** (victim) **was a[n] [law enforcement officer] [correctional probation officer] [firefighter] [emergency medical care provider].**

5. (Defendant) **knowingly and willfully violated** (victim's) **verbal warning by approaching [or remaining within 25 feet of** (victim)**] with the intent to [impede or interfere with** (victim's) **ability to perform [his] [her] legal duty] [threaten** (victim) **with physical harm] [harass** (victim)**].**

"Willfully" means intentionally and purposefully.

Give as applicable.

A law enforcement officer is defined as (insert language from § 943.10(1), Fla. Stat.)**.**

A correctional probation officer is defined as (insert language from § 943.10(3), Fla. Stat.)**.**

A firefighter is defined as (insert language from § 784.07(1), Fla. Stat.)**.**

An emergency medical care provider is defined as (insert language from § 784.07(1), Fla. Stat.)**.**

Give if applicable.

"Harass" means to willfully engage in a course of conduct directed at a [law enforcement officer] [correctional probation officer] [firefighter] [emergency medical care provider] which intentionally causes substantial distress in that [law enforcement officer] [correctional probation officer] [firefighter] [emergency medical care provider] and which serves no legitimate purpose.

Lesser Included Offense

INTERFERING WITH A [LAW ENFORCEMENT OFFICER] [CORRECTIONAL PROBATION OFFICER] [FIREFIGHTER] [EMERGENCY MEDICAL CARE PROVIDER] AFTER WARNING — 843.31

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS.NO.
None			
	Attempt	777.04	5.1

Comment

This instruction was adopted on June 27, 2025.

21.24 TAMPERING WITH A COURT OFFICIAL

§ 918.12(1), Fla. Stat.

To prove the crime of Tampering with a Court Official, the State must prove the following five elements beyond a reasonable doubt:

Give as applicable.

1. (Defendant) **knowingly**

a. used intimidation or physical force against (name of person)**.**

b. threatened or attempted to threaten (name of person)**.**

c. engaged in misleading conduct toward (name of person)**.**

d. offered pecuniary benefit or gain to (name of person)**.**

2. (Defendant) **did so with the intent to cause or induce** (name of court official) **to obstruct the administration of justice or affect the outcome of an official investigation or official proceeding.**

3. The official investigation or official proceeding involved the investigation or prosecution of (insert appropriate type of investigation or proceeding, e.g., first degree murder, dissolution of marriage, etc.)**.**

4. At the time, (name of court official) **was a[n] [judge] [justice] [general magistrate] [special magistrate] [grand juror] [petit juror] [clerk of the court] [deputy clerk of the court] [judicial assistant] [administrative assistant] [attorney] [child support enforcement hearing officer] [bailiff] [court deputy].**

5. At the time, (defendant) **knew** (name of court official) **was a[n] [judge] [justice] [general magistrate] [special magistrate] [grand juror] [petit juror] [clerk of the court] [deputy clerk of the court] [judicial assistant] [administrative assistant] [attorney] [child support enforcement hearing officer] [bailiff] [court deputy].**

The Court instructs you that an official investigation or official proceeding involving the investigation or prosecution of (insert relevant information from element #3) **is** (insert appropriate information from § 918.12(1)(b)1.-6.)

"Physical force" means physical action against another person and includes confinement of a person.

"Misleading conduct" means:

a. knowingly making a false statement;

b. intentionally omitting information from a statement and thereby causing a portion of such statement to be misleading, or intentionally concealing a material fact and thereby creating a false impression by such statement;

c. with intent to mislead, knowingly submitting or inviting reliance on a writing or recording that is false, forged, altered, or otherwise lacking in authenticity;

d. with intent to mislead, knowingly submitting or inviting reliance on a sample, specimen, map, photograph, boundary mark, or other object that is misleading in a material respect;

or

e. knowingly using a trick, scheme, or device with intent to mislead.

"Official investigation" means any investigation instituted by a law enforcement agency or prosecuting officer of the state or a political subdivision of the state or by the Commission on Ethics.

"Official proceeding" means any proceeding before a judge or court or a grand jury.

Give as applicable.

"Administrative assistant" means a court employee assigned to the office of a specific general or special magistrate or a child support enforcement hearing officer.

"Judicial assistant" means a court employee assigned to the office of a specific judge or justice responsible for providing administrative, secretarial, or clerical support to the assigned judge or justice.

Affirmative Defense. Give if applicable. § 918.12(3), Fla. Stat. As of February 2026, the courts had not determined which party had the burden of

persuasion and at what level of proof (preponderance, clear and convincing, beyond a reasonable doubt).

It is a defense to the charge of Tampering with a Court Official if at the time of the alleged offense, (defendant) **was an attorney acting in the performance of [his] [her] duties.**

Lesser Included Offenses

TAMPERING WITH A COURT OFFICIAL — 918.12(1)			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
None			
	Bribery of a Public Official	838.015	19.1
	Unlawful Compensation for Official Behavior	838.016	19.3
	Aggravated Assault	784.021	8.2
	Threat to [Kill] [do Serious Bodily Injury] to a Public Official	836.12	8.22(a)
	Assault	784.011	8.1
	Attempt	777.04(1)	5.1

Comments

Other crimes could be lesser included offenses depending on the charging document and the evidence.

This instruction was adopted on March 20, 2026.

21.25 HARASSING A COURT OFFICIAL

§ 918.12(2), Fla. Stat.

To prove the crime of Harassing a Court Official, the State must prove the following five elements beyond a reasonable doubt:

1. (Defendant) **intentionally harassed** (victim)**.**

2. **At the time,** (victim) **was a[n] [judge] [justice] [general magistrate] [special magistrate] [grand juror] [petit juror] [clerk of the court] [deputy clerk of the court] [judicial assistant] [administrative assistant] [attorney] [child support enforcement hearing officer] [bailiff] [court deputy].**

3. (Defendant) **knew** (victim) **was a[n] [judge] [justice] [general magistrate] [special magistrate] [grand juror] [petit juror] [clerk of the court] [deputy clerk of the court] [judicial assistant] [administrative assistant] [attorney] [child support enforcement hearing officer] [bailiff] [court deputy].**

4. ((Defendant) **thereby [hindered] [delayed] [prevented] [dissuaded] [attempted to [hinder] [delay] [prevent] [dissuade]]** (victim) **from**

Give as applicable.

a. attending an official proceeding.

b. rendering a fair verdict based solely upon the evidence produced at an official proceeding and upon the law.

c. following the rules of juror behavior and deliberation as set forth by the judge in an official proceeding.

5. **The official proceeding involved** (insert appropriate type of proceeding, e.g., first degree murder, dissolution of marriage, etc.)**.**

The Court instructs you that an official proceeding involving the investigation or prosecution of (insert relevant information from element #5) **is** (insert appropriate information from § 918.12(2)(b)1.-6.)

§ 918.115, Fla. Stat.

"Harass" means to engage in a course of conduct directed at a specific person which causes substantial emotional distress in that person and serves no legitimate purpose.

"Official investigation" means any investigation instituted by a law enforcement agency or prosecuting officer of the state or a political subdivision of the state or by the Commission on Ethics.

"Official proceeding" means any proceeding before a judge or court or a grand jury.

Give as applicable.

"Administrative assistant" means a court employee assigned to the office of a specific general or special magistrate or a child support enforcement hearing officer.

"Judicial assistant" means a court employee assigned to the office of a specific judge or justice responsible for providing administrative, secretarial, or clerical support to the assigned judge or justice.

Affirmative Defense. Give if applicable. § 918.12(3), Fla. Stat. As of February 2026, the courts had not determined which party has the burden of persuasion and at what level of proof (preponderance, clear and convincing, beyond a reasonable doubt).

It is a defense to the charge of Harassing a Court Official if at the time, (defendant) **was an attorney acting in the performance of [his] [her] duties.**

Lesser Included Offenses

HARASSING A COURT OFFICIAL — 918.12(2)			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
None			
	Stalking	784.048	8.6
	Harassing Telephone Calls	365.16	8.30

Comments

As of February 2026, it was unclear whether the courts will require the state to prove that a reasonable person in the court official's position would have experienced substantial emotional distress. It was also undetermined whether the courts will require the state to prove that the defendant's harassment was done with the intent to affect the official proceeding or investigation.

This instruction was adopted on March 20, 2026.

21.26 RETALIATING AGAINST A COURT OFFICIAL

§ 918.125, Fla. Stat.

To prove the crime of Retaliating Against a Court Official, the State must prove the following three elements beyond a reasonable doubt:

Give 1a or 1b or both as applicable.

1. (Defendant)

a. knowingly engaged in conduct that threatened to cause bodily injury to (name of person)**.**

b. [damaged] [threatened to damage] the tangible property of (name of person).

2. (Defendant) **did so with the intent to retaliate against** (name of person) f**or [his] [her] participation in an official investigation or official proceeding.**

3. At the time, (name of person) **was a[n] [judge] [justice] [general magistrate] [special magistrate] [grand juror] [petit juror] [clerk of the court] [deputy clerk of the court] [judicial assistant] [administrative assistant] [attorney] [child support enforcement hearing officer] [bailiff] [court deputy].**

Give if applicable.

If you find (defendant) **guilty of Retaliating Against a Court Official, you must further determine whether the State proved beyond a reasonable doubt that the commission of Retaliating Against a Court Official resulted in bodily injury.**

"Bodily injury" means a cut, an abrasion, a bruise, a burn, or a disfigurement; physical pain; illness; impairment of the function of a bodily member, an organ, or a mental faculty; or any other injury to the body, regardless of how temporary.

Give as applicable.

"Administrative assistant" means a court employee assigned to the office of a specific general or special magistrate or a child support enforcement hearing officer.

"Judicial assistant" means a court employee assigned to the office of a specific judge or justice responsible for providing administrative, secretarial, or clerical support to the assigned judge or justice.

"Official investigation" means any investigation instituted by a law enforcement agency or prosecuting officer of the state or a political subdivision of the state or by the Commission on Ethics.

"Official proceeding" means any proceeding before a judge or court or a grand jury.

Lesser Included Offenses

RETALIATING AGAINST A COURT OFFICIAL — 918.125			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
None			
	Aggravated Assault	784.021	8.2
	Criminal Mischief	806.13	12.4
	Assault	784.011	8.1
	Attempt	777.04(1)	5.1

Comments

This instruction was adopted on March 20, 2026.

CHAPTER 22 — GAMBLING

22.1 GAMBLING

§ 849.08, Fla. Stat.

To prove the crime of Gambling, the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **played or engaged in a game of chance by** (read from charge)**.**

2. (Defendant) **risked money or property on the outcome of the game.**

3. (Defendant) **expected to gain or lose money or property as a result of the game.**

It is not necessary that the risked money or property was that of the defendant.

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comment

This instruction was adopted in 1981.

22.2 MAINTAINING A GAMBLING ESTABLISHMENT

§ 849.01-A (849.02) Fla. Stat.

§ 849.01, Fla. Stat., covers both the maintaining of a gambling establishment and the permitting of gambling. Accordingly, separate instructions have been prepared for these offenses with the designations "A" and "B" § 849.02, Fla. Stat., proscribes the same conduct when one is acting as a servant, clerk, agent, or employee. Therefore, the instructions for § 849.01, Fla. Stat., may be given for charges under § 849.02, Fla. Stat., by using appropriate language as indicated.

To prove the crime of Maintaining a Gambling Establishment, the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant)**,**

a. [in person or by a servant, clerk, or agent,]

Give 1b if applicable under § 849.02, Fla. Stat.

b. [acting as servant, clerk, agent, or employee of another,] had a substantial degree of control over and kept or maintained (place or articles alleged)**.**

2. The [place was] [articles were] habitually kept or maintained for the purpose of gambling.

A single instance or rare and isolated instances of placing bets or gambling would be insufficient to constitute the crime. But if the property was used at frequent intervals as a place or means for betting, gaming, or gambling, the crime has been committed even if the principal use of the property is for some other lawful purpose.

It is not necessary to prove that the defendant gambled, or received any profit from the gambling, or that [he] [she] wholly owned or controlled the property.

It is not necessary to a conviction of this offense that there be direct and positive evidence of gambling. It is sufficient if implements, devices, or apparatus commonly used by gambling houses or by gamblers are found under circumstances that convince you that the premises were kept or maintained for the purpose of gambling.

Give if applicable under § 849.02, Fla. Stat.

A servant, clerk, agent, or employee of another who keeps or maintains property for the purpose of gambling is equally guilty with [his] [her] employer.

Definition

"Gambling" is a game of chance in which the participant risks money or property on the outcome with the expectation of gaining or losing as a result of the game.

If there is evidence of the exception referred to in § 849.093 and 849.085, Fla. Stat., an appropriate instruction should be given.

Lesser Included Offenses

MAINTAINING A GAMBLING ESTABLISHMENT — 849.01 (849.02)			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
None			
	Lottery	849.09(1)(f)	
	Lottery	849.09(1)(k)	22.11
	Lottery	849.11	

Comment

This instruction was adopted in 1981 and amended in 1992.

22.3 PERMITTING GAMBLING

§ 849.01-B, Fla. Stat. (849.02)

§ 849.01, Fla. Stat., covers both the maintaining of a gambling establishment and the permitting of gambling. Accordingly, separate instructions have been prepared for these offenses with the designations "A" and "B". § 849.02, Fla. Stat., proscribes the same conduct when one is acting as a servant, clerk, agent or employee. Therefore, the instructions for § 849.01, Fla. Stat., may be given for charges under § 849.02, Fla. Stat., by using appropriate language as indicated.

To prove the crime of Permitting Gambling, the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant)**,**

a. [in person or by a servant, clerk, or agent,]

Give 1b if applicable under § 849.02, Fla. Stat.

b. [acting as servant, clerk, agent, or employee,] had direct or indirect charge, control, or management of (place or premises alleged).

2. (Defendant) **habitually solicited or knowingly permitted gambling at that place.**

The word "knowingly" is implied in "permit" or "allow" but is added here to make this fact clear to the jury. In this definition the word "gambling" has been added to effectuate the obvious legislative intent.

A single instance or rare and isolated instances of placing bets or gambling would be insufficient to constitute the crime. But if the place was used at frequent intervals for betting, gaming, or gambling, the crime has been committed, even if the principal use of the place was for some other lawful purpose.

It is not necessary that the defendant have the sole and exclusive control or management of the place. It is sufficient if the control or management was exercised jointly with others. But a person would not be guilty of this crime unless that person had sufficient control or management of the place to carry with it the authority to deny or forbid that use of the place.

It is not necessary that the defendant have any personal interest in the gambling or in the use of the place for gambling.

Definition

"Gambling" is a game of chance in which the participant risks money or property on the outcome with the expectation of gaining or losing as a result of the game.

If there is evidence of the exception referred to in § 849.093, Fla. Stat., an appropriate instruction should be given.

Lesser Included Offenses

PERMITTING GAMBLING — 849.01 (849.02)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Lottery	849.09(1)(f)	
	Lottery	849.09(1)(k)	22.11
	Lottery	849.11	

AGENTS, SERVANTS, ETC., OF KEEPER OF GAMBLING HOUSE — 849.02

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Lottery	849.09(1)(f)	
	Lottery	849.09(1)(k)	22.11

RENTING HOUSE FOR GAMBLING PURPOSES — 849.02

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	None		

Comment

This instruction was adopted in 1981.

22.4 RENTING SPACE FOR GAMBLING

§ 849.03, Fla. Stat.

To prove the crime of Renting Space for Gambling, the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant)**, as owner or agent, knowingly rented** (place alleged) **to** (person alleged)**.**

2. (Defendant) **knew at the time of renting the place that** (person alleged) **intended to use the place for gambling.**

Definition

"Gambling" is a game of chance in which the participant risks money or property on the outcome with the expectation of gaining or losing as a result of the game.

If there is evidence of the exception referred to in § 849.093, Fla. Stat., an appropriate instruction should be given.

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comment

This instruction was adopted in 1981.

22.5 SETTING UP, PROMOTING, CONDUCTING A LOTTERY

§ 849.09(1)(a), Fla. Stat.

To prove the crime of [Setting Up] [Promoting] [Conducting] a Lottery, the State must prove beyond a reasonable doubt that:

(Defendant) **[set up] [promoted] [conducted] a lottery for [money] [anything of value].**

Definitions.

Little River Theatre Corp. v. State, 185 So. 855 (Fla. 1939).

A "lottery" has three elements: (1) consideration — that is, a bet or thing ventured; (2) a prize; and (3) the award or winning of the prize by lot or chance.

A "bet" is when money or other property is risked, pledged, wagered, or staked by a participant on the outcome of a game, contest, or uncertain or contingent event, with the expectation of gaining or losing as a result.

A "thing ventured" is when something other than money or property is risked by a participant on the outcome of a game, contest, or uncertain or contingent event, with the expectation of gaining or losing as a result, which includes but is not limited to the time, inconvenience, and effort required to attend or participate, at the expense of foregone alternatives and other opportunities.

A "prize by lot or chance" is when the award or winning prize is determined by a chance or uncertain or contingent event, the outcome of which is not influenced or controlled by a participant's skill, such as by drawing numbers, entries, cards, or by rolling dice.

Lesser Included Offenses

LOTTERY — 849.09(1)(a)			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
None			
	Lottery	849.09(1)(f)	
	Lottery	849.09(1)(g)	22.9
	Lottery	849.09(1)(h)	22.10
	Lottery	849.09(1)(i)	
	Lottery	849.09(1)(j)	
	Lottery	849.09(1)(k)	22.11
	Playing at game of chance by lot	849.11	
	Gambling devices, etc.	849.231	
	Attempt	777.04	5.1

Comments

See Blackburn v. Ippolito, 156 So. 2d 550, 553 (Fla. 2d DCA 1963) ("[T]hings other than money can constitute a sufficient consideration, moving from the participants in such scheme to the operators without any cash outlay being made.") citing to *Dorman v. Publix-Saenger-Sparks Theatres*, 184 So. 886 (Fla. 1938) ("The consideration required to support a simple contract need not be money or anything having a monetary value, but any consist of either a benefit to the promisor or a detriment to the promisee.") and *Little River Theatre Corp. v. State*, 185 So. 855

(Fla. 1939)(holding that increased attendance and receipts at a theater offering a "bank night" drawing satisfied the element of consideration, even though persons could participate in the drawing without purchasing a ticket).

A special instruction will be needed if an exception, such as §§ 849.09(1), 849.092, 849.0931, or 849.0935, Fla. Stats., might apply.

This instruction was adopted in 1981 and amended in 2014 [143 So. 3d 893], 2015 [176 So. 3d 938], and 2019.

22.6 DISPOSING OF [MONEY] [PROPERTY] BY LOTTERY

§ 849.09(1)(b), Fla. Stat.

To prove the crime of Disposing of [Money] [Property] by Lottery, the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) **disposed of [money] [property].**

2. The [money] [property] was disposed of by means of a lottery.

Definitions.

Little River Theatre Corp. v. State, 185 So. 855 (Fla. 1939).

A "lottery" has three elements: (1) consideration — that is, a bet or thing ventured; (2) a prize; and (3) the award or winning of the prize by lot or chance.

A "bet" is when money or other property is risked, pledged, wagered, or staked by a participant on the outcome of a game, contest, or uncertain or contingent event, with the expectation of gaining or losing as a result.

A "thing ventured" is when something other than money or property is risked by a participant on the outcome of a game, contest, or uncertain or contingent event, with the expectation of gaining or losing as a result, which includes but is not limited to the time, inconvenience, and effort required to attend or participate, at the expense of foregone alternatives and other opportunities.

A "prize by lot or chance" is when the award or winning prize is determined by a chance or uncertain or contingent event, the outcome of which is not influenced or controlled by a participant's skill, such as by drawing numbers, entries, cards, or by rolling dice.

Lesser Included Offenses

LOTTERY — 849.09(1)(b)			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
None			
	Lottery	849.09(1)(f)	
	Lottery	849.09(1)(g)	22.9
	Lottery	849.09(1)(h)	22.10
	Lottery	849.09(1)(i)	
	Lottery	849.09(1)(j)	
	Lottery	849.09(1)(k)	22.11
	Gambling devices, etc.	849.231	
	Attempt	777.04	5.1

Comments

See Blackburn v. Ippolito, 156 So. 2d 550, 553 (Fla. 2d DCA 1963) ("[T]hings other than money can constitute a sufficient consideration, moving from the participants in such scheme to the operators without any cash outlay being made.") citing to *Dorman v. Publix-Saenger-Sparks Theatres*, 184 So. 886 (Fla. 1938) ("The consideration required to support a simple contract need not be money or anything having a monetary value, but any consist of either a benefit to the promisor or a detriment to the promisee.") and *Little River Theatre Corp. v. State*, 185 So. 855 (Fla. 1939) (holding that increased attendance and receipts at a theater offering a "bank night" drawing satisfied the element of consideration, even though persons could participate in the drawing without purchasing a ticket).

A special instruction will be needed if an exception, such as §§ 849.09(1), 849.092, 849.0931, or 849.0935, Fla. Stats., might apply.

This instruction was adopted in 1981 and amended in 2015 [176 So. 3d 938], and 2019.

22.7 [CONDUCTING] [ADVERTISING] A LOTTERY DRAWING

§ 849.09(1)(c), Fla. Stat.

To prove the crime of [Conducting] [Advertising] a Lottery Drawing, the State must prove the following beyond a reasonable doubt:

Give as applicable.

a. (Defendant) **conducted a lottery drawing.**

b. (Defendant) **advertised a lottery drawing [in a newspaper] [or] [by [a circular] [a poster] [a pamphlet] [radio] [telegraph] [telephone] [or otherwise]].**

Definitions.

Little River Theatre Corp. v. State, 185 So. 855 (Fla. 1939).

A "lottery" has three elements: (1) consideration — that is, a bet or thing ventured; (2) a prize; and (3) the award or winning of the prize by lot or chance.

A "bet" is when money or other property is risked, pledged, wagered, or staked by a participant on the outcome of a game, contest, or uncertain or contingent event, with the expectation of gaining or losing as a result.

A "thing ventured" is when something other than money or property is risked by a participant on the outcome of a game, contest, or uncertain or contingent event, with the expectation of gaining or losing as a result, which includes but is not limited to the time, inconvenience, and effort required to attend or participate, at the expense of foregone alternatives and other opportunities.

A "prize by lot or chance" is when the award or winning prize is determined by a chance or uncertain or contingent event, the outcome of which is not influenced or controlled by a participant's skill, such as by drawing numbers, entries, cards, or by rolling dice.

Lesser Included Offenses

LOTTERY — 849.09(1)(c)			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
None			
	Lottery	849.09(1)(f)	
	Lottery	849.09(1)(g)	22.9
	Lottery	849.09(1)(h)	22.10
	Lottery	849.09(1)(i)	
	Lottery	849.09(1)(j)	
	Lottery	849.09(1)(k)	22.11
	Gambling devices, etc.	849.231	
	Attempt	777.04	5.1

Comments

See Blackburn v. Ippolito, 156 So. 2d 550, 553 (Fla. 2d DCA 1963) ("[T]hings other than money can constitute a sufficient consideration, moving from the participants in such scheme to the operators without any cash outlay being made.") citing to *Dorman v. Publix-Saenger-Sparks Theatres*, 184 So. 886 (Fla. 1938) ("The consideration required to support a simple contract need not be money or anything having a monetary value, but any consist of either a benefit to the promisor or a detriment to the promisee.") and *Little River Theatre Corp. v. State*, 185 So. 855 (Fla. 1939) (holding that increased attendance and receipts at a theater offering a "bank night" drawing satisfied the element of consideration, even though persons could participate in the drawing without purchasing a ticket).

A special instruction will be needed if an exception, such as §§ 849.09(1), 849.092, 849.0931, or 849.0935, Fla. Stats., might apply.

This instruction was adopted in 1981 and amended in 2015 [176 So. 3d 938] and 2019.

22.8 ASSISTING IN SETTING UP, PROMOTING, OR CONDUCTING A LOTTERY

§ 849.09(1)(d), Fla. Stat.

To prove the crime of Assisting in Setting up, Promoting, or Conducting a Lottery, the State must prove the following two elements beyond a reasonable doubt:

1. There was a lottery set up, promoted, or conducted.

Give as applicable.

2. a. (Defendant) **aided or assisted in setting up, promoting, or conducting the lottery by** (read from charge)**.**

b. (Defendant) **was interested in or connected with the lottery by** (read from charge)**.**

Definitions.

Little River Theatre Corp. v. State, 185 So. 855 (Fla. 1939).

A "lottery" has three elements: (1) consideration — that is, a bet or thing ventured; (2) a prize; and (3) the award or winning of the prize by lot or chance.

A "bet" is when money or other property is risked, pledged, wagered, or staked by a participant on the outcome of a game, contest, or uncertain or contingent event, with the expectation of gaining or losing as a result.

A "thing ventured" is when something other than money or property is risked by a participant on the outcome of a game, contest, or uncertain or contingent event, with the expectation of gaining or losing as a result, which includes but is not limited to the time, inconvenience, and effort required to attend or participate, at the expense of foregone alternatives and other opportunities.

A "prize by lot or chance" is when the award or winning prize is determined by a chance or uncertain or contingent event, the outcome of which is not influenced or controlled by a participant's skill, such as by drawing numbers, entries, cards, or by rolling dice.

Lesser Included Offenses

LOTTERY — 849.09(1)(d)			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
None			
	Lottery	849.09(1)(f)	
	Lottery	849.09(1)(g)	22.9
	Lottery	849.09(1)(h)	22.10
	Lottery	849.09(1)(i)	
	Lottery	849.09(1)(j)	
	Lottery	849.09(1)(k)	22.11
	Playing at game of chance by lot	849.11	
	Gambling devices, etc.	849.231	
	Attempt	777.04	5.1

Comments

See Blackburn v. Ippolito, 156 So. 2d 550, 553 (Fla. 2d DCA 1963) ("[T]hings other than money can constitute a sufficient consideration, moving from the participants in such scheme to the operators without any cash outlay being made.") citing to *Dorman v. Publix-Saenger-Sparks Theatres*, 184 So. 886 (Fla. 1938) ("The consideration required to support a simple contract need not be money or anything having a monetary value, but any consist of either a benefit to the promisor or a detriment to the promisee.") and *Little River Theatre Corp. v. State*, 185 So. 855 (Fla. 1939)(holding that increased attendance and receipts at a theater offering a "bank night" drawing satisfied the element of consideration, even though persons could participate in the drawing without purchasing a ticket).

A special instruction will be needed if an exception, such as §§ 849.09(1), 849.092, 849.0931, or 849.0935, Fla. Stats., might apply.

This instruction was adopted in 1981 and amended in 2015 [176 So. 3d 938] and 2019.

22.9 [SALE OF LOTTERY TICKETS] [OFFERING LOTTERY TICKETS FOR SALE] [TRANSMITTING LOTTERY TICKETS]

§ 849.09(1)(g), Fla. Stat.

To prove the crime of [Sale of Lottery Tickets] [Offering Lottery Tickets for Sale] [Transmitting Lottery Tickets], the State must prove beyond a reasonable doubt that:

(Defendant) **[sold] [offered for sale] [transmitted, in person or by mail or in some other way] a lottery ticket, coupon or share, or fractional part of a lottery ticket, coupon or share, representing an interest in a live lottery yet to be played or in a lottery that has already been played.**

Definitions.

Little River Theatre Corp. v. State, 185 So. 855 (Fla. 1939).

A "lottery" has three elements: (1) consideration — that is, a bet or thing ventured; (2) a prize; and (3) the award or winning of the prize by lot or chance.

A "bet" is when money or other property is risked, pledged, wagered, or staked by a participant on the outcome of a game, contest, or uncertain or contingent event, with the expectation of gaining or losing as a result.

A "thing ventured" is when something other than money or property is risked by a participant on the outcome of a game, contest, or uncertain or contingent event, with the expectation of gaining or losing as a result, which includes but is not limited to the time, inconvenience, and effort required to attend or participate, at the expense of foregone alternatives and other opportunities.

A "prize by lot or chance" is when the award or winning prize is determined by a chance or uncertain or contingent event, the outcome of which is not influenced or controlled by a participant's skill, such as by drawing numbers, entries, cards, or by rolling dice.

A "lottery ticket, coupon, or share" is any paper, token, or thing that represents the right of the possessor to receive all or any part of a prize awarded or to be awarded in the operation of a lottery. It is not necessary that the rights of the holder be written or printed in plain language. It is sufficient if the ticket, coupon, share, or token, by any manner known to those familiar with a particular lottery being played, indicates or represents the rights of its owner or possessor.

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comments

See Blackburn v. Ippolito, 156 So. 2d 550, 553 (Fla. 2d DCA 1963) ("[T]hings other than money can constitute a sufficient consideration, moving from the participants in such scheme to the operators without any cash outlay being made.") citing to *Dorman v. Publix-Saenger-Sparks Theatres*, 184 So. 886 (Fla. 1938) ("The consideration required to support a simple contract need not be money or anything having a monetary value, but any consist of either a benefit to the promisor or a detriment to the promisee.") and *Little River Theatre Corp. v. State*, 185 So. 855 (Fla. 1939) (holding that increased attendance and receipts at a theater offering a "bank night" drawing satisfied the element of consideration, even though persons could participate in the drawing without purchasing a ticket).

A special instruction will be needed if an exception, such as §§ 849.09(1), 849.092, 849.0931, or 849.0935, Fla. Stats., might apply.

This instruction was adopted in 1981 and amended in 2015 [176 So. 3d 938] and 2019.

22.10 POSSESSING A LOTTERY TICKET

§ 849.09(1)(h), Fla. Stat.

To prove the crime of Possessing a Lottery Ticket, the State must prove beyond a reasonable doubt that:

(Defendant) **had in [his] [her] possession a lottery ticket or a coupon, share, or token evidencing some interest in a live lottery yet to be played or in a lottery that has already been played.**

Definitions.

Lottery.

Little River Theatre Corp. v. State, 185 So. 855 (Fla. 1939).

A "lottery" has three elements: (1) consideration — that is, a bet or thing ventured; (2) a prize; and (3) the award or winning of the prize by lot or chance.

A "bet" is when money or other property is risked, pledged, wagered, or staked by a participant on the outcome of a game, contest, or uncertain or contingent event, with the expectation of gaining or losing as a result.

A "thing ventured" is when something other than money or property is risked by a participant on the outcome of a game, contest, or uncertain or contingent event, with the expectation of gaining or losing as a result, which includes but is not limited to the time, inconvenience, and effort required to attend or participate, at the expense of foregone alternatives and other opportunities.

A "prize by lot or chance" is when the award or winning prize is determined by a chance or uncertain or contingent event, the outcome of which is not influenced or controlled by a participant's skill, such as by drawing numbers, entries, cards, or by rolling dice.

Lottery ticket, coupon, or share.

A "lottery ticket, coupon, or share" is any paper, token, or thing that represents the right of the possessor to receive all or any part of a prize awarded or to be awarded in the operation of a lottery. It is not necessary that the rights of the holder be written or printed in plain language. It is sufficient if the ticket, coupon, share, or token by any

manner known to those familiar with a particular lottery being played indicates or represents the rights of its owner or possessor.

Possession.

To prove (defendant) **possessed a [lottery ticket] [coupon, share, or token], the State must prove beyond a reasonable doubt that [he] [she] a) knew of the existence of the [lottery ticket] [coupon, share, or token]; and b) intentionally exercised control over that [lottery ticket] [coupon, share, or token].**

Give if applicable.

Control can be exercised over a [lottery ticket] [coupon, share, or token] whether it is carried on a person, near a person, or in a completely separate location. Mere proximity to a [lottery ticket] [coupon, share, or token] 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 the [lottery ticket] [coupon, share, or token] or the present ability to direct its control by another.**

Joint possession. Give if applicable.

Possession of a [lottery ticket] [coupon, share, or token] may be sole or joint, that is, two or more persons may possess a [lottery ticket] [coupon, share, or token].

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comments

See Blackburn v. Ippolito, 156 So. 2d 550, 553 (Fla. 2d DCA 1963) ("[T]hings other than money can constitute a sufficient consideration, moving from the participants in such scheme to the operators without any cash outlay being made.") citing to *Dorman v. Publix-Saenger-Sparks Theatres*, 184 So. 886 (Fla. 1938) ("The consideration required to support a simple contract need not be money or anything having a monetary value, but any consist of either a benefit to the promisor or a detriment to the promisee.") and *Little River Theatre Corp. v. State*, 185 So. 855 (Fla. 1939) (holding that increased attendance and receipts at a theater offering a "bank night" drawing satisfied the element of consideration, even though persons could participate in the drawing without purchasing a ticket).

A special instruction will be needed if an exception, such as §§ 849.09(1), 849.092, 849.0931, or 849.0935, Fla. Stats., might apply.

This instruction was adopted in 1981 and amended in 2015 [176 So. 3d 938], 2018 [259 So. 3d 765], and 2019.

22.11 POSSESSING RUNDOWN SHEETS, ETC.

§ 849.09(1)(k), Fla. Stat.

To prove the crime of Possessing [Run Down Sheets] [Tally Sheets] [or] [Other Papers, Records, Instruments, or Paraphernalia], the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) **had in [his] [her] possession [Run Down Sheets] [Tally Sheets] [or] [Other Papers, Records, Instruments, or Paraphernalia].**

2. **These articles were designed for use, directly or indirectly, in gambling or in the conduct of a lottery.**

Definitions.

Gambling.

"Gambling" is a game of chance in which the participant risks money or property on the outcome with the expectation of gaining or losing as a result of the game.

Lottery.

Little River Theatre Corp. v. State, 185 So. 855 (Fla. 1939).

A "lottery" has three elements: (1) consideration — that is, a bet or thing ventured; (2) a prize; and (3) the award or winning of the prize by lot or chance.

A "bet" is when money or other property is risked, pledged, wagered, or staked by a participant on the outcome of a game, contest, or uncertain or contingent event, with the expectation of gaining or losing as a result.

A "thing ventured" is when something other than money or property is risked by a participant on the outcome of a game, contest, or uncertain or contingent event, with the expectation of gaining or losing as a result, which includes but is not limited to the time, inconvenience, and effort required to attend or participate, at the expense of foregone alternatives and other opportunities.

A "prize by lot or chance" is when the award or winning prize is determined by a chance or uncertain or contingent event, the outcome of which is not influenced or controlled by a participant's skill, such as by drawing numbers, entries, cards, or by rolling dice.

Possession.

To prove (defendant) **possessed [Run Down Sheets] [Tally Sheets] [or] [Other Papers, Records, Instruments, or Paraphernalia], the State must prove beyond a reasonable doubt that [he] [she] a) knew of the existence of the Run Down Sheets] [Tally Sheets] [or] [Other Papers, Records, Instruments, or Paraphernalia]; and b) intentionally exercised control over those [Run Down Sheets] [Tally Sheets] [or] [Other Papers, Records, Instruments, or Paraphernalia].**

Give if applicable.

Control can be exercised over Run Down Sheets] [Tally Sheets] [or] [Other Papers, Records, Instruments, or Paraphernalia], whether they are carried on a person, near a person, or in a completely separate location. Mere proximity to [Run Down Sheets] [Tally Sheets] [or] [Other Papers, Records, Instruments, or Paraphernalia], does not establish that the person intentionally exercised control over them in the absence of additional evidence. Control can be established by proof that (defendant) **had direct personal power to control the [Run Down Sheets] [Tally Sheets] [or] [Other Papers, Records, Instruments, or Paraphernalia], or the present ability to direct their control by another.**

Joint possession. Give if applicable.

Possession of [Run Down Sheets] [Tally Sheets] [or] [Other Papers, Records, Instruments, or Paraphernalia], may be sole or joint, that is, two or more persons may possess [Run Down Sheets] [Tally Sheets] [or] [Other Papers, Records, Instruments, or Paraphernalia].

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comments

See Blackburn v. Ippolito, 156 So. 2d 550, 553 (Fla. 2d DCA 1963) ("[T]hings other than money can constitute a sufficient consideration, moving from the participants in such scheme to the operators without any cash outlay being made.") citing to *Dorman v. Publix-Saenger-Sparks Theatres*, 184 So. 886 (Fla. 1938) ("The consideration required to support a simple contract need not be money or anything having a monetary value, but any consist of either a benefit to the promisor or a detriment to the promisee.") and *Little River Theatre Corp. v. State*, 185 So. 855 (Fla. 1939) (holding that increased attendance and receipts at a theater offering a "bank night" drawing satisfied the element of

consideration, even though persons could participate in the drawing without purchasing a ticket).

A special instruction will be needed if an exception, such as §§ 849.09(1), 849.092, 849.0931, or 849.0935, Fla. Stats., might apply.

This instruction was adopted in 1981 and amended in 2015 [176 So. 3d 938] 2018 [259 So. 3d 765], and 2019.

22.12 BETTING

§ 849.14, Fla. Stat.

To prove the crime of Betting, the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) **staked, bet, or wagered money or something of value.**

2. [He] [She] did so upon the result of a trial or contest of

[skill]

[speed]

[power]

[endurance]

of man or beast.

This charge may be adapted to cover the other ways of violating § 849.14, Fla. Stat.

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comment

This instruction was adopted in 1981.

22.13 BOOKMAKING ON GROUNDS OF A PERMIT-HOLDER

§ 550.3615 (adapted from former § 849.24, Fla. Stat.)

To prove the crime of Bookmaking on Grounds of a Permit-holder, the State must prove the following four elements beyond a reasonable doubt:

1. (Defendant) **took or received a bet or wager.**

2. **The bet or wager was upon the result of a trial or contest of skill, speed, power, or endurance**

[of horses].

[of dogs].

[between men].

3. **The bet or wager was taken upon the grounds or property of** (alleged permit-holder)**.**

4. (Alleged permit-holder) **had a permit to operate a**

[horse track].

[dog track].

[jai alai fronton].

Lesser Included Offenses

BOOKMAKING ON GROUNDS OF PERMIT HOLDER (ADAPTED FROM FORMER 849.24) — 550.3615

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempt	777.04(1)	5.1

Comment

This instruction was adopted in 1981.

22.14 BOOKMAKING

§ 849.25(1), Fla. Stat.

To prove the crime of Bookmaking, the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **was engaged in the business or profession of gambling.**

2. While so engaged, (defendant) **took or received a bet or wager.**

3. The bet or wager was upon the result of

[a trial or contest of skill, speed, power, or endurance of [man] [beast] [fowl] [motor vehicles] [mechanical apparatus]].

[a chance, casualty, or unknown or contingent event].

§ 849.25(1)(b), Fla. Stat.

To determine whether (defendant) **was engaged in the offense of bookmaking the following factors shall be considered:**

1. Taking advantage of betting odds created to produce a profit for the bookmaker or charging a percentage on accepted wagers.

2. Placing all or part of accepted wagers with other bookmakers to reduce the chance of financial loss.

3. Taking or receiving more than five wagers in any single day.

4. Taking or receiving wagers totaling more than $500 in any single day, or more than $1,500 in any single week.

5. Engaging in a common scheme with two or more persons to take or receive wagers.

6. Taking or receiving wagers on both sides of a contest at the identical point spread.

7. Any other factor relevant to establishing that the operating procedures of such person are commercial in nature.

It is the committee's opinion that § 849.25(1)(c), Fla. Stat., is for the judge and not the jury. Therefore (1)(c) should not be read to the jury.

Lesser Included Offenses

BOOKMAKING — 849.25(1) AND (2)			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
None			
	Attempt	777.04(1)	5.1

Comment

This instruction was adopted in 1981 and amended in 1989.

22.15 [MANUFACTURING] [OWNING] [STORING] [KEEPING] [POSSESSION OF] [PERMITTING THE OPERATION OF] [SELLING] [LEASING] [TRANSPORTING] A SLOT MACHINE

§ 849.15(1)(a) and (b), Fla. Stat.

To prove the crime of (crime charged)**, the State must prove the following element beyond a reasonable doubt:**

Give as applicable.

(Defendant)

a. [manufactured] [owned] [stored] [kept] [possessed][sold] [leased] [let on shares] [lent] [gave away] [transported] [exposed for sale or lease] any slot machine or device [or any part of a slot machine or device].

b. offered to [sell] [rent] [lease] [let on shares] [lend] [give away] any slot machine or device [or any part of a slot machine or device].

c. permitted the operation of any slot machine or device [or any part of a slot machine or device].

d. permitted any slot machine or device [or any part of a slot machine or device] to be [placed] [maintained] [used] [kept]in a [room] [space] [building] owned, leased, or occupied by [him][her] or under [his] [her] management or control.

e. [or permitted to be made] an agreement with another, pursuant to which the user of any slot machine or device, may become entitled to receive [money] [credit] [allowance] [a thing of value] [an additional chance or right to use the slot machine or device] [any [check] [slug] [token] [memorandum] entitling the holder to receive [money] [credit] [allowance] [or] [thing of value]].

§ 849.16, Fla. Stat.

A "slot machine or device" is a machine or device or system or network of devices that is adapted for use in such a way that, upon activation, which may be achieved by, but is not limited to, the insertion of any piece of money, coin, account number, code, or other object or information, such device or system is directly or indirectly caused to operate or may be operated and if the user, whether by application of skill or by reason of any element of chance or of any other outcome unpredictable by the user, may:

a) receive or become entitled to receive any piece of money, credit, allowance, or thing of value; or

b) receive or become entitled to receive any check, slug, token, or memorandum, whether of value or otherwise, which may be exchanged for any money, credit, allowance, or thing of value or which may be given in trade; or

c) secure additional chances or rights to use such machine, apparatus, or device, even though the device or system may be available for free play, or, in addition to any element of chance or unpredictable outcome of such operation, may also sell, deliver, or present some merchandise, indication of weight, entertainment, or other thing of value.

Give if applicable. §§ 849.16(1)(b), 551.102(8), Fla. Stats.

A "slot machine" includes, but is not limited to, devices regulated as slot machines under chapter 551 of Florida Statutes. Under chapter 551, a "slot machine" means any mechanical or electrical contrivance, terminal that may or may not be capable of downloading slot games from a central server system, machine, or other device that, upon insertion of a coin, bill, ticket, token, or similar object or upon payment of any consideration whatsoever, including the use of any electronic payment system except a credit card or debit card, is available to play or operate, the play or operation of which, whether by reason of skill or application of the element of chance or both, may deliver or entitle the person or persons playing or operating the contrivance, terminal, machine, or other device to receive cash, billets, tickets, tokens, or electronic credits to be exchanged for cash or to receive merchandise or anything of value whatsoever, whether the payoff is made automatically from the machine or manually. The term includes associated equipment necessary to conduct the operation of the contrivance, terminal, machine, or other device. Slot machines may use spinning reels, video displays, or both. [A slot machine is not a "coin-operated amusement machine" as defined in § 212.02(24), Fla. Stat. or an amusement game or machine as described in § 546.10, Fla. Stat.] *Instruct on § 212.02(24), Fla. Stat. or § 546.10, Fla. Stat. as applicable.*

Give if applicable. § 849.094(8)(b), Fla. Stat.

Compliance with the rules of the Department of Agriculture and Consumer Services is not a defense to a charge of Possession of a Slot Machine or Device.

Give if applicable. § 849.16(3), Fla. Stat.

You are permitted to infer that a device, system, or network is a prohibited slot machine or device if it is used to display images of games of chance and is part of a scheme involving any payment or donation of money or its equivalent and awarding anything of value.

Possession.

To prove (defendant) **possessed a slot machine or device, [or any part of a slot machine or device,] the State must prove beyond a reasonable doubt that [he] [she] a) knew of the existence of the slot machine or device [or any part of a slot machine or device]; and b) intentionally exercised control over that slot machine or device [or any part of a slot machine or device].**

Give if applicable.

Control can be exercised over a slot machine or device, [or any part of a slot machine or device,] whether it is carried on a person, near a person, or in a completely separate location. Mere proximity to a slot machine or device [or any part of a slot machine or device] 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 the slot machine or device [or any part of a slot machine or device] or the present ability to direct its control by another.**

Joint possession. Give if applicable.

Possession of a slot machine or device [or any part of a slot machine or device] may be sole or joint, that is, two or more persons may possess a slot machine or device [or any part of a slot machine or device].

Lesser Included Offenses

[POSSESSION] [PERMITTING THE OPERATION] OF A SLOT MACHINE — 849.15(1)(a) AND (b)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempt	777.04(1)	5.1

Comments

It is not necessary for the State to prove that the slot machine or device was used for gambling. *See Eccles v. Stone,* 183 So. 628 (Fla. 1938)*; Dept. of Business Regulation v. Rains,* 477 So. 2d 1029 (Fla. 2d DCA 1985).

It is a defense to Possession of a Slot Machine if the device is an antique slot machine and is not being used for gambling. An antique slot machine is one which was manufactured at least 20 years prior to the prosecution. *See* § 849.235, Fla. Stat.

This instruction was adopted in 2013 [122 So. 3d 302] and amended in 2014 [148 So. 3d 1204] and 2018.

22.16 [SETTING UP] [PROMOTING] [PLAYING AT] A GAME OF CHANCE FOR MONEY, THING OF VALUE, OR UNDER THE PRETEXT OF A SALE, GIFT, OR DELIVERY

§ 849.11, Fla. Stat.

To prove the crime of [Setting Up] [Promoting] [Playing at] a Game of Chance For Money, Thing of Value, or Under the Pretext of a Sale, Gift or Delivery, the State must prove following three elements beyond a reasonable doubt:

1. (Defendant) **[set up] [promoted] [played at] a game of chance.**

2. (Defendant) **did so [by lot] [with [dice] [cards] [numbers] [hazards] [any gambling device]].**

Give 3a and/or 3b as applicable.

3. (Defendant) **did so:**

a. for the disposal of money or other thing of value; or

b. [under the pretext of a sale, gift, or delivery] [or] [for any right, share, or interest thereof].

Lesser Included Offenses

[SETTING UP] [PROMOTING] [PLAYING AT] A GAME OF CHANCE FOR MONEY, THING OF VALUE, OR UNDER THE PRETEXT OF A SALE, GIFT, OR DELIVERY — 849.11

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempt	777.04	5.1

Comment

This instruction was adopted in 2015.

22.17 UNLAWFUL OPERATION OF A DRAWING BY CHANCE

§ 849.0935(4) and § 849.0935(7), Fla. Stat.

To prove the crime of Unlawful Operation of a Drawing by Chance, the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **was [an organization] [a bona fide member or officer of an organization].**

2. (Defendant) **[promoted] [conducted] [operated] a drawing by chance.**

Give one or more as applicable. § 849.0935(4)(a)–(4)(i), Fla. Stat.

3. (Defendant)

a. [designed] [engaged in] [promoted] [conducted] the drawing in which the selection of the winners was [in any way rigged] [predetermined by means of matching, instant win, preselected sweepstakes, or otherwise].

b. required an entry fee, donation, substantial consideration, payment, proof of purchase, or contribution as a condition of entering the drawing or being selected to win a prize.

c. conditioned the drawing on a minimum [number of tickets having been disbursed to contributors] [or] [amount of contributions having been received].

d. [[arbitrarily removed] [disqualified] [disallowed] [or] [rejected] any entry in the drawing] [or] [discriminated in any manner in the drawing between entrants who gave contributions to the organization and those who did not give such contributions].

e. failed to promptly notify, at the address set forth on the entry blank, any person whose entry was selected to win, of the fact that the person won the drawing.

f. failed to award all prizes offered in the drawing.

g. printed, published, or circulated literature or advertising material used in connection with the drawing which was false, deceptive, or misleading.

h. cancelled the drawing.

i. conditioned the acquisition or giveaway of any prize in the drawing upon the receipt of voluntary donations or contributions.

§ 849.0935(7), Fla. Stat.

j. [sold] [offered for sale] in this state a ticket or entry blank for a raffle or other drawing by chance that did not conspicuously disclose in a [brochure] [advertisement] [notice] [ticket] [or] [entry blank], the date, hour, and place where the winner would be chosen and the prizes would be awarded, unless the [brochure] [advertisement] [notice] [ticket] [or] [entry blank] [was] [were] not offered to the public more than 3 days prior to the drawing.

Give if jurors are instructed on element #3b. § 849.0935(4)(b), Fla. Stat.

It is lawful for an organization to suggest a minimum donation or to include a statement of a suggested minimum donation on any printed material utilized in connection with the fundraising event or drawing.

Definitions. Give as applicable.

§ 849.0935(1)(b), Fla. Stat.

"Organization" means an organization which is exempt from federal income taxation pursuant to 26 U.S.C. 501(c)(3), (4), (7), (8), (10), or (19), and which has a current determination letter stating that it is exempt from the Internal Revenue Service, and its bona fide members or officers.

§ 849.0935(1)(a), Fla. Stat.

"Drawing by Chance," "drawing," or "raffle" means an enterprise in which, from the entries submitted by the public to the organization conducting the drawing, one or more entries are selected by chance to win a prize.

The term "drawing" does not include those enterprises, commonly known as "game promotions," "matching," "instant winner," or "preselected sweepstakes," which involve the distribution of winning numbers, previously designated as such, to the public.

§ 849.094(1)(a), Fla. Stat.

"Game promotion" means, but is not limited to, a contest, game of chance, sweepstakes, or gift enterprise, conducted by an operator in

connection with and incidental to the sale of consumer products or services, and in which the elements of chance and prize are present. [However, "game promotion" does not apply to bingo games.]

§ 849.094(1)(b), Fla. Stat.

"Operator" means a retailer who operates a game promotion or any person, firm, corporation, organization, or association or agent or employee thereof who promotes, operates, or conducts a nationally advertised game promotion.

Lesser Included Offenses

UNLAWFUL OPERATION OF A DRAWING BY CHANCE — 849.0935(4) AND 849.0935(7)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempt or Solicitation or Conspiracy	777.04	5.1 or 5.2 or 5.3

Comments

The crime described in the second sentence in § 849.0935(7), Fla. Stat., does not require the defendant to be either an organization or a bona fide member or officer of an organization. If the State filed charges under that provision of the statute against a person who was unrelated to an organization, this instruction should be amended so that jurors are instructed only on element #3j.

The statute does not prohibit an organization conducting the drawing from limiting the number of tickets distributed to each drawing entrant. See § 849.0935(5), Fla. Stat.

Pursuant to § 849.0935(2), Fla. Stat., the lottery laws in § 849.09, Fla. Stat., do not prohibit an organization from conducting drawings by chance if the organization complied with all applicable provisions of chapter 496 and § 849.0935, Fla. Stat.

This instruction was adopted in 2016.

22.18 UNLAWFUL OPERATION OF A GAME PROMOTION

§ 849.094(2), Fla. Stat.

To prove the crime of Unlawful Operation of a Game Promotion, the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) **was an operator of a game promotion.**

Give one or more as applicable. § 849.094(2)(a)–(2)(e), Fla. Stat.

2. (Defendant)

a. designed, engaged in, promoted, or conducted a game promotion, in connection with the promotion or sale of consumer products or services, wherein [the winner could be predetermined] [or] [the game could be manipulated or rigged so as to allocate a winning game or [any portion thereof to certain lessees, agents, or franchises] [or] [part thereof to a particular period of the game promotion or to a particular geographic area]].

b. arbitrarily removed, disqualified, disallowed, or rejected any entry in the game promotion.

c. failed to award prizes offered in the game promotion.

d. printed, published, or circulated literature or advertising material used in connection with the game promotion that was false, deceptive, or misleading.

e. required an entry fee, payment, or proof of purchase as a condition of entering the game promotion.

Definitions.

§ 849.094(1)(b), Fla. Stat.

"Operator" means a retailer who operates a game promotion or any person, firm, corporation, organization, or association or agent or employee thereof who promotes, operates, or conducts a nationally advertised game promotion.

§ 849.094(1)(a), Fla. Stat.

"Game promotion" means, but is not limited to, a contest, game of chance, sweepstakes, or gift enterprise, conducted by an operator within or

throughout the state and other states in connection with and incidental to the sale of consumer products or services, and in which the elements of chance and prize are present. [However, a "game promotion" does not apply to bingo games.]

"Prize" means money, property of any kind, or any other thing of value, or anything that could be exchanged for something of value, or to obtain a credit of value.

Lesser Included Offenses

UNLAWFUL OPERATION OF A GAME PROMOTION — 849.094(2)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempt or Solicitation or Conspiracy	777.04	5.1 or 5.2 or 5.3

Comments

Pursuant to § 849.094(10), Fla. Stat., this "game promotion" statute does not apply to actions or transactions regulated by the Department of Business and Professional Regulation or to any other organization engaged in any enterprise other than the sale of consumer products or services or to television or radio broadcasting companies licensed by the Federal Communications Commission.

This instruction was adopted in 2016.

CHAPTER 23 — PROSTITUTION

23.1 MAINTAINING A PLACE OF PROSTITUTION, LEWDNESS, OR ASSIGNATION

§ 796.07(2)(a), Fla. Stat.

To prove the crime of Maintaining a Place of [Prostitution] [Lewdness] [Assignation], the State must prove the following element beyond a reasonable doubt:

(Defendant) **[established] [owned] [maintained] [operated] any [place] [structure] [building] [conveyance] for the purpose of [lewdness] [assignation] [prostitution].**

Give if applicable. § 796.07(7)(a), Fla. Stat.; § 480.043(1), Fla. Stat.; § 480.033, Fla. Stat.

If you find the defendant guilty of Maintaining a Place of [Prostitution] [Lewdness] [Assignation], you must also determine whether the State has proven beyond a reasonable doubt that the [place] [structure] [building] [conveyance] that was [established] [owned] [maintained] [operated] for the purpose of [lewdness] [assignation] [prostitution] was a massage establishment that was or should have been licensed by the Florida Department of Health.

All "massage establishments" must be licensed by the Florida Department of Health. A "massage establishment" means a site or premises, or portion thereof, wherein a massage therapist practices massage therapy. A "massage therapist" means a person licensed as required by law who administers massage for compensation. "Massage therapy" means the manipulation of the soft tissues of the human body with the hand, foot, knee, arm, or elbow, whether or not such manipulation is aided by hydrotherapy, including colonic irrigation, or thermal therapy; any electrical or mechanical device; or the application to the human body of a chemical or herbal preparation.

Give as applicable. § 796.07(1), Fla. Stat.

"Prostitution" is the giving or receiving of the body for sexual activity for hire but excludes sexual activity between spouses.

"Lewdness" is any indecent or obscene act. "Indecent" means wicked, lustful, unchaste, licentious, or sensual intention on the part of the person doing the act.

"Assignation" means the making of any appointment or engagement for prostitution or lewdness, or any act in furtherance of such appointment or engagement.

"Sexual activity" means oral, anal, or female genital penetration by, or union with, the sexual organ of another; anal or female genital penetration of another by any other object; or the handling or fondling of the sexual organ of another for the purpose of masturbation[; however, the term does not include acts done for bona fide medical purposes. "Bona fide" means genuine].

§ 796.07(1), Fla. Stat.

"Female genitals" includes the labia minora, labia majora, clitoris, vulva, hymen, and vagina.

Phillips v. State, 238 So. 3d 308 (Fla. 4th DCA 2018).

"Union" means contact.

Give if applicable.

Lakey v. State, 113 So. 3d 90 (Fla. 5th DCA 2013).

The definition of "an object" includes a finger.

§ 810.011, Fla. Stat.; Dubose v. State, 210 So. 3d 641 (Fla. 2017).

A "structure" is any building of any kind, either temporary or permanent, which has a roof over it and includes any closely adjoining land enclosed by a fence or wall. [The enclosure need not be continuous as it may have an ungated opening for entering and exiting.]

A "conveyance" means any motor vehicle, ship, vessel, railroad vehicle or car, trailer, aircraft, or sleeping car.

Lesser Included Offense

MAINTAINING A PLACE OF PROSTITUTION, LEWDNESS, OR ASSIGNATION — 796.07(2)(a), FLA. STAT.

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempt	777.04(1)	5.1

Comments

The crime in § 796.07(2)(a), Florida Statutes, is bumped up based on the number of prior violations. As of November 2022, it was unclear whether the existence of a prior violation is an element or a recidivist factor to be proven to the trial judge under a preponderance of the evidence standard at sentencing.

Generally, it would be improper to allow the jury to hear about a prior violation. Therefore, if the information or indictment contains an allegation of one or more prior violations, do not read that allegation and do not send the information or indictment into the jury room. If the defendant is found guilty and if the prior violation is treated as an element, the historical fact of a prior violation should be determined by the jury beyond a reasonable doubt in a bifurcated proceeding. *State v. Harbaugh*, 754 So. 2d 691 (Fla. 2000).

As of November 2022, it was unclear whether acts done for bona fide medical purposes should be treated as an affirmative defense or as an element that the State must disprove. If treated as an affirmative defense, the judge must determine who has the burden of persuasion and what that burden is (preponderance, clear and convincing, or beyond a reasonable doubt).

This instruction was adopted in 1981 and amended in 2008 [995 So. 2d 476], 2010 [48 So. 3d 41], 2013 [122 So. 3d 302], 2017 [229 So. 3d 295], and December 22, 2022.

23.2 SOLICITING FOR THE PURPOSE OF PROSTITUTION OR A LEWD OR INDECENT ACT

§ 796.07(2)(b), Fla. Stat.

To prove the crime of Soliciting for the Purpose of [Prostitution] [Any Lewd or Indecent Act], the State must prove the following element beyond a reasonable doubt:

(Defendant) **[offered] [offered to secure] [agreed to secure] another person for the purpose of [prostitution] [any lewd or indecent act].**

§ 796.07(1), Fla. Stat.

"Prostitution" is the giving or receiving of the body for sexual activity for hire but excludes sexual activity between spouses.

A "lewd act" is any indecent or obscene act. "Indecent" means wicked, lustful, unchaste, licentious, or sensual intention on the part of the person doing the act.

"Sexual activity" means oral, anal, or female genital penetration by, or union with, the sexual organ of another; anal or female genital penetration of another by any other object; or the handling or fondling of the sexual organ of another for the purpose of masturbation[; however, the term does not include acts done for bona fide medical purposes. "Bona fide" means genuine].

"Female genitals" includes the labia minora, labia majora, clitoris, vulva, hymen, and vagina.

Phillips v. State, 238 So. 3d 308 (Fla. 4th DCA 2018).

"Union" means contact.

Lakey v. State, 113 So. 3d 90 (Fla. 5th DCA 2013).

The definition of "an object" includes a finger.

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comments

The crime in § 796.07(2)(b), Florida Statutes, is bumped up based on the number of prior violations. As of November 2022, it was unclear whether the existence of a prior violation is an element or a recidivist factor to be proven to

the trial judge under a preponderance of the evidence standard at sentencing. Generally, it would be improper to allow the jury to hear about a prior violation. Therefore, if the information or indictment contains an allegation of one or more prior violations, do not read that allegation and do not send the information or indictment into the jury room. If the defendant is found guilty and if the prior violation is treated as an element, the historical fact of a prior violation should be determined by the jury beyond a reasonable doubt in a bifurcated proceeding. *State v. Harbaugh*, 754 So. 2d 691 (Fla. 2000).

As of November 2022, it was unclear whether acts done for bona fide medical purposes should be treated as an affirmative defense or as an element that the State must disprove. If treated as an affirmative defense, the judge must then determine who has the burden of persuasion and what that burden is (preponderance, clear and convincing, or beyond a reasonable doubt).

This instruction was adopted in 1981 and amended in 2008 [995 So. 2d 476], 2010 [48 So. 3d 41], 2013 [122 So. 3d 302], 2017 [229 So. 3d 295], and December 21, 2022.

23.3 RECEIVING FOR THE PURPOSE OF PROSTITUTION, LEWDNESS, OR ASSIGNATION

§ 796.07(2)(c), Fla. Stat.

To prove the crime of Receiving for the Purpose of [Prostitution] [Lewdness] [Assignation], the State must prove the following element beyond a reasonable doubt:

Give 1a or 1b or both as applicable.

1. **a.** (Defendant) **[received] [offered to receive] [agreed to receive] a person into a [place] [structure] [building] [conveyance] for the purpose of [prostitution] [lewdness] [assignation].**

b (Defendant) **permitted a person to remain in a [place] [structure] [building] [conveyance] for the purpose of [prostitution] [lewdness] [assignation].**

§ 796.07(1), Fla. Stat.

"Prostitution" is the giving or receiving of the body for sexual activity for hire but excludes sexual activity between spouses.

"Lewdness" is any indecent or obscene act. "Indecent" means wicked, lustful, unchaste, licentious, or sensual intention on the part of the person doing the act.

"Assignation" means the making of any appointment or engagement for prostitution or lewdness, or any act in furtherance of such appointment or engagement.

"Sexual activity" means oral, anal, or female genital penetration by, or union with, the sexual organ of another; anal or female genital penetration of another by any other object; or the handling or fondling of the sexual organ of another for the purpose of masturbation[; however, the term does not include acts done for bona fide medical purposes. "Bona fide" means genuine].

"Female genitals" includes the labia minora, labia majora, clitoris, vulva, hymen, and vagina.

Phillips v. State, 238 So. 3d 308 (Fla. 4th DCA 2018).

"Union" means contact.

Give if applicable.

Lakey v. State, 113 So. 3d 90 (Fla. 5th DCA 2013).

The definition of "an object" includes a finger.

§ 810.011(1), Fla. Stat.; Dubose v. State, 210 So. 3d 641 (Fla. 2017).

A "structure" is any building of any kind, either temporary or permanent, which has a roof over it and includes any closely adjoining land enclosed by a fence or wall. [The enclosure need not be continuous as it may have an ungated opening for entering and exiting.]

§ 810.011(3), Fla. Stat.

A "conveyance" means any motor vehicle, ship, vessel, railroad vehicle or car, trailer, aircraft, or sleeping car.

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comments

The crime in § 796.07(2)(c), Florida Statutes, is bumped up based on the number of prior violations. As of November 2022, it was unclear whether the existence of a prior violation is an element or a recidivist factor to be proven to the trial judge under a preponderance of the evidence standard at sentencing. Generally, it would be improper to allow the jury to hear about a prior violation. Therefore, if the information or indictment contains an allegation of one or more prior violations, do not read that allegation and do not send the information or indictment into the jury room. If the defendant is found guilty and if the prior violation is treated as an element, the historical fact of a prior violation should be determined by the jury beyond a reasonable doubt in a bifurcated proceeding. *State v. Harbaugh*, 754 So. 2d 691 (Fla. 2000).

As of November 2022, it was unclear whether acts done for bona fide medical purposes should be treated as an affirmative defense or as an element that the State must disprove. If treated as an affirmative defense, the judge must then determine who has the burden of persuasion and what that burden is (preponderance, clear and convincing, or beyond a reasonable doubt).

This instruction was adopted in 1981 and amended in 2008 [995 So. 2d 476], 2010 [48 So. 3d 41], 2013 [122 So. 3d 302], 2017 [229 So. 3d 295], and on December 21, 2022.

23.4 TRANSPORTING FOR THE PURPOSE OF PROSTITUTION, LEWDNESS, OR ASSIGNATION

§ 796.07(2)(d), Fla. Stat.

To prove the crime of Transporting for the Purpose of [Prostitution] [Lewdness] [Assignation], the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) **[directed] [took] [transported] [offered or agreed to [direct] [take] [transport]] a person to [a place] [a structure] [a building] [another person].**

2. **At the time,** (defendant) **knew or had reasonable cause to believe that such [directing] [taking] [transporting] was for the purpose of [prostitution] [lewdness] [assignation].**

§ 796.07(1), Fla. Stat.

"Prostitution" is the giving or receiving of the body for sexual activity for hire but excludes sexual activity between spouses.

"Lewdness" is any indecent or obscene act. "Indecent" means wicked, lustful, unchaste, licentious, or sensual intention on the part of the person doing the act.

"Assignation" means the making of any appointment or engagement for prostitution or lewdness, or any act in furtherance of such appointment or engagement.

"Sexual activity" means oral, anal, or female genital penetration by, or union with, the sexual organ of another; anal or female genital penetration of another by any other object; or the handling or fondling of the sexual organ of another for the purpose of masturbation[; however, the term does not include acts done for bona fide medical purposes. "Bona fide" means genuine].

"Female genitals" includes the labia minora, labia majora, clitoris, vulva, hymen, and vagina.

Phillips v. State, 238 So. 3d 308 (Fla. 4th DCA 2018).

"Union" means contact.

Give if applicable.

Lakey v. State, 113 So. 3d 90 (Fla. 5th DCA 2013).

The definition of "an object" includes a finger.

§ 810.011(1), Fla. Stat.; Dubose v. State, 210 So. 3d 641 (Fla. 2017).

A "structure" is any building of any kind, either temporary or permanent, which has a roof over it and includes any closely adjoining land enclosed by a fence or wall. [The enclosure need not be continuous as it may have an ungated opening for entering and exiting.]

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comments

The crime in § 796.07(2)(d), Florida Statutes, is bumped up based on the number of prior violations. As of November 2022, it was unclear whether the existence of a prior violation is an element or a recidivist factor to be proven to the trial judge under a preponderance of the evidence standard at sentencing. Generally, it would be improper to allow the jury to hear about a prior violation. Therefore, if the information or indictment contains an allegation of one or more prior violations, do not read that allegation and do not send the information or indictment into the jury room. If the defendant is found guilty and if the prior violation is treated as an element, the historical fact of a prior violation should be determined by the jury beyond a reasonable doubt in a bifurcated proceeding. *State v. Harbaugh*, 754 So. 2d 691 (Fla. 2000).

As of November 2022, it was unclear whether acts done for bona fide medical purposes should be treated as an affirmative defense or as an element that the State must disprove. If treated as an affirmative defense, the judge must then determine who has the burden of persuasion and what that burden is (preponderance, clear and convincing, or beyond a reasonable doubt).

This instruction was adopted in 1981 and amended in 2008 [995 So. 2d 476], 2010 [48 So. 3d 41], 2013 [122 So. 3d 302], 2017 [229 So. 3d 295], and December 21, 2022.

23.5 OFFERING TO COMMIT, COMMITTING, OR ENGAGING IN PROSTITUTION, LEWDNESS, OR ASSIGNATION

§ 796.07(2)(e), Fla. Stat.

To prove the crime of Offering to Commit, Committing, or Engaging in [Prostitution] [Lewdness] [Assignation], the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) **[offered to commit] [committed] [engaged in] [prostitution] [lewdness] [assignation].**

2. At the time, (defendant) **was 18 years of age or older.**

§ 796.07(1), Fla. Stat.

"Prostitution" is the giving or receiving of the body for sexual activity for hire but excludes sexual activity between spouses.

"Lewdness" is any indecent or obscene act. "Indecent" means wicked, lustful, unchaste, licentious, or sensual intention on the part of the person doing the act.

"Assignation" means the making of any appointment or engagement for prostitution or lewdness, or any act in furtherance of such appointment or engagement.

"Sexual activity" means oral, anal, or female genital penetration by, or union with, the sexual organ of another; anal or female genital penetration of another by any other object; or the handling or fondling of the sexual organ of another for the purpose of masturbation[; however, the term does not include acts done for bona fide medical purposes. "Bona fide" means genuine].

"Female genitals" includes the labia minora, labia majora, clitoris, vulva, hymen, and vagina.

Phillips v. State, 238 So. 3d 308 (Fla. 4th DCA 2018).

"Union" means contact.

Give if applicable.

Lakey v. State, 113 So. 3d 90 (Fla. 5th DCA 2013).

The definition of "an object" includes a finger.

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comments

The crime in § 796.07(2)(e), Florida Statutes, is bumped up based on the number of prior violations. As of November 2022, it was unclear whether the existence of a prior violation is an element or a recidivist factor to be proven to the trial judge under a preponderance of the evidence standard at sentencing. Generally, it would be improper to allow the jury to hear about a prior violation. Therefore, if the information or indictment contains an allegation of one or more prior violations, do not read that allegation and do not send the information or indictment into the jury room. If the defendant is found guilty and if the prior violation is treated as an element, the historical fact of a prior violation should be determined by the jury beyond a reasonable doubt in a bifurcated proceeding. *State v. Harbaugh*, 754 So. 2d 691 (Fla. 2000).

As of November 2022, it was unclear whether acts done for bona fide medical purposes should be treated as an affirmative defense or as an element that the State must disprove. If treated as an affirmative defense, the judge must then determine who has the burden of persuasion and what that burden is (preponderance, clear and convincing, or beyond a reasonable doubt).

This instruction was adopted in 1981 and amended in 2008 [995 So. 2d 476], 2010 [48 So. 3d 41], 2013 [122 So. 3d 302], 2017 [229 So. 3d 295], and on December 21, 2022.

23.6 SOLICITING FOR PROSTITUTION, LEWDNESS, OR ASSIGNATION

§ 796.07(2)(f), Fla. Stat.

To prove the crime of Soliciting for [Prostitution] [Lewdness] [Assignation], the State must prove the following element beyond a reasonable doubt:

(Defendant) **[solicited] [induced] [enticed] [procured] another to commit [prostitution] [lewdness] [assignation].**

§ 796.07(1), Fla. Stat.

"Prostitution" is the giving or receiving of the body for sexual activity for hire but excludes sexual activity between spouses.

"Lewdness" is any indecent or obscene act. "Indecent" means wicked, lustful, unchaste, licentious, or sensual intention on the part of the person doing the act.

"Assignation" means the making of any appointment or engagement for prostitution or lewdness, or any act in furtherance of such appointment or engagement.

"Sexual activity" means oral, anal, or female genital penetration by, or union with, the sexual organ of another; anal or female genital penetration of another by any other object; or the handling or fondling of the sexual organ of another for the purpose of masturbation[; however, the term does not include acts done for bona fide medical purposes. "Bona fide" means genuine].

"Female genitals" includes the labia minora, labia majora, clitoris, vulva, hymen, and vagina.

Phillips v. State, 238 So. 3d 308 (Fla. 4th DCA 2018).

"Union" means contact.

Give if applicable.

Lakey v. State, 113 So. 3d 90 (Fla. 5th DCA 2013).

The definition of "an object" includes a finger.

§ 777.04(2), Fla. Stat.

To "solicit" means to command, encourage, hire, or request another person to engage in specific conduct.

To "procure" means to persuade, induce, prevail upon or cause a person to do something.

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comments

The crime in § 796.07(2)(f), Florida Statutes, is bumped up based on the number of prior violations. As of November 2022, it was unclear whether the existence of a prior violation is an element or a recidivist factor to be proven to the trial judge under a preponderance of the evidence standard at sentencing. Generally, it would be improper to allow the jury to hear about a prior violation. Therefore, if the information or indictment contains an allegation of one or more prior violations, do not read that allegation and do not send the information or indictment into the jury room. If the defendant is found guilty and if the prior violation is treated as an element, the historical fact of a prior violation should be determined by the jury beyond a reasonable doubt in a bifurcated proceeding. *State v. Harbaugh*, 754 So. 2d 691 (Fla. 2000).

As of November 2022, it was unclear whether acts done for bona fide medical purposes should be treated as an affirmative defense or as an element that the State must disprove. If treated as an affirmative defense, the judge must then determine who has the burden of persuasion and what that burden is (preponderance, clear and convincing, or beyond a reasonable doubt).

This instruction was adopted in 1981 and amended in 2008 [995 So. 2d 476], 2010 [48 So. 3d 41], 2013 [122 So. 3d 302], 2017 [229 So. 3d 295], and December 21, 2022.

23.7 ENTERING FOR THE PURPOSE OF PROSTITUTION, LEWDNESS, OR ASSIGNATION

§ 796.07(2)(g), Fla. Stat.

To prove the crime of Entering for the Purpose of [Prostitution] [Lewdness] [Assignation], the State must prove the following element beyond a reasonable doubt:

(Defendant) **[resided in] [entered] [remained in] a [place] [structure] [building] [conveyance] for the purpose of [prostitution] [lewdness] [assignation].**

§ 796.07(1), Fla. Stat.

"Prostitution" is the giving or receiving of the body for sexual activity for hire but excludes sexual activity between spouses.

"Lewdness" is any indecent or obscene act. "Indecent" means wicked, lustful, unchaste, licentious, or sensual intention on the part of the person doing the act.

"Assignation" means the making of any appointment or engagement for prostitution or lewdness, or any act in furtherance of such appointment or engagement.

"Sexual activity" means oral, anal, or female genital penetration by, or union with, the sexual organ of another; anal or female genital penetration of another by any other object; or the handling or fondling of the sexual organ of another for the purpose of masturbation[; however, the term does not include acts done for bona fide medical purposes. "Bona fide" means genuine].

"Female genitals" includes the labia minora, labia majora, clitoris, vulva, hymen, and vagina.

Phillips v. State, 238 So. 3d 308 (Fla. 4th DCA 2018).

"Union" means contact.

Give if applicable.

Lakey v. State, 113 So. 3d 90 (Fla. 5th DCA 2013).

The definition of "an object" includes a finger.

§ 810.011(1), Fla. Stat.; Dubose v. State, 210 So. 3d 641 (Fla. 2017).

A "structure" is any building of any kind, either temporary or permanent, which has a roof over it and includes any closely adjoining land enclosed by a fence or wall. [The enclosure need not be continuous as it may have an ungated opening for entering and exiting.]

§ 810.011(3), Fla. Stat.

A "conveyance" means any motor vehicle, ship, vessel, railroad vehicle or car, trailer, aircraft, or sleeping car.

Lesser Included Offense

ENTERING FOR THE PURPOSE OF PROSTITUTION, LEWDNESS, OR ASSIGNATION — 796.07(2)(g), FLA. STAT.

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempt	777.04(1)	5.1

Comments

The crime in § 796.07(2)(g), Florida Statutes, is bumped up based on the number of prior violations. As of November 2022, it is unclear whether the existence of a prior violation will be treated as an element of the crime that must be found by the jury in a bifurcated trial or whether a prior violation can be proven to the judge at sentencing.

As of November 2022, it was unclear whether the existence of a prior violation is an element or a recidivist factor to be proven to the trial judge under a preponderance of the evidence standard at sentencing. Generally, it would be improper to allow the jury to hear about a prior violation. Therefore, if the information or indictment contains an allegation of one or more prior violations, do not read that allegation and do not send the information or indictment into the jury room. If the defendant is found guilty and if the prior violation is treated as an element, the historical fact of a prior violation should be determined by the jury beyond a reasonable doubt in a bifurcated proceeding. *State v. Harbaugh*, 754 So. 2d 691 (Fla. 2000).

As of November 2022, it was unclear whether acts done for bona fide medical purposes should be treated as an affirmative defense or as an element that the State must disprove. If treated as an affirmative defense, the judge must then determine who has the burden of persuasion and what that burden is (preponderance, clear and convincing, or beyond a reasonable doubt).

This instruction was adopted in 1981 and amended in 2008 [995 So. 2d 476], 2010 [48 So. 3d 41], 2013 [122 So. 3d 302], 2017 [229 So. 3d 295], and on December 21, 2022.

CHAPTER 24 — OBSCENITY

24.1 PROHIBITION OF CERTAIN ACTS IN CONNECTION WITH OBSCENE MATERIALS — POSSESSION WITH INTENT TO SELL

§ 847.011(1), Fla. Stat.

To prove the crime of (crime charged)**, the State must prove the following three elements beyond a reasonable doubt:**

1. (Defendant) **had in [his] [her] possession, custody or control with the intent to sell, lend, give away, distribute, transmit, show, transmute, or advertise the material charged in this case.**

2. **The material charged in this case is obscene. In order for such material to be legally obscene, each of the following facts must be found:**

   a. **The average person applying contemporary community standards of _____ County, Florida, would find that the material, taken as a whole, appeals to the prurient interest.**

   b. **The material depicts or describes sexual conduct in a patently offensive way.**

   c. **The material, taken as a whole, lacks serious literary, artistic, political. or scientific value.**

3. **The defendant had knowledge of the nature, character, or content of the materials.**

Definitions

Prurient Interest

A "prurient interest" in sex is a shameful or morbid interest in sex, nudity, or excretion. Material does not appeal to a prurient interest if the average person today can view the material candidly, openly, and with a normal interest in sex.

Patently Offensive

In order to be obscene, the dominant theme of the material must depict or describe sexual conduct in a patently offensive way, that is, it must do so in a way that offends the contemporary community standards of _____ County. Not all descriptions or depictions of sexual conduct go substantially beyond customary community standards of decency for it to be patently offensive. You must determine the collective view of the community in evaluating this element of the offense.

In order for you to find that this material is obscene, you must also find that, taken as a whole, it lacks serious literary, artistic, political, or scientific value. If the material has such value, it is not obscene even if it appeals to the prurient interest in sex, and even if it depicts or describes sexual conduct in a patently offensive way. In judging whether the value is serious, you should consider the intent of the material. If it is a serious literary or artistic effort, or if it attempts to convey scientific information, or a political point of view, it cannot be obscene. If the primary intent is to appeal to the prurient interest, then the mere insertion of literary, artistic, political, or scientific materials irrelevant to the predominant theme will not prevent you from determining that the material is obscene. Sex can be a legitimate subject for literature, art, scientific inquiry, or political argument, and such serious treatments of sex, even if appealing to the prurient interest and patently offensive, cannot be obscene.

Optional Definition

"**Morbid interest" means diseased, dwelling on the gruesome, or sick.**

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comment

This instruction was adopted in 1981.

24.2 PROHIBITION OF CERTAIN ACTS IN CONNECTION WITH OBSCENE MATERIALS — DESIGNING, COPYING

§ 847.011(1), Fla. Stat.

To prove the crime of (crime charged)**, the State must prove the following three elements beyond a reasonable doubt:**

1. (Defendant) **knowingly designed, copied, drew, photographed, posed for, wrote, printed, published, or in any manner manufactured or prepared the material charged in this case.**

2. **The material charged in this case is obscene. In order for such material to be legally obscene, each of the following facts must be found:**

   a. **The average person applying contemporary community standards of _____ County, Florida, would find that the material, taken as a whole, appeals to the prurient interest.**

   b. **The material depicts or describes sexual conduct in a patently offensive way.**

   c. **The material, taken as a whole, lacks serious literary, artistic, political, or scientific value.**

3. **The defendant had knowledge of the nature, character, or content of the materials.**

Definitions

Prurient Interest

A "prurient interest" in sex is a shameful or morbid interest in sex, nudity, or excretion. Material does not appeal to a prurient interest if the average person today can view the material candidly, openly, and with a normal interest in sex.

Patently Offensive

In order to be obscene, the dominant theme of the material must depict or describe sexual conduct in a patently offensive way, that is, it must do so in a way that offends the contemporary community standards of _____ County. Not all descriptions or depictions of sexual conduct go substantially beyond customary community standards of decency for it to be patently offensive. You must determine the collective view of the community in evaluating this element of the offense.

In order for you to find that this material is obscene, you must also find that, taken as a whole, it lacks serious literary, artistic, political, or scientific value. If the material has such value, it is not obscene even if it appeals to the prurient interest in sex, and even if it depicts or describes sexual conduct in a patently offensive way. In judging whether the value is serious, you should consider the intent of the material. If it is a serious literary or artistic effort, or if it attempts to convey scientific information, or a political point of view, it cannot be obscene. If the primary intent is to appeal to the prurient interest, then the mere insertion of literary, artistic, political, or scientific materials irrelevant to the predominant theme will not prevent you from determining that the material is obscene. Sex can be a legitimate subject for literature, art, scientific inquiry, or political argument, and such serious treatments of sex, even if appealing to the prurient interest and patently offensive, cannot be obscene.

Optional Definition

"**Morbid interest" means diseased, dwelling on the gruesome, or sick.**

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comment

This instruction was adopted in 1981.

24.3 PROHIBITION OF CERTAIN ACTS IN CONNECTION WITH OBSCENE MATERIALS — ADVERTISING

§ 847.011(1), Fla. Stat.

To prove the crime of (crime charged)**, the State must prove the following three elements beyond a reasonable doubt:**

1. (Defendant) **knowingly wrote, printed, published, or uttered any advertisement or notice of any kind, giving information directly or indirectly, stating or purporting to state where, how, of whom, or by what means any, or what purports to be any of the material charged in this case could be purchased, obtained, or had or caused such to be written, printed, published, or uttered.**

2. **The material charged in this case is obscene. In order for such material to be legally obscene, each of the following facts must be found:**

   a. **The average person applying contemporary community standards of _____ County, Florida, would find that the material, taken as a whole, appeals to the prurient interest.**

   b. **The material depicts or describes sexual conduct in a patently offensive way.**

   c. **The material, taken as a whole, lacks serious literary, artistic, political, or scientific value.**

3. **The defendant had knowledge of the nature, character, or content of the materials.**

Definitions

Prurient Interest

A "prurient interest" in sex is a shameful or morbid interest in sex, nudity, or excretion. Material does not appeal to a prurient interest if the average person today can view the material candidly, openly, and with a normal interest in sex.

Patently Offensive

In order to be obscene, the dominant theme of the material must depict or describe sexual conduct in a patently offensive way, that is, it

must do so in a way that offends the contemporary community standards of _____ County. Not all descriptions or depictions of sexual conduct go substantially beyond customary community standards of decency for it to be patently offensive. You must determine the collective view of the community in evaluating this element of the offense.

In order for you to find that this material is obscene, you must also find that, taken as a whole, it lacks serious literary, artistic, political, or scientific value. If the material has such value, it is not obscene even if it appeals to the prurient interest in sex, and even if it depicts or describes sexual conduct in a patently offensive way. In judging whether the value is serious, you should consider the intent of the material. If it is a serious literary or artistic effort, or if it attempts to convey scientific information, or a political point of view, it cannot be obscene. If the primary intent is to appeal to the prurient interest, then the mere insertion of literary, artistic, political, or scientific materials irrelevant to the predominant theme will not prevent you from determining that the material is obscene. Sex can be a legitimate subject for literature, art, scientific inquiry, or political argument, and such serious treatments of sex, even if appealing to the prurient interest and patently offensive, cannot be obscene.

Optional Definition

"**Morbid interest" means diseased, dwelling on the gruesome, or sick.**

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comment

This instruction was adopted in 1981.

24.4 PROHIBITION OF CERTAIN ACTS IN CONNECTION WITH OBSCENE MATERIALS — HIRING PERSON TO SELL, POSSESS, DESIGN OR ADVERTISE

§ 847.011(1), Fla. Stat.

To prove the crime of (crime charged)**, the State must prove the following three elements beyond a reasonable doubt:**

1. (Defendant) **knowingly hired, employed, used, or permitted any person knowingly to do or assist in doing,**

Give a, b, c or d as applicable.

a. [the selling, lending, giving away, distributing, transmitting, showing, or transmuting of the material charged in this case or offering to do so].

b. [the possession, custody, or control with the intent to sell, lend, give away, distribute, transmit, show, transmute, or advertise the material charged in this case].

c. [the designing, copying, drawing, photographing, posing for, writing, printing, publishing, or in any manner, manufacturing or preparing the material charged in this case].

d. [writing, printing, publishing, or uttering any advertisement or notice of any kind, giving information directly or indirectly, stating or purporting to state where, how, of whom, or by what means any, or what purports to be any of the material charged in this case could be purchased, obtained, or had or caused such to be written, printed, published, or uttered].

2. The material charged in this case is obscene. In order for such material to be legally obscene, each of the following facts must be found:

a. The average person applying contemporary community standards of _____ County, Florida, would find that the material, taken as a whole, appeals to the prurient interest.

b. The material depicts or describes sexual conduct in a patently offensive way.

c. The material, taken as a whole, lacks serious literary, artistic, political, or scientific value.

3. The defendant had knowledge of the nature, character, or content of the materials.

Definitions

Prurient Interest

A "prurient interest" in sex is a shameful or morbid interest in sex, nudity, or excretion. Material does not appeal to a prurient interest if the average person today can view the material candidly, openly, and with a normal interest in sex.

Patently Offensive

In order to be obscene, the dominant theme of the material must depict or describe sexual conduct in a patently offensive way, that is, it must do so in a way that offends the contemporary community standards of _____ County. Not all descriptions or depictions of sexual conduct go substantially beyond customary community standards of decency for it to be patently offensive. You must determine the collective view of the community in evaluating this element of the offense.

In order for you to find that this material is obscene, you must also find that, taken as a whole, it lacks serious literary, artistic, political, or scientific value. If the material has such value, it is not obscene even if it appeals to the prurient interest in sex, and even if it depicts or describes sexual conduct in a patently offensive way. In judging whether the value is serious, you should consider the intent of the material. If it is a serious literary or artistic effort, or if it attempts to convey scientific information, or a political point of view, it cannot be obscene. If the primary intent is to appeal to the prurient interest, then the mere insertion of literary, artistic, political, or scientific materials irrelevant to the predominant theme will not prevent you from determining that material is obscene. Sex can be a legitimate subject for literature, art, scientific inquiry, or political argument, and such serious treatments of sex, even if appealing to the prurient interest and patently offensive, cannot be obscene.

Optional Definition

"Morbid interest" means diseased, dwelling on the gruesome, or sick.

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comment

This instruction was adopted in 1981.

24.5 PROHIBITION OF CERTAIN ACTS IN CONNECTION WITH OBSCENE MATERIALS — POSSESSION WITHOUT INTENT TO SELL

§ 847.011(2), Fla. Stat.

To prove the crime of (crime charged)**, the State must prove the following three elements beyond a reasonable doubt:**

1. (Defendant) **knowingly had in [his] [her] possession, custody, or control any of the material charged without intent to sell, lend, give away, distribute, transmit, show, transmute, or advertise the same.**

2. **The material charged in this case is obscene. In order for such material to be legally obscene, each of the following facts must be found:**

   a. **The average person applying contemporary community standards of _____ County, Florida, would find that the material, taken as a whole, appeals to the prurient interest.**

   b. **The material depicts or describes sexual conduct in a patently offensive way.**

   c. **The material, taken as a whole, lacks serious literary, artistic, political, or scientific value.**

3. **The defendant had knowledge of the nature, character, or content of the materials.**

Definitions

Prurient Interest

A "prurient interest" in sex is a shameful or morbid interest in sex, nudity, or excretion. Material does not appeal to a prurient interest if the average person today can view the material candidly, openly, and with a normal interest in sex.

Patently Offensive

In order to be obscene, the dominant theme of the material must depict or describe sexual conduct in a patently offensive way, that is, it must do so in a way that offends the contemporary community standards of _____ County. Not all descriptions or depictions of sexual conduct go substantially beyond customary community standards of

decency for it to be patently offensive. You must determine the collective view of the community in evaluating this element of the offense.

In order for you to find that this material is obscene, you must also find that, taken as a whole, it lacks serious literary, artistic, political, or scientific value. If the material has such value, it is not obscene even if it appeals to the prurient interest in sex, and even if it depicts or describes sexual conduct in a patently offensive way. In judging whether the value is serious, you should consider the intent of the material. If it is a serious literary or artistic effort, or if it attempts to convey scientific information, or a political point of view, it cannot be obscene. If the primary intent is to appeal to the prurient interest, then the mere insertion of literary, artistic, political, or scientific materials irrelevant to the predominant theme will not prevent you from determining that the material is obscene. Sex can be a legitimate subject for literature, art, scientific inquiry, or political argument, and such serious treatments of sex, even if appealing to the prurient interest and patently offensive, cannot be obscene.

Optional Definition

"**Morbid interest" means diseased, dwelling on the gruesome, or sick.**

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comment

This instruction was adopted in 1981.

24.6 PROHIBITION OF CERTAIN ACTS IN CONNECTION WITH OBSCENE MATERIALS — PROMOTING OR PERFORMING

§ 847.011(4), Fla. Stat.

To prove the crime of (crime charged)**, the State must prove the following three elements beyond a reasonable doubt:**

1. (Defendant) **knowingly promoted, conducted, performed, or participated in an obscene, show, exhibition, or performance by live persons or a live person before an audience.**

2. **The material charged in this case is obscene. In order for such material to be legally obscene, each of the following facts must be found:**

   a. **The average person applying contemporary community standards of _____ County, Florida, would find that the material, taken as a whole, appeals to the prurient interest.**

   b. **The material depicts or describes sexual conduct in a patently offensive way.**

   c. **The material, taken as a whole, lacks serious literary, artistic, political, or scientific value.**

3. **The defendant had knowledge of the nature, character or content of the materials.**

Definitions.

Obscene.

In order to be obscene, the dominant theme of the material must depict or describe sexual conduct in a patently offensive way, that is, it must do so in a way that offends the contemporary community standards of _____ County. Not all descriptions or depictions of sexual conduct goes substantially beyond customary community standards of decency for it to be patently offensive. You must determine the collective view of the community in evaluating this element of the offense.

In order for you to find that this material is obscene, you must also find that, taken as a whole, it lacks serious literary, artistic, political, or scientific value. If the material has such value, it is not obscene even if it appeals to the prurient interest in sex, and even if it depicts or describes sexual conduct in a patently offensive way. In judging whether the value

is serious, you should consider the intent of the material. If it is a serious literary or artistic effort, or if it attempts to convey scientific information, or a political point of view, it cannot be obscene. If the primary intent is to appeal to the prurient interest, then the mere insertion of literary, artistic, political, or scientific materials irrelevant to the predominant theme will not prevent you from determining that the material is obscene. Sex can be a legitimate subject for literature, art, scientific inquiry, or political argument, and such serious treatments of sex, even if appealing to the prurient interest and patently offensive, cannot be obscene.

Prurient Interest.

A "prurient interest" in sex is a shameful or morbid interest in sex, nudity, or excretion. Material does not appeal to a prurient interest if the average person today can view the material candidly, openly, and with a normal interest in sex.

Optional Definition.

"Morbid interest" means diseased, dwelling on the gruesome, or sick.

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comment

This instruction was adopted in 1981 and amended in 2012.

24.7 EXPOSING MINORS TO HARMFUL MOVIES OR PICTURES [§ 847.013 RESERVED]

CHAPTER 25 — DRUG ABUSE

25.1 SALE OF A SUBSTANCE IN PLACE OF A CONTROLLED SUBSTANCE

§ 817.563, Fla. Stat.

To prove the crime of Sale of a Substance in Place of a Controlled Substance, the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) **without legal authority agreed, consented, or offered to sell** (substance prohibited by § 893.03, Fla. Stat.)**.**

2. (Defendant) **did sell a different substance in place of** (substance prohibited by § 893.03, Fla. Stat.)**.**

Definition

"Sell" means the actual transfer or delivery of something to another person in exchange for money or something of value.

Lesser Included Offenses

SALE OF SUBSTANCE IN PLACE OF A CONTROLLED SUBSTANCE — 817.563

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempt	777.04(1)	5.1

Comment

This instruction was adopted in 1995.

25.2 SALE, PURCHASE, MANUFACTURE, DELIVERY, OR POSSESSION WITH INTENT TO SELL, PURCHASE, MANUFACTURE, OR DELIVER A CONTROLLED SUBSTANCE

§ 893.13(1)(a), Fla. Stat.; § 893.13(2)(a), Fla. Stat.

Certain drugs and chemical substances are by law known as "controlled substances." (Specific substance alleged) **is a controlled substance.**

To prove the crime of (crime charged)**, the State must prove the following three elements beyond a reasonable doubt:**

1. (Defendant) **[sold] [manufactured] [delivered] [purchased] [possessed with intent to [sell] [manufacture] [deliver] [purchase]] a certain substance.**

2. **The substance was** (specific substance alleged)**.**

3. (Defendant) **had knowledge of the presence of the substance.**

Delivery of 20 Grams or Less of Cannabis without consideration is a misdemeanor. See § 893.13(3), Fla. Stat. If the State charges the felony of Delivery of More Than 20 Grams of Cannabis, the jury must make a finding as to the weight. Give if applicable.

If you find that (defendant) **is guilty of Delivery of Cannabis, you must then determine if the State proved beyond a reasonable doubt that the cannabis weighed more than 20 grams.**

Definitions. Give as applicable.

Cannabis. § 893.02(3), Fla. Stat.

See Comment section for medical marijuana.

Cannabis means all parts of any plant of the genus *Cannabis*, whether growing or not and the seeds thereof; and the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin.

Sell.

"Sell" means to transfer or deliver something to another person in exchange for money or something of value or a promise of money or something of value.

Manufacture. § 893.02(15)(a), Fla. Stat.

"Manufacture" means the production, preparation, propagation, compounding, cultivating, growing, conversion, or processing of a controlled substance, either directly or indirectly, by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging of the substance or labeling or relabeling of its container.

Give if applicable.

The term "manufacture" does not include the preparation, compounding, packaging, or labeling of a controlled substance by:

1. **A practitioner or pharmacist as an incident to his or her administering or delivering of a controlled substance in the course of his or her professional practice.**

2. **A practitioner, or by his or her authorized agent under the practitioner's supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis, and not for sale.**

Deliver. § 893.02(6), Fla. Stat.

"Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship.

Possession.

To prove (defendant) **"possessed a substance," the State must prove beyond a reasonable doubt that [he] [she] a) knew of the existence of the substance and b) intentionally exercised control over that substance.**

Give if applicable.

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

Joint possession. Give if applicable.

Possession of a substance may be sole or joint, that is, two or more persons may possess a substance.

Affirmative defense: Lack of knowledge of illicit nature. Give if applicable. § 893.101(2) and (3), Fla. Stat.

Lack of knowledge of the illicit nature of a controlled substance is a defense to (crime charged)**.**

You may but are not required to infer that (defendant) **was aware of the illicit nature of the controlled substance if you find that [he] [she] possessed the controlled substance.**

Give if applicable. See McMillon v. State, 813 So. 2d 56 (Fla. 2002).

You may but are not required to infer that a person who sells a controlled substance knows of its illicit nature.

If you are convinced beyond a reasonable doubt that (defendant) **knew of the illicit nature of the controlled substance, and all of the elements of the charge have been proved, you should find [him] [her] guilty of** (crime charged)**.**

If you have a reasonable doubt on the question of whether (defendant) **knew of the illicit nature of the controlled substance, you should find [him] [her] not guilty of** (crime charged)**.**

Lesser Included Offenses

SALE, PURCHASE, MANUFACTURE, DELIVERY OR POSSESSION WITH INTENT— 893.13(1)(a) AND (2)(a)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
*Possession of a Controlled Substance, if Possession With Intent is charged		893.13(6)	25.7
*Delivery of 20 Grams or Less of Cannabis, if Delivery of More than 20 Grams of Cannabis is charged		893.13(3)	25.2
	Attempt, except when delivery is charged	777.04(1)	5.1

Comments

*The crime of Possession of a Controlled Substance is not a necessarily lesser-included crime of Manufacture of a Controlled Substance. *Anderson v. State*, 447 So. 2d 236 (Fla. 1st DCA 1983). Also, Possession of a Controlled Substance is not a necessary lesser-included offense of Sale of a Controlled Substance. *State v. McCloud*, 577 So. 2d 939 (Fla. 1991). It is unclear if the courts will determine that a person charged with Purchase or Delivery of a Controlled Substance is necessarily charged with Possession of a Controlled Substance.

If the State alleges the defendant possessed cannabis, in an amount more than 20 grams, with intent to sell, purchase, deliver, or manufacture the cannabis, there will be both a felony necessary lesser-included offense of simple possession and a misdemeanor lesser-included offense of simple possession. § 893.13(6)(b), Fla. Stat.

There is no crime of Attempted Delivery because the definition of "delivery" in § 893.03(6), Fla. Stat. includes the attempt to transfer from one person to another.

Starting in 2014, the Legislature passed laws pertaining to "medical cannabis" or "low-THC cannabis," which is excluded from the definition of "cannabis" in § 893.02(3), Fla. Stat.; is defined in § 381.986(1), Fla. Stat.; and must be manufactured, possessed, sold, purchased, delivered, distributed, or dispensed in conformance with § 381.986, Fla. Stat. A special instruction will be necessary in cases where a defendant relies on a cannabis-related prescription defense.

This instruction was adopted in 1981 and amended in 1989 [543 So. 2d 1205], 1997 [697 So. 2d 84], 2007 [969 So. 2d 245], 2014 [153 So. 3d 192], 2016 [191 So. 3d 291], 2017 [216 So. 3d 497], and 2019.

25.3 SALE, PURCHASE, DELIVERY, OR POSSESSION IN EXCESS OF TEN GRAMS OF A CONTROLLED SUBSTANCE

§ 893.13(1)(b), Fla. Stat.; § 893.13(2)(b), Fla. Stat.; and § 893.13(6)(c), Fla. Stat.

Certain drugs and chemical substances are by law known as "controlled substances." (Specific substance alleged) **is a controlled substance.**

To prove the crime of (crime charged)**, the State must prove the following four elements beyond a reasonable doubt:**

1. (Defendant) **[sold] [purchased] [delivered] [or] [possessed] [a certain substance] [a mixture] [a combination of substances].**

2. **The [substance] [mixture] [combination of substances] contained** (specific substance alleged)**.**

3. **The [substance] [mixture] [combination of substances] weighed more than 10 grams.**

4. (Defendant) **had knowledge of the presence of the substance.**

Definitions. Give as applicable.

Sell.

"Sell" means to transfer or deliver something to another person in exchange for money or something of value or a promise of money or something of value.

Deliver. § 893.02(6), Fla. Stat.

"Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship.

Mixture. § 893.02(16), Fla. Stat.

"Mixture" means any physical combination of two or more substances, including, but not limited to, a blend, an aggregation, a suspension, an emulsion, a solution, or a dosage unit, whether or not such combination can be separated into its components by physical means, whether mechanical or thermal.

Possession.

To prove (defendant) **"possessed a substance," the State must prove beyond a reasonable doubt that [he] [she] a) knew of the existence of the substance and b) intentionally exercised control over that substance.**

Give if applicable.

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

Joint possession. Give if applicable.

Possession of a substance may be sole or joint, that is, two or more persons may possess a substance.

Affirmative defense: Lack of knowledge of illicit nature. Give if applicable. § 893.101(2) and (3), Fla. Stat.

Lack of knowledge of the illicit nature of a controlled substance is a defense to (crime charged)**. You may but are not required to infer that** (defendant) **was aware of the illicit nature of the controlled substance if you find that [he] [she] possessed the controlled substance.**

Give if applicable. See McMillon v. State, 813 So. 2d 56 (Fla. 2002).

You may but are not required to infer that a person who sells a controlled substance knows of its illicit nature.

If you are convinced beyond a reasonable doubt that (defendant) **knew of the illicit nature of the controlled substance, and all of the elements of the charge have been proved, you should find [him] [her] guilty of** (crime charged)**.**

If you have a reasonable doubt on the question of whether (defendant) **knew of the illicit nature of the controlled substance, you should find [him] [her] not guilty of** (crime charged)**.**

Lesser Included Offenses

SALE, PURCHASE, DELIVERY, OR POSSESSION IN EXCESS OF 10 GRAMS — 893.13(1)(b), (2)(b), AND (6)(c)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Sale, purchase, or delivery of controlled substance if sale, purchase, or delivery is charged		893.13(1)(a) and (2)(a)	25.2
*Possession of a controlled substance, if possession is charged		893.13(6)	25.7
	Attempt, except when delivery is charged	777.04(1)	5.1

Comments

*It is unclear if the courts will determine that Possession of a Controlled Substance is necessarily included in a charge of Purchase or Delivery of a Controlled Substance. Possession is not a necessary lesser-included offense of either Sale or Manufacture of a Controlled Substance. *State v. McCloud*, 577 So. 2d 939 (Fla. 1991); *Anderson v. State*, 447 So. 2d 236 (Fla. 1st DCA 1983).

There is no crime of Attempted Delivery because the definition of "delivery" in § 893.03(6), Fla. Stat., includes the attempt to transfer from one person to another.

This instruction was adopted in 1981 and amended in 1989 [543 So. 2d 1205], 1997 [697 So. 2d 84], 2007 [969 So. 2d 245], 2014 [153 So. 3d 192], 2016 [191 So. 3d 291], 2017 [216 So. 3d 497], and 2019.

25.4 DELIVERY OF A CONTROLLED SUBSTANCE TO OR USE OF MINOR

§ 893.13(4), Fla. Stat.

Certain drugs and chemical substances are by law known as "controlled substances." (Specific substance alleged) **is a controlled substance.**

To prove the crime of (crime charged)**, the State must prove the following four elements beyond a reasonable doubt:**

Give 1a, 1b, and/or 1c as applicable.

1. a. (Defendant) **delivered a substance to a person under the age of 18 years.**

b. (Defendant) **used or hired a person under the age of 18 years as an agent or employee in the sale or delivery of a substance.**

c. (Defendant) **used a person under the age of 18 years to assist in avoiding detection or apprehension for** (violation of chapter 893, Fla. Stat., alleged)**.**

2. The substance was (specific substance alleged)**.**

3. (Defendant) **was 18 years of age or older at the time.**

4. (Defendant) **had knowledge of the presence of the substance.**

Definition.

Deliver. § 893.02(6), Fla. Stat.

"Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship.

Affirmative defense: Lack of knowledge of illicit nature. Give if applicable. § 893.101(2) and (3), Fla. Stat.

Lack of knowledge of the illicit nature of a controlled substance is a defense to (crime charged)**. You may but are not required to infer that** (defendant) **was aware of the illicit nature of the controlled substance if you find that [he] [she] possessed the controlled.**

To prove (defendant) **"possessed a substance," the State must prove beyond a reasonable doubt that [he] [she] a) knew of the existence of the substance and b) intentionally exercised control over that substance.**

Give if applicable.

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

Joint possession. Give if applicable.

Possession of a substance may be sole or joint, that is, two or more persons may possess a substance.

If you are convinced beyond a reasonable doubt that (defendant) **knew of the illicit nature of the controlled substance, and all of the elements of the charge have been proved, you should find [him] [her] guilty of** (crime charged)**.**

If you have a reasonable doubt on the question of whether (defendant) **knew of the illicit nature of the controlled substance, you should find [him] [her] not guilty of** (crime charged)**.**

Lesser Included Offense

DELIVERY OF A CONTROLLED SUBSTANCE TO OR USE OF A MINOR — 893.13(4)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
*Delivery of a Controlled Substance		893.13(1)(a)	25.2

Comments

*It is unclear if the courts will determine that Possession of a Controlled Substance is a necessarily lesser-included offense of a charge involving Delivery of a Controlled Substance. Possession is not a necessary lesser-included offense of either Sale or Manufacture of a Controlled Substance. *State v. McCloud*, 577 So. 2d 939 (Fla. 1991); *Anderson v. State*, 447 So. 2d 236 (Fla. 1st DCA 1983).

There is no crime of Attempted Delivery because the definition of "delivery" in § 893.03(6), Fla. Stat., includes the attempt to transfer from one person to another.

This instruction was adopted in 1981 and amended in 1989 [543 So. 2d 1205], 2007 [969 So. 2d 245], 2014 [153 So. 3d 192], 2016 [191 So. 3d 291], 2017 [216 So. 3d 497], and 2019.

25.5 BRINGING A CONTROLLED SUBSTANCE INTO THE STATE

§ 893.13(5), Fla. Stat.

Certain drugs and chemical substances are by law known as "controlled substances." (Specific substance alleged) **is a controlled substance.**

To prove the crime of Bringing a Controlled Substance Into the State, the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **brought a substance into Florida.**

2. The substance was (specific substance alleged)**.**

3. (Defendant) **had knowledge of the presence of the substance.**

Affirmative defense: Lack of knowledge of illicit nature. Give if applicable. § 893.101(2) and (3), Fla. Stat.

Lack of knowledge of the illicit nature of a controlled substance is a defense to Bringing a Controlled Substance Into the State. You may but are not required to infer that (defendant) **was aware of the illicit nature of the controlled substance if you find that [he] [she] possessed the controlled substance.**

To prove (defendant) **"possessed a substance," the State must prove beyond a reasonable doubt that [he] [she] a) knew of the existence of the substance and b) intentionally exercised control over that substance.**

Give if applicable.

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

Joint possession. Give if applicable.

Possession of a substance may be sole or joint, that is, two or more persons may possess a substance.

If you are convinced beyond a reasonable doubt that (defendant) **knew of the illicit nature of the controlled substance, and all of the elements of the charge have been proved, you should find [him] [her] guilty of Bringing a Controlled Substance Into the State.**

If you have a reasonable doubt on the question of whether (defendant) **knew of the illicit nature of the controlled substance, you should find [him] [her] not guilty of Bringing a Controlled Substance Into the State.**

Lesser Included Offenses

BRINGING A CONTROLLED SUBSTANCE INTO THE STATE — 893.13(5)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
*None			
	Attempt	777.04(1)	5.1

Comments

*It is unclear if the courts will determine that Possession of a Controlled Substance is necessarily included in a charge of Bringing a Controlled Substance into the State. Possession is not a necessary lesser-included offense of either Sale or Manufacture of a Controlled Substance. *State v. McCloud*, 577 So. 2d 939 (Fla. 1991); *Anderson v. State*, 447 So. 2d 236 (Fla. 1st DCA 1983).

Starting in 2014, the Legislature passed laws pertaining to "medical cannabis" or "low-THC cannabis," which is excluded from the definition of "cannabis" in § 893.02(3), Fla. Stat.; is defined in § 381.986(1), Fla. Stat.; and must be manufactured, possessed, sold, purchased, delivered, distributed, or dispensed in conformance with § 381.986, Fla. Stat. A special instruction will be necessary in cases where a defendant relies on a cannabis-related prescription defense.

This instruction was adopted in 1981 and amended in 1997 [697 So. 2d 84], 2007 [969 So. 2d 245], 2014 [153 So. 3d 192], 2016 [191 So. 3d 291], 2017 [216 So. 3d 497], and 2019.

25.6 SELL, MANUFACTURE, DELIVER, OR POSSESSION WITH INTENT TO SELL, MANUFACTURE OR DELIVER A CONTROLLED SUBSTANCE IN SPECIFIED LOCATIONS

§ 893.13(1)(c)–(f) and (h), Fla. Stat.

Certain drugs and chemical substances are by law known as "controlled substances." (Specific substance alleged) **is a controlled substance.**

To prove the crime of (crime charged)**, the State must prove the following four elements beyond a reasonable doubt:**

1. (Defendant) **[sold] [manufactured] [delivered] [possessed with intent to [sell] [manufacture] [deliver]] a certain substance.**

Give as applicable. § 893.13(1)(c)–(f) and (h), Fla. Stat. To explain the specified locations, the judge should provide definitions (see below) from the appropriate statutes that are referred to in § 893.13(1), Fla. Stat.

2. The [sale] [manufacture] [delivery] [possession with intent to [sell] [manufacture] [deliver]] took place in, on, or within 1,000 feet of:

the real property comprising a child care facility;

the real property comprising a public or private [elementary] [middle] [secondary] school between the hours of 6:00 a.m. and 12:00 midnight;

the real property comprising [a state, county, or municipal park] [a community center] [a publicly-owned recreational facility];

the real property comprising a public or private college, university, or other postsecondary educational institution;

a physical place for worship at which a church or religious organization regularly conducts religious services;

a convenience business;

[the real property comprising a public housing facility];

the real property comprising a mental health facility;

the real property comprising a health care facility licensed under chapter 395, Florida Statutes, that provides substance abuse treatment;

the real property comprising a licensed service provider;

the real property comprising a facility providing services that include clinical treatment, intervention, or prevention;

the real property comprising a recovery residence;

the real property comprising an assisted living facility;

the real property comprising a pain management clinic.

3. The substance was (specific substance alleged)**.**

4. (Defendant) **had knowledge of the presence of the substance.**

Sell.

"Sell" means to transfer or deliver something to another person in exchange for money or something of value or a promise of money or something of value.

Manufacture. § 893.02(15)(a), Fla. Stat.

"Manufacture" means the production, preparation, propagation, compounding, cultivating, growing, conversion, or processing of a controlled substance, either directly or indirectly, by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging of the substance or labeling or relabeling of its container.

The term "manufacture" does not include the preparation, compounding, packaging, or labeling of a controlled substance by:

1. A practitioner or pharmacist as an incident to his or her administering or delivering of a controlled substance in the course of his or her professional practice.

2. A practitioner, or by his or her authorized agent under the practitioner's supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis, and not for sale.

Deliver. § 893.02(6), Fla. Stat.

"Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship.

Possession.

To prove (defendant) **"possessed a substance," the State must prove beyond a reasonable doubt that [he] [she] a) knew of the existence of the substance and b) intentionally exercised control over that substance.**

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

Joint possession. Give if applicable.

Possession of a substance may be sole or joint, that is, two or more persons may possess a substance.

Affirmative defense: Lack of knowledge of illicit nature. Give if applicable. § 893.101(2) and (3), Fla. Stat.

Lack of knowledge of the illicit nature of a controlled substance is a defense to (crime charged)**. You may but are not required to infer that** (defendant) **was aware of the illicit nature of the controlled substance if you find that [he] [she] possessed the controlled substance.**

Give if applicable. See McMillon v. State, 813 So. 2d 56 (Fla. 2002).

You may but are not required to infer that a person who sells a controlled substance knows of its illicit nature.

If you are convinced beyond a reasonable doubt that (defendant) **knew of the illicit nature of the controlled substance, and all of the elements of the charge have been proved, you should find [him] [her] guilty of** (crime charged)**.**

If you have a reasonable doubt on the question of whether (defendant) **knew of the illicit nature of the controlled substance, you should find [him] [her] not guilty of** (crime charged)**.**

Define appropriate specified location(s) here. See § 893.13(1), Fla. Stat., for statutory cites for location definitions.

Lesser Included Offenses

SELL, MANUFACTURE, DELIVER, OR POSSESSION WITH INTENT TO SELL, MANUFACTURE OR DELIVER A CONTROLLED SUBSTANCE IN SPECIFIED LOCATIONS — 893.13(1)(c)–(f) AND (h)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
*Sale, Manufacture, or Delivery of a controlled substance, if Sale, Manufacture, or Delivery is charged		893.13(1)(a)	25.2
*Possession of a Controlled Substance, if Possession with Intent to Sell, Manufacture, or Deliver is charged		893.13(6)	25.7

Comments

*The crime of Possession of a Controlled Substance is not a necessarily lesser-included crime of Manufacture of a Controlled Substance. *Anderson v. State*, 447 So. 2d 236 (Fla. 1st DCA 1983). Also, Possession of a Controlled Substance is not a necessary lesser-included offense of Sale of a Controlled Substance. *State v. McCloud*, 577 So. 2d 939 (Fla. 1991). It is unclear if the courts will determine that a person charged with Delivery of a Controlled Substance is necessarily charged with Possession of a Controlled Substance.

Starting in 2014, the Legislature passed laws pertaining to "medical cannabis" or "low-THC cannabis," which is excluded from the definition of "cannabis" in § 893.02(3), Fla. Stat.; is defined in § 381.986(1), Fla. Stat.; and must be manufactured, possessed, sold, purchased, delivered, distributed, or dispensed in conformance with § 381.986, Fla. Stat. A special instruction will be necessary in cases where a defendant relies on a cannabis-related prescription defense.

Child care facility; affirmative defense. § 893.13(1)(c), Fla. Stat., requires the owner or operator of a child care facility to post a sign that is not less than 2 square feet in size with a word legend identifying the facility as a licensed child care facility and that the sign be posted on the property of the facility in a conspicuous place where it is reasonably visible to the public. According to *Brevil v. State*, 326 So. 3d 1129 (Fla. 4th DCA 2021), the absence of such a

sign is an affirmative defense. Therefore, the defendant must meet his or her burden of production of non-compliance with the statutory signage requirements. As of November 2022, there is no case law that establishes which party has the burden of persuasion for the affirmative defense and what that burden is (preponderance, clear and convincing, or beyond a reasonable doubt). Until there is a statutory change or case law, trial judges will need to draft a special instruction that addresses these issues.

This instruction was adopted in 1981 and amended in 1989 [543 So. 2d 1205], 1997 [697 So. 2d 84], 2000 [765 So. 2d 692], 2007 [969 So. 2d 245], 2014 [153 So. 3d 192], 2016 [191 So. 3d 291], 2017 [216 So. 3d 497], 2019 [272 So. 3d 243], on December 15, 2021, and on December 21, 2022.

25.7 POSSESSION OF A CONTROLLED SUBSTANCE

§ 893.13(6), Fla. Stat.

Certain drugs and chemical substances are by law known as "controlled substances." (Specific substance) **is a controlled substance.**

To prove the crime of Possession of a Controlled Substance, the State must prove the following [two] [three] elements beyond a reasonable doubt:

1. (Defendant) **possessed a substance.**

2. The substance was (specific substance)**.**

§ 893.13(6)(b), Fla. Stat. Give if applicable.

The jury must make a finding as to weight if the defendant is charged with possessing more than 20 grams of cannabis.

3. The cannabis weighed more than 20 grams.

To prove (defendant) **"possessed a substance," the State must prove beyond a reasonable doubt that [he] [she] a) knew of the existence of the substance and b) intentionally exercised control over that substance.**

Give if applicable.

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

Joint possession. Give if applicable.

Possession of a substance may be sole or joint, that is, two or more persons may possess a substance.

Give if applicable. Cannabis. §§ 893.02(3), 893.13(6)(b), Fla. Stat.

See Comment section for medical marijuana.

Cannabis means all parts of any plant of the genus *Cannabis*, whether growing or not, and the seeds thereof [but does not include any resin extracted from the plant].

Affirmative defense: Lack of knowledge of illicit nature. Give if applicable. § 893.101(2) and (3), Fla. Stat.

Lack of knowledge of the illicit nature of a controlled substance is a defense to (crime charged)**. You may but are not required to infer that** (defendant) **was aware of the illicit nature of the controlled substance if you find that [he] [she] possessed the controlled substance.**

If you are convinced beyond a reasonable doubt that (defendant) **knew of the illicit nature of the controlled substance, and all of the elements of the charge have been proved, you should find [him] [her] guilty of Possession of a Controlled Substance.**

If you have a reasonable doubt on the question of whether (defendant) **knew of the illicit nature of the controlled substance, you should find [him] [her] not guilty of Possession of a Controlled Substance.**

Lesser Included Offenses

POSSESSION OF A CONTROLLED SUBSTANCE — 893.13(6)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Possession of Less than 20 Grams of Cannabis if the felony level of cannabis is charged		893.13(6)(b)	25.7
	Attempt	777.04(1)	5.1

Comments

§ 893.21, Fla. Stat.

A person acting in good faith who seeks medical assistance for himself, herself, or another experiencing or believed to be experiencing a drug-related or alcohol-related overdose may not be prosecuted for simple Possession of a Controlled Substance if the evidence of the possession was obtained as a result of the person seeking medical assistance.

A special instruction is necessary when the defense is a mere involuntary or superficial possession. *See* cases such as *Hamilton v. State*, 732 So. 2d 493 (Fla. 2d DCA 1999) and *Sanders v. State*, 563 So. 2d 781 (Fla. 1st DCA 1990).

Starting in 2014, the Legislature passed laws pertaining to "medical cannabis" or "low-THC cannabis," which is excluded from the definition of "cannabis" in § 893.02(3), Fla. Stat.; is defined in § 381.986(1), Fla. Stat.; and must be manufactured, possessed, sold, purchased, delivered, distributed, or

dispensed in conformance with § 381.986, Fla. Stat. A special instruction will be necessary in cases where a defendant relies on a cannabis-related prescription defense.

Starting in 2019, the Legislature excluded hemp as defined in § 581.217, Fla. Stat., and industrial hemp as defined in § 1004.4473, Fla. Stat., from the definition of "cannabis" in § 893.02(3), Fla. Stat.

This instruction was adopted in 1981 and amended in 1989 [543 So. 2d 1205], 1997 [697 So. 2d 84], 2007 [969 So. 2d 245], 2014 [153 So. 3d 192], 2016 [191 So. 3d 291], 2017 [216 So. 3d 497], 2018 [238 So. 3d 182], and 2020.

25.7(a) TRAFFICKING IN (NAME OF CONTROLLED SUBSTANCE)
§ 893.135(1), Fla. Stat.

Certain drugs and chemical substances are by law known as "controlled substances." (Name of controlled substance) **is a controlled substance.**

To prove the crime of Trafficking in (name of controlled substance)**, the State must prove the following three elements beyond a reasonable doubt:**

1. (Defendant) **knowingly [possessed] [sold] [purchased] [manufactured] [delivered] [brought into Florida] a substance.**

2. **The substance was [**(name of controlled substance)**] [a mixture containing** (name of controlled substance)**].**

3. **The [**(name of controlled substance)**] [mixture containing** (name of controlled substance)**] weighed [**(insert weight alleged)**].**

If applicable under the facts of the case and pursuant to § 893.135(2), Fla. Stat., instructions on the following elements 1 and 2 should be given instead of elements 1 and 2 above. For example, if it is alleged that the defendant intended to sell heroin but actually sold cocaine, instructions on elements 1 and 2 below would be given.

1. (Defendant) **intended to [possess] [sell] [purchase] [manufacture] [deliver] [bring into Florida]** (a controlled substance enumerated in § 893.135(1), Fla. Stat.)**.**

2. **The defendant actually [possessed] [sold] [purchased] [manufactured] [delivered] [brought into Florida]** (a controlled substance enumerated in § 893.135(1), Fla. Stat.)**.**

Definitions. Give as applicable.

Sell.

"Sell" means to transfer or deliver something to another person in exchange for money or something of value or a promise of money or something of value.

Manufacture. § 893.02(15)(a), Fla. Stat.

"Manufacture" means the production, preparation, propagation, compounding, cultivating, growing, conversion, or processing of a

controlled substance, either directly or indirectly, by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging of the substance or labeling or relabeling of its container.

Give if applicable.

The term "manufacture" does not include the preparation, compounding, packaging, or labeling of a controlled substance by:

1. **A practitioner or pharmacist as an incident to his or her administering or delivering of a controlled substance in the course of his or her professional practice.**

2. **A practitioner, or by his or her authorized agent under the practitioner's supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis, and not for sale.**

Deliver. § 893.02(6), Fla. Stat.

"Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship.

Mixture. § 893.02(16), Fla. Stat.

"Mixture" means any physical combination of two or more substances, including, but not limited to, a blend, an aggregation, a suspension, an emulsion, a solution, or a dosage unit, whether or not such combination can be separated into its components by physical means, whether mechanical or thermal.

Possession.

To prove (defendant) **knowingly possessed a substance, the State must prove beyond a reasonable doubt that [he] [she] a) knew of the existence of the substance and b) intentionally exercised control over that substance.**

Give if applicable.

Control can be exercised over a substance whether the substance is carried on a person, near a person, or in a completely separate location. Mere proximity to a substance does not establish that the person intentionally exercised control over the substance in the absence of

additional evidence. Control can be established by proof that (defendant) had direct personal power to control the substance or the present ability to direct its control by another.

Joint possession. Give if applicable.

Possession of a substance may be sole or joint, that is, two or more persons may possess a substance.

Affirmative defense: Lack of knowledge of illicit nature. Give if applicable. § 893.101(2) and (3), Fla. Stat.

Lack of knowledge of the illicit nature of a controlled substance is a defense to Trafficking in (name of controlled substance)**. You may but are not required to infer that** (defendant) **was aware of the illicit nature of the controlled substance if you find that [he] [she] possessed the controlled substance.**

Give if applicable. McMillon v. State, 813 So. 2d 56 (Fla. 2002).

You may but are not required to infer that a person who sells a controlled substance knows of its illicit nature.

If you are convinced beyond a reasonable doubt that (defendant) **knew of the illicit nature of the controlled substance, and all of the elements of the charge have been proved, you should find [him] [her] guilty of Trafficking in** (name of controlled substance)**.**

If you have a reasonable doubt on the question of whether (defendant) **knew of the illicit nature of the controlled substance, you should find [him] [her] not guilty of Trafficking in** (name of controlled substance)**.**

State v. Weller, 590 So. 2d 923 (Fla. 1991).

If you find the defendant guilty of Trafficking in (name of controlled substance)**, you must further determine by your verdict whether the State has further proved beyond a reasonable doubt that:**

§ 893.135(1) Fla. Stat. contains differing weights and associated penalties for various controlled substances. Give if applicable, as determined by the date of the offense, up to the weight charged.

a. **the [**(name of controlled substance)**] [mixture containing** (name of controlled substance)**] weighed [**(insert weight)**] but less than [**(insert weight)**].**

b. **the [**(name of controlled substance)**] [mixture containing** (name of controlled substance)**] weighed [**(insert weight)**] but less than [**(insert weight)**].**

c. **the [**(name of controlled substance)**] [mixture containing** (name of controlled substance)**] weighed [**(insert weight)**] but less than [**(insert weight)**].**

Lesser Included Offenses

Trafficking can be committed by possession, sale, purchase, manufacture, delivery, or by bringing into this state a certain amount of drugs. Accordingly, before deciding the appropriate lesser-included offenses, trial judges should review not only the evidence but also the charging document to see what type of trafficking was alleged. For example, if a defendant is charged only with Trafficking via Sale, then Possession of a Controlled Substance should not be given as a lesser-included offense because of *State v. McCloud*, 577 So. 2d 939 (Fla. 1991) (holding that possession of cocaine is not a lesser-included offense of sale of cocaine). Also, there is no crime of Attempted Delivery because the definition of "delivery" in § 893.03(6), Fla. Stat., includes the attempt to transfer from one person to another.

Comments

One way to commit Trafficking in Cannabis is to knowingly possess, sell, purchase, manufacture, deliver, or bring into the state 300 or more cannabis plants. Also, the trafficking statute for some of the controlled substances include not only the controlled substance or a mixture containing that controlled substance, but also a salt, derivative, isomer, salt of an isomer, analog, substituted controlled substance, ester, ether, salt of an ester, or salt of an ether of that controlled substance. A special instruction is needed in those cases.

There is no crime of attempted conspiracy. *Hutchinson v. State*, 315 So. 2d 546 (Fla. 2d DCA 1975).

This instruction was adopted in 2019.

25.8 OBTAINING A CONTROLLED SUBSTANCE BY FRAUD, ETC.

§ 893.13(7)(a)9., Fla. Stat.

Certain drugs and chemical substances are by law known as "controlled substances." (Specific substance alleged) **is a controlled substance.**

To prove the crime of Obtaining a Controlled Substance by [Misrepresentation] [Fraud] [Forgery] [Deception] [Subterfuge], the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **[acquired or obtained] [attempted to acquire or obtain] possession of a certain substance.**

2. **The substance was** (specific substance alleged)**.**

3. (Defendant) **[acquired or obtained] [attempted to acquire or obtain] the substance by [misrepresentation] [fraud] [forgery] [deception] [subterfuge].**

Affirmative defense: Lack of knowledge of illicit nature. Give if applicable. § 893.101(2) and (3), Fla. Stat.

Lack of knowledge of the illicit nature of a controlled substance is a defense to the crime of Obtaining a Controlled Substance by [Misrepresentation] [Fraud] [Forgery] [Deception] [Subterfuge].

You may but are not required to infer that (defendant) **was aware of the illicit nature of the controlled substance if you find that [he] [she] possessed the controlled substance.**

To prove (defendant) **"possessed a substance," the State must prove beyond a reasonable doubt that [he] [she] a) knew of the existence of the substance and b) intentionally exercised control over that substance.**

Give if applicable.

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

Joint possession. Give if applicable.

Possession of a substance may be sole or joint, that is, two or more persons may possess a substance.

If you are convinced beyond a reasonable doubt that (defendant) **knew of the illicit nature of the controlled substance, and all of the elements of the charge have been proved, you should find [him] [her] guilty of Obtaining a Controlled Substance by [Misrepresentation] [Fraud] [Forgery] [Deception] [Subterfuge].**

If you have a reasonable doubt on the question of whether (defendant) **knew of the illicit nature of the controlled substance, you should find [him] [her] not guilty of Obtaining a Controlled Substance by [Misrepresentation] [Fraud] [Forgery] [Deception] [Subterfuge].**

Lesser Included Offenses

*No lesser included offenses have been identified for this offense.

Comments

*It is unclear if the courts will determine that a person charged with Obtaining a Controlled Substance by Fraud, etc. is necessarily charged with [Attempted] Possession of a Controlled Substance.

Starting in 2014, the Legislature passed laws pertaining to "medical cannabis" or "low-THC cannabis," which is excluded from the definition of "cannabis" in § 893.02(3), Fla. Stat.; is defined in § 381.986(1), Fla. Stat.; and must be manufactured, possessed, sold, purchased, delivered, distributed, or dispensed in conformance with § 381.986, Fla. Stat. A special instruction will be necessary in cases where a defendant relies on a cannabis-related prescription defense.

This instruction was adopted in 1981 and amended in 1989 [543 So. 2d 1205], 2007 [969 So. 2d 245], 2014 [153 So. 3d 192], 2016 [191 So. 3d 291], 2017 [216 So. 3d 497], and 2019.

25.9 SALE, MANUFACTURE, DELIVERY, OR POSSESSION WITH INTENT TO SELL, MANUFACTURE, OR DELIVER [FENTANYL] [INSERT RELEVANT SUBSTANCE]

§ 893.13(1)(i), Fla. Stat.

To prove the crime of (crime charged), **the State must prove the following four elements beyond a reasonable doubt:**

1. (Defendant) **[sold] [manufactured] [delivered] [possessed with intent to [sell] [manufacture] [deliver]] a certain substance.**

2. **The substance was [**(insert relevant substance listed in § 893.13(1)(i)1.a.-f., Fla. Stat.)] [a mixture containing (insert relevant substance listed in § 893.13(1)(i)1.a.-f., Fla. Stat.)**]**.

3. **The [substance] [mixture] was in a form that resembled, or was mixed, granulated, absorbed, spray-dried, or aerosolized as or onto, coated on, in whole or in part, or solubilized with or into, a product, when such product or its packaging further had at least one of the following attributes:**

   a. **Resembled the trade dress of a branded food product, consumer food product, or logo food product; or,**

   b. **Incorporated an actual or fake registered copyright, service mark, or trademark; or,**

   c. **Resembled candy, cereal, a gummy, a vitamin, or a chewable product, such as a gum or gelatin-based product; or,**

   d. **Contained a cartoon character imprint.**

4. (Defendant) **had knowledge of the presence of the substance.**

Definitions. § 893.02, Fla. Stat. Give if applicable.

"Mixture" means any physical combination of two or more substances, including, but not limited to, a blend, an aggregation, a suspension, an emulsion, a solution, or a dosage unit, whether or not such combination can be separated into its components by physical means, whether mechanical or thermal.

"Sell" means to transfer or deliver something to another person in exchange for money or something of value or a promise of money or something of value.

"Manufacture" means the production, preparation, propagation, compounding, cultivating, growing, conversion, or processing of a controlled substance, either directly or indirectly, by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging of the substance or labeling or relabeling of its container.

The term "manufacture" does not include the preparation, compounding, packaging, or labeling of a controlled substance by:

1. **A practitioner or pharmacist as an incident to his or her administering or delivering of a controlled substance in the course of his or her professional practice.**

2. **A practitioner, or by his or her authorized agent under the practitioner's supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis, and not for sale.**

"Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship. The Court instructs you that (insert relevant substance listed in § 893.13(1)(i)1.a.-f., Fla. Stat.) **is a controlled substance.**

Possession.

To prove (defendant) **"possessed a substance," the State must prove beyond a reasonable doubt that [he] [she] a) knew of the existence of the substance and b) intentionally exercised control over that substance.**

Give if applicable.

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

Joint possession. Give if applicable.

Possession of a substance may be sole or joint, that is, two or more persons may possess a substance.

Affirmative defense: Lack of knowledge of illicit nature. Give if applicable. § 893.101(2) and (3), Fla. Stat.

Lack of knowledge of the illicit nature of a controlled substance is a defense to (crime charged)**.**

You may but are not required to infer that (defendant) **was aware of the illicit nature of the controlled substance if you find that [he] [she] possessed the controlled substance.**

Give if applicable. See McMillon v. State, 813 So. 2d 56 (Fla. 2002).

You may but are not required to infer that a person who sells a controlled substance knows of its illicit nature.

If you are convinced beyond a reasonable doubt that (defendant) **knew of the illicit nature of the controlled substance, and all of the elements of the charge have been proved, you should find [him] [her] guilty of** (crime charged)**.**

If you have a reasonable doubt on the question of whether (defendant) **knew of the illicit nature of the controlled substance, you should find [him] [her] not guilty of** (crime charged)**.**

Lesser Included Offenses

SALE, PURCHASE, MANUFACTURE, DELIVERY, OR POSSESSION WITH INTENT TO SELL, MANUFACTURE, OR DELIVER [FENTANYL] [RELEVANT CONTROLLED SUBSTANCE] — 893.13(1)(i)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
*Possession of a Controlled Substance, if Possession with Intent is charged		893.13(6)	25.7
	Attempt, except when delivery is charged	777.04(1)	5.1

Comments

*The crime of Possession of a Controlled Substance is not a necessarily lesser-included crime of Manufacture of a Controlled Substance. *Anderson v. State*, 447 So. 2d 236 (Fla. 1st DCA 1983). Also, Possession of a Controlled Substance is not a necessary lesser-included offense of Sale of a Controlled Substance. *State v. McCloud*, 577 So. 2d 939 (Fla. 1991). It is unclear if the

courts will determine that a person charged with Purchase or Delivery of a Controlled Substance is necessarily charged with Possession of a Controlled Substance.

There is no crime of Attempted Delivery because the definition of "delivery" in § 893.02(6), Fla. Stat. includes the attempt to transfer from one person to another.

This instruction was adopted on March 8, 2024.

25.13(f) [OWNERSHIP] [LEASE] [RENTAL] OF A PLACE FOR [[TRAFFICKING IN] [SALE OF] A CONTROLLED SUBSTANCE] [MANUFACTURING A CONTROLLED SUBSTANCE INTENDED FOR SALE OR DISTRIBUTION]

§ 893.1351(1), Fla. Stat.

Certain drugs and chemical substances are by law known as "controlled substances." (Insert name(s) of controlled substance(s)) **[is a] [are] controlled substance[s].**

To prove the crime of [Ownership] [Lease] [Rental] of a Place for [[Trafficking in] [Sale of] a Controlled Substance] [Manufacturing a Controlled Substance Intended for Sale or Distribution], the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) **[owned] [leased] [rented] any [place] [structure [or part thereof]] [conveyance].**

2. **At that time,** (defendant) **knew the [place] [structure [or part thereof]] [conveyance] would be used for the purpose of [Trafficking in** (insert name(s) of controlled substance)**] [Sale of a Controlled Substance] [Manufacture of a Controlled Substance that was intended for sale or distribution to another].**

Inference. Give if applicable. § 893.1351(4), Fla. Stat.

You may conclude that cannabis was intended for sale or distribution upon proof of the possession of 25 or more cannabis plants.

§ 893.02(3), Fla. Stat.

"Cannabis" means all parts of any plant of the genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin.

Definitions. Give as applicable.

§ 810.011(1), Fla. Stat. Dubose v. State, 210 So. 3d 641 (Fla. 2017).

A "structure" is any building of any kind, either temporary or permanent, which has a roof over it together with the curtilage. The "curtilage" is the enclosed land adjoining the structure. [The enclosure need not be continuous as it may have an ungated opening for entering and exiting.]

§ 810.011(3), Fla. Stat.

A "conveyance" means any motor vehicle, ship, vessel, railroad vehicle or car, trailer, aircraft, or sleeping car.

Insert elements of Trafficking alleged, if applicable.

"Sell" means to transfer or deliver something to another person in exchange for money or something of value or a promise of money or something of value.

§ 893.02(15)(a), Fla. Stat.

"Manufacture" means the production, preparation, propagation, compounding, cultivating, growing, conversion, or processing of a controlled substance, either directly or indirectly, by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging of the substance or labeling or relabeling of its container.

Give if applicable.

The term "manufacture" does not include the preparation, compounding, packaging, or labeling of a controlled substance by:

1. **A practitioner or pharmacist as an incident to his or her administering or delivering of a controlled substance in the course of his or her professional practice.**

2. **A practitioner, or by his or her authorized agent under the practitioner's supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis, and not for sale.**

Lesser Included Offense

Attempted Trafficking in a Controlled Substance has a higher maximum penalty than the crime in § 893.1351(1), Fla. Stat., and therefore is not listed as a lesser included offense below.

[OWNERSHIP] [LEASE] [RENTAL] OF A PLACE FOR [[TRAFFICKING IN] [SALE OF] A CONTROLLED SUBSTANCE] [MANUFACTURING A CONTROLLED SUBSTANCE INTENDED FOR SALE OR DISTRIBUTION] — 893.1351(1)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempted [Sale] [Manufacture] of a Controlled Substance	777.04(1) & 893.13	5.1 & 25.2 or 25.3
	Attempt	777.04(1)	5.1

Comments

It is unlawful to sell or manufacture all of the controlled substances listed in §893.02, Florida Statutes. However, only certain controlled substances qualify for prosecution under the trafficking statute, § 893.135, Florida Statutes. Accordingly, the exact nature of the substance must be proven if the State is prosecuting under the trafficking prong of § 893.1351(1), Florida Statutes.

A special instruction will be required if the defense is that the defendant did not know of the illicit nature of the controlled substance. *See* § 893.101, Fla. Stat.

§ 893.1351(1), Florida Statutes, requires that the place will be used for certain drug-related activity while § 893.1351(3), Florida Statutes, requires that the place was being used to manufacture a controlled substance. *See Zeigler v. State*, 198 So. 3d 1005 (Fla. 1st DCA 2016).

A special instruction may be required to address the nexus between a conveyance, place, structure, and the drug activity. *See Hunt v. State*, 256 So. 3d 243 (Fla. 2d DCA 2018) and *Delgado-George v. State,* 125 So. 3d 1031 (Fla. 2d DCA 2013).

This instruction was adopted in 2018 [238 So. 3d 192] and amended in 2020.

25.13(g) POSSESSION OF A PLACE FOR [[TRAFFICKING IN] [SALE OF] A CONTROLLED SUBSTANCE] [MANUFACTURING A CONTROLLED SUBSTANCE INTENDED FOR SALE OR DISTRIBUTION]

§ 893.1351(2), Fla. Stat.

Certain drugs and chemical substances are by law known as "controlled substances." (Insert name(s) of controlled substance(s)) **[is a] [are] controlled substance[s].**

To prove the crime of Possession of a Place for [[Trafficking in] [Sale of] a Controlled Substance] [Manufacturing a Controlled Substance Intended for Sale or Distribution], the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) **was knowingly in possession of a [place] [structure [or part thereof]] [trailer] [conveyance].**

2. **At the time,** (defendant) **knew the [place] [structure [or part thereof]] [trailer] [conveyance] would be used for the purpose of [Trafficking in** (insert name(s) of controlled substance)**] [Sale of a Controlled Substance] [Manufacture of a Controlled Substance that was intended for sale or distribution to another]**.

Inference. Give if applicable. § 893.1351(4), Fla. Stat.

You may, but are not required to, infer that cannabis was intended for sale or distribution upon proof of the possession of 25 or more cannabis plants.

§ 893.02(3), Fla. Stat.

"Cannabis" means all parts of any plant of the genus *Cannabis*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin.

Definitions. Give as applicable.

§ 810.011(1), Fla. Stat. Dubose v. State, 210 So. 3d 641 (Fla. 2017).

A "structure" is any building of any kind, either temporary or permanent, which has a roof over it together with the curtilage. The "curtilage" is the enclosed land adjoining the structure. [The enclosure need not be continuous as it may have an ungated opening for entering and exiting.]

§ 810.011(3), Fla. Stat.

A "conveyance" means any motor vehicle, ship, vessel, railroad vehicle or car, trailer, aircraft, or sleeping car.

Insert elements of Trafficking alleged, if applicable.

"Sell" means to transfer or deliver something to another person in exchange for money or something of value or a promise of money or something of value.

§ 893.02(15)(a), Fla. Stat.

"Manufacture" means the production, preparation, propagation, compounding, cultivating, growing, conversion, or processing of a controlled substance, either directly or indirectly, by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging of the substance or labeling or relabeling of its container.

Give if applicable.

The term "manufacture" does not include the preparation, compounding, packaging, or labeling of a controlled substance by:

1. **A practitioner or pharmacist as an incident to his or her administering or delivering of a controlled substance in the course of his or her professional practice.**

2. **A practitioner, or by his or her authorized agent under the practitioner's supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis, and not for sale.**

Possession.

To prove (defendant) **"possessed a [place] [structure [or part thereof]] [trailer] [conveyance]," the State must prove beyond a reasonable doubt that [he] [she] a) knew of the existence of the [place] [structure [or part thereof]] [trailer] [conveyance], and b) intentionally exercised control over it.**

Give if applicable.

Control can be exercised over a [place] [structure [or part thereof]] [trailer] [conveyance] regardless of whether it is near a person or in a

completely separate location. Mere proximity to a [place] [structure [or part thereof]] [trailer] [conveyance] 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 the [place] [structure [or part thereof]] [trailer] [conveyance] or the present ability to direct its control by another.**

Joint possession. Give if applicable.

Possession of a [place] [structure [or part thereof]] [trailer] [conveyance] may be sole or joint, that is, two or more persons may possess a [place] [structure [or part thereof]] [conveyance].

Lesser Included Offenses

POSSESSION OF A PLACE FOR [[TRAFFICKING IN] [SALE OF] A CONTROLLED SUBSTANCE] [MANUFACTURING A CONTROLLED SUBSTANCE INTENDED FOR SALE OR DISTRIBUTION — § 893.1351(2)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempted Trafficking of a Controlled Substance	777.04(1) & 893.135	
	Attempted [Sale] [Manufacture] of a Controlled Substance	777.04(1) & 893.13	5.1 & 25.2 or 25.3
	[Ownership] [Lease] [Rental] of a Place for [[Trafficking in] [Sale of] a Controlled Substance] [Manufacturing a Controlled Substance Intended for Sale or Distribution]	893.1351(1)	25.13(f)
	Attempt	777.04(1)	5.1

Comments

It is unlawful to sell or manufacture all of the controlled substances listed in § 893.02, Fla. Stat. However, only certain controlled substances qualify for prosecution under the trafficking statute, § 893.135, Fla. Stat. Accordingly, the exact nature of the substance must be proven if the State is prosecuting under the trafficking prong of § 893.1351(2), Fla. Stat.

A special instruction will be required if the defense is that the defendant did not know of the illicit nature of the controlled substance. *See* § 893.101, Fla. Stat.

A special instruction may be required to address the nexus between a conveyance, place, structure, trailer, and the drug activity. *See Hunt v. State*, 256 So. 3d 243 (Fla. 2d DCA 2018) and *Delgado-George v. State,* 125 So. 3d 1031 (Fla. 2d DCA 2013).

§ 893.1351(1) and (2), Fla. Stat., require that the place *will* be used for certain drug-related activity while § 893.1351(3), Fla. Stat., requires that the place *was* being used to manufacture a controlled substance. *See Zeigler v. State*, 198 So. 3d 1005 (Fla. 1st DCA 2016).

This instruction was adopted in 2020.

25.13(h) POSSESSION OF A PLACE USED TO MANUFACTURE A CONTROLLED SUBSTANCE INTENDED FOR SALE OR DISTRIBUTION (MINOR PRESENT OR IN RESIDENCE)

§ 893.1351(3), Fla. Stat.

Certain drugs and chemical substances are by law known as "controlled substances." (Insert name(s) of controlled substance(s)) **[is a] [are] controlled substance[s].**

To prove the crime of Possession of a Place Used to Manufacture a Controlled Substance Intended for Sale or Distribution (Minor Present or in Residence), the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **was knowingly in possession of a [place] [structure] [trailer] [conveyance].**

2. **At the time,** (defendant) **knew the [place] [structure] [trailer] [conveyance] was being used to manufacture a controlled substance that was intended for sale or distribution to another.**

3. **At the time,** (defendant) **knew or should have known that a minor was present or resided in the [place] [structure] [trailer] [conveyance].**

Inference. Give if applicable. § 893.1351(4), Fla. Stat.

You may, but are not required to, infer that cannabis was intended for sale or distribution upon proof of the possession of 25 or more cannabis plants.

§ 893.02(3), Fla. Stat.

"Cannabis" means all parts of any plant of the genus *Cannabis*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin.

Definitions. Give as applicable.

§ 810.011(1), Fla. Stat. Dubose v. State, 210 So. 3d 641 (Fla. 2017).

A "structure" is any building of any kind, either temporary or permanent, which has a roof over it together with the curtilage. The "curtilage" is the enclosed land adjoining the structure. [The enclosure

need not be continuous as it may have an ungated opening for entering and exiting.]

§ 810.011(3), Fla. Stat.

A "conveyance" means any motor vehicle, ship, vessel, railroad vehicle or car, trailer, aircraft, or sleeping car.

"Sell" means to transfer or deliver something to another person in exchange for money or something of value or a promise of money or something of value.

§ 893.02(15)(a), Fla. Stat.

"Manufacture" means the production, preparation, propagation, compounding, cultivating, growing, conversion, or processing of a controlled substance, either directly or indirectly, by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging of the substance or labeling or relabeling of its container.

Give if applicable.

The term "manufacture" does not include the preparation, compounding, packaging, or labeling of a controlled substance by:

1. **A practitioner or pharmacist as an incident to his or her administering or delivering of a controlled substance in the course of his or her professional practice.**

2. **A practitioner, or by his or her authorized agent under the practitioner's supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis, and not for sale.**

Possession.

To prove (defendant) **"possessed a [place] [structure] [trailer] [conveyance]," the State must prove beyond a reasonable doubt that [he] [she] a) knew of the existence of the [place] [structure] [conveyance], and b) intentionally exercised control over it.**

Give if applicable.

Control can be exercised over a [place] [structure] [trailer] [conveyance] regardless of whether it is near a person or in a completely

separate location. Mere proximity to a [place] [structure] [trailer] [conveyance] 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 the [place] [structure] [trailer] [conveyance] or the present ability to direct its control by another.**

Joint possession. Give if applicable.

Possession of a [place] [structure] [trailer] [conveyance] may be sole or joint, that is, two or more persons may possess a [place] [structure] [trailer] [conveyance].

§ 847.0137(1)(a), Fla. Stat.

"Minor" means any person less than 18 years of age.

Lesser Included Offenses

POSSESSION OF A PLACE USED TO MANUFACTURE A CONTROLLED SUBSTANCE INTENDED FOR SALE OR DISTRIBUTION (MINOR PRESENT OR IN RESIDENCE) — § 893.1351(3)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Manufacture of a Controlled Substance		893.13(1)(a)	25.2
	Contributing to the delinquency of a minor	827.04(1)	16.4
	Manufacture methamphetamine and other drugs in presence of child younger than 16	893.13(1)(g)	--
	Attempt	777.04(1)	5.1

Comments

The crimes in §§ 893.1351(1), and 893.1351(2), Fla. Stats., are not necessary lesser included offenses because they have an element that is not present in § 893.1351(3), Fla. Stat.

Specifically, § 893.1351(1) and (2), Fla. Stats., require that the place *will* be used for certain drug-related activity while § 893.1351(3), Fla. Stat., requires that the place *was* being used to manufacture a controlled substance. *See Zeigler v. State*, 198 So. 3d 1005 (Fla. 1st DCA 2016).

A special instruction will be required if the defense is that the defendant did not know of the illicit nature of the controlled substance. *See* § 893.101, Fla. Stat.

This instruction was adopted in 2020.

25.14 USE OR POSSESSION WITH INTENT TO USE DRUG PARAPHERNALIA

§ 893.147(1), Fla. Stat.

To prove the crime of Use or Possession With Intent to Use Drug Paraphernalia, the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) **knew of the presence of drug paraphernalia.**

2. (Defendant) **[used the drug paraphernalia] [or] [possessed the drug paraphernalia with intent to use it] to:**

[plant] [propagate] [cultivate] [grow] [harvest] [manufacture] [compound] [convert] [produce] [process] [prepare] [test] [analyze] [pack] [repack] [store] [contain] [conceal] a controlled substance;

or

[inject] [ingest] [inhale] [or] [introduce] a controlled substance into the human body.

The Court instructs you that (name of substance) **is a controlled substance.**

Possession. Give if applicable.

To prove (defendant) **"possessed drug paraphernalia," the State must prove beyond a reasonable doubt that [he] [she] a) knew of the existence of the drug paraphernalia and b) intentionally exercised control over that drug paraphernalia.**

Give if applicable.

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

Joint possession. Give if applicable.

Possession of drug paraphernalia may be sole or joint, that is, two or more persons may possess drug paraphernalia.

Drug Paraphernalia. § 893.145, Fla. Stat.

The term "drug paraphernalia" means all equipment, products, and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, transporting, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance or a substance listed in § 877.111, Florida Statutes]. The Court instructs you that (name of substance) **is a substance listed in § 877.111, Florida Statutes.**

It includes, but is not limited to:

Give specific definition as applicable.

1. **Kits used, intended for use, or designed for use in planting, propagating, cultivating, growing, or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived.**

2. **Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances.**

3. **Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substance.**

4. **Testing equipment used, intended for use, or designed for use in identifying, or in analyzing the strength, effectiveness, or purity of, controlled substances, excluding narcotic-drug-testing products that are used solely to determine whether a controlled substance contains fentanyl, xylazine, [or** (*insert dangerous fentanyl or fentanyl analogues as specified in § 893.135(1)(c)4.a.)***]. This exclusion does not apply to a narcotic-drug-testing product that can measure or determine the quantity, weight, or potency of a controlled substance.**

5. **Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances.**

6. Diluents and adulterants, such as quinine hydrochloride, caffeine, dimethyl sulfone, mannitol, mannite, dextrose, and lactose used, intended for use, or designed for use in diluting controlled substances or substances such as damiana leaf, marshmallow leaf, and mullein leaf, used, intended for use, or designed for use as carrier mediums of controlled substances.

7. Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, cannabis.

8. Blenders, bowls, containers, spoons, and mixing devices used, intended for use, or designed for use in compounding controlled substances.

9. Capsules, balloons, envelopes, and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances.

10. Containers and other objects used, intended for use, or designed for use in storing or concealing controlled substances.

11. Hypodermic syringes, needles, and other objects used, intended for use, or designed for use in parenterally injecting controlled substances into the human body.

12. Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing controlled substances or a substance listed in § 877.111, Florida Statutes, into the human body, such as:

a. Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls.

b. Water pipes.

c. Carburetion tubes and devices.

d. Smoking and carburetion masks.

e. Roach clips: meaning objects used to hold burning material, such as a cannabis cigarette, that has become too small or too short to be held in the hand.

f. Miniature cocaine spoons, and cocaine vials.

g. Chamber pipes.

h. Carburetor pipes.

i. Electric pipes.

j. Air-driven pipes.

k. Chillums.

l. Bongs.

m. Ice pipes or chillers.

Relevant factors. § 893.146, Fla. Stat.

In addition to all other logically relevant factors, the following factors shall be considered in determining whether an object is drug paraphernalia:

1. Statements by an owner or by anyone in control of the object concerning its use.

2. The proximity of the object, in time and space, to a direct violation of the drug laws.

3. The proximity of the object to controlled substances.

4. The existence of any residue of controlled substances on the object.

5. Evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons whom [he] [she] knows, or should reasonably know, intend to use the object to facilitate a violation of the drug laws. The innocence of an owner, or of anyone in control of the object, as to a direct violation of the drug laws shall not prevent a finding that the object is intended for use, or designed for use, as drug paraphernalia.

6. Instructions, oral or written, provided with the object concerning its use.

7. Descriptive materials accompanying the object which explain or depict its use.

8. **Any advertising concerning its use.**

9. **The manner in which the object is displayed for sale.**

10. **Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products.**

11. **Evidence of the ratio of sales of the object or objects to the total sales of the business enterprise.**

12. **The existence and scope of legitimate uses for the object in the community.**

13. **Expert testimony concerning its use.**

Lesser Included Offense

USE OR POSSESSION WITH INTENT TO USE DRUG PARAPHERNALIA — 893.147(1)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempt	777.04(1)	5.1

Comments

§ 893.21, Fla. Stat.

A person acting in good faith who seeks medical assistance for himself, herself, or another experiencing or believed to be experiencing a drug-related or alcohol-related overdose may not be prosecuted for Use or Possession with Intent to Use Drug Paraphernalia if evidence of the crime was obtained as a result of the person seeking medical assistance.

This instruction was adopted in 1981 and amended in 1989 [543 So. 2d 1205], 1992 [603 So. 2d 1175], 1997 [697 So. 2d 84], 2007 [969 So. 2d 245], 2014 [153 So. 3d 192], 2016 [191 So. 3d 291], 2017 [216 So. 3d 497], 2019 [272 So. 3d 243], 2020 [288 So. 3d 540], on December 15, 2023, and on October 9, 2026.

25.15 DELIVERY, POSSESSION WITH INTENT TO DELIVER, OR MANUFACTURE WITH INTENT TO DELIVER DRUG PARAPHERNALIA

§ 893.147(2), Fla. Stat.

To prove the crime of (crime charged)**, the State must prove the following three elements beyond a reasonable doubt:**

1. (Defendant) **[delivered] [possessed with intent to deliver] [manufactured with intent to deliver] drug paraphernalia.**

2. (Defendant) **had knowledge of the presence of the drug paraphernalia.**

3. (Defendant) **knew or reasonably should have known that the drug paraphernalia would be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce a controlled substance into the human body.**

The Court instructs you that (name of substance) **is a controlled substance.**

Give if possession with intent to deliver is charged.

To prove (defendant) **"possessed drug paraphernalia," the State must prove beyond a reasonable doubt that [he] [she] a) knew of the existence of the drug paraphernalia and b) intentionally exercised control over that drug paraphernalia.**

Give if applicable.

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

Joint possession. Give if applicable.

Possession of drug paraphernalia may be sole or joint, that is, two or more persons may possess drug paraphernalia.

Drug Paraphernalia. § 893.145, Fla. Stat.

The term "drug paraphernalia" means all equipment, products, and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, transporting, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance or a substance listed in § 877.111, Florida Statutes. The Court instructs you that (name of substance) **is a substance listed in § 877.111, Florida Statutes.**

Give specific definition as applicable.

1. **Kits used, intended for use, or designed for use in planting, propagating, cultivating, growing, or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived.**

2. **Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances.**

3. **Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substance.**

4. **Testing equipment used, intended for use, or designed for use in identifying, or in analyzing the strength, effectiveness, or purity of, controlled substances, excluding narcotic-drug-testing products that are used solely to determine whether a controlled substance contains fentanyl, xylazine, [or** (*insert dangerous fentanyl or fentanyl analogues as specified in § 893.135(1)(c)4.a.)***]. This exclusion does not apply to a narcotic-drug-testing product that can measure or determine the quantity, weight, or potency of a controlled substance.**

5. **Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances.**

6. **Diluents and adulterants, such as quinine hydrochloride, caffeine, dimethyl sulfone, mannitol, mannite, dextrose, and lactose used, intended for use, or designed for use in diluting controlled substances or substances such as damiana leaf, marshmallow leaf, and mullein leaf, used, intended for use, or designed for use as carrier mediums of controlled substances.**

7. **Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, cannabis.**

8. **Blenders, bowls, containers, spoons, and mixing devices used, intended for use, or designed for use in compounding controlled substances.**

9. **Capsules, balloons, envelopes, and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances.**

10. **Containers and other objects used, intended for use, or designed for use in storing or concealing controlled substances.**

11. **Hypodermic syringes, needles, and other objects used, intended for use, or designed for use in parenterally injecting controlled substances into the human body.**

12. **Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing controlled substances or a substance listed in § 877.111, Florida Statutes, into the human body, such as:**

    a. **Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls.**

    b. **Water pipes.**

    c. **Carburetion tubes and devices.**

    d. **Smoking and carburetion masks.**

    e. **Roach clips: meaning objects used to hold burning material, such as a cannabis cigarette, that has become too small or too short to be held in the hand.**

    f. **Miniature cocaine spoons, and cocaine vials.**

    g. **Chamber pipes.**

    h. **Carburetor pipes.**

    i. **Electric pipes.**

j. Air-driven pipes.

k. Chillums.

l. Bongs.

m. Ice pipes or chillers.

Relevant factors. § 893.146, Fla. Stat.

In addition to all other logically relevant factors, the following factors shall be considered in determining whether an object is drug paraphernalia:

1. Statements by an owner or by anyone in control of the object concerning its use.

2. The proximity of the object, in time and space, to a direct violation of the drug laws.

3. The proximity of the object to controlled substances.

4. The existence of any residue of controlled substances on the object.

5. Evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons whom [he] [she] knows, or should reasonably know, intend to use the object to facilitate a violation of the drug laws. The innocence of an owner, or of anyone in control of the object, as to a direct violation of the drug laws shall not prevent a finding that the object is intended for use, or designed for use, as drug paraphernalia.

6. Instructions, oral or written, provided with the object concerning its use.

7. Descriptive materials accompanying the object which explain or depict its use.

8. Any advertising concerning its use.

9. The manner in which the object is displayed for sale.

10. Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products.

11. Evidence of the ratio of sales of the object or objects to the total sales of the business enterprise.

12. The existence and scope of legitimate uses for the object in the community.

13. Expert testimony concerning its use.

Lesser Included Offenses

DELIVERY, POSSESSION WITH INTENT TO DELIVER, OR MANUFACTURE WITH INTENT TO DELIVER DRUG PARAPHERNALIA — 893.147(2)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
*Use or Possession with Intent to Use Drug Paraphernalia, if Possession of Drug Paraphernalia with Intent to Deliver is charged		893.147(1)	25.14
	Attempt	777.04(1)	5.1

Comments

*As of September 2026, it is unclear if the courts will determine a person charged with either Delivery of Drug Paraphernalia or Manufacture with Intent to Deliver Drug Paraphernalia is necessarily charged with Use or Possession with Intent to Use Drug Paraphernalia.

This instruction was adopted in 1981 and amended in 1989 [543 So. 2d 1205], 1997 [697 So. 2d 84], 2007 [969 So. 2d 245], 2014 [153 So. 3d 192], 2016 [191 So. 3d 291], 2017 [216 So. 3d 497], 2019 [272 So. 3d 243], on December 15, 2023, and on October 9, 2026.

25.15(a) RETAIL SALE OF DRUG PARAPHERNALIA

§ 893.147(6), Fla. Stat.

To prove the crime of Retail Sale of Drug Paraphernalia, the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) **knowingly and willfully [sold] [offered for sale] at retail one or more objects defined as drug paraphernalia.**

2. **The object[s] [was] [were]:**

Give as applicable. § 893.145(12)(a)–(c), (g)–(m), Fla. Stat.

   a. **[a] metal, wooden, acrylic, glass, stone, plastic, or ceramic pipe[s].**

   b. **[a] water pipe[s].**

   c. **[a] carburetion tube[s] and device[s].**

   d. **[a] chamber pipe[s].**

   e. **[a] carburetor pipe[s].**

   f. **[an] electric pipe[s].**

   g. **[an] air-driven pipe[s].**

   h. **[a] chillum[s].**

   i. **[a] bong[s].**

   j. **[an] ice pipe[s] or [a] chiller[s].**

Definitions.

Optional definitions of knowingly.

"Knowingly" means with actual knowledge and understanding of the facts or the truth.

"Knowingly" means an act done voluntarily and intentionally and not because of mistake or accident or other innocent reason.

"Willfully" means intentionally and purposely.

The term "drug paraphernalia" means an object used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing [a controlled substance] [a substance described in § 877.111(1), Florida Statutes] into the human body.

The Court instructs you that (name of substance) **is a [controlled substance] [substance listed in § 877.111(1), Florida Statutes].**

Relevant factors. § 893.146, Fla. Stat.

In addition to all other logically relevant factors, the following factors shall be considered in determining whether an object is drug paraphernalia:

1. **Statements by an owner or by anyone in control of the object concerning its use.**

2. **The proximity of the object, in time and space, to a direct violation of the drug laws.**

3. **The proximity of the object to controlled substances.**

4. **The existence of any residue of controlled substances on the object.**

5. **Evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons whom [he] [she] knows, or should reasonably know, intend to use the object to facilitate a violation of the drug laws. The innocence of an owner, or of anyone in control of the object, as to a direct violation of the drug laws shall not prevent a finding that the object is intended for use, or designed for use, as drug paraphernalia.**

6. **Instructions, oral or written, provided with the object concerning its use.**

7. **Descriptive materials accompanying the object which explain or depict its use.**

8. **Any advertising concerning its use.**

9. **The manner in which the object is displayed for sale.**

10. **Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products.**

11. **Evidence of the ratio of sales of the object or objects to the total sales of the business enterprise.**

12. **The existence and scope of legitimate uses for the object in the community.**

13. **Expert testimony concerning its use.**

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comments

It is unclear whether the exception for pipes primarily made of briar, meerschaum, clay, or corn cob is an element or an affirmative defense. In the absence of case law, trial judges will have to make that determination if the issue arises.

The crime in § 893.147(6)(a), Fla. Stat., is reclassified from a first-degree misdemeanor to a third-degree felony upon a second or subsequent violation. *See* § 893.147(6)(b), Fla. Stat. As of August 2017, it is unclear whether a prior violation will be treated as an element of the crime which must be proven to the jury or as a sentencing factor which may be proven to the judge. If treated as an element, it is error to inform the jury of a prior violation of Retail Sale of Drug Paraphernalia. Therefore, if the information or indictment contains an allegation of one or more prior violations, do not read that allegation and do not send the information or indictment into the jury room. If the defendant is found guilty of a Retail Sale of Drug Paraphernalia, the historical fact of a previous violation shall be determined beyond a reasonable doubt in a bifurcated proceeding. *See State v. Harbaugh,* 754 So. 2d 691 (Fla. 2000).

This instruction was adopted in 2014 [143 So. 3d 893] and amended in 2017.

25.16 DELIVERY OF DRUG PARAPHERNALIA TO A MINOR

§ 893.147(3)(a), Fla. Stat.

To prove the crime of Delivery of Drug Paraphernalia to a Minor, the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **delivered drug paraphernalia to** (person alleged)**.**

2. (Defendant) **knew or reasonably should have known that the drug paraphernalia would be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce a controlled substance into the human body.**

3. **When the delivery was made,** (defendant) **was 18 years old or over and** (person alleged) **was under 18 years old.**

The Court instructs you that (name of substance) **is a controlled substance.**

Drug Paraphernalia. § 893.145, Fla. Stat.

The term "drug paraphernalia" means all equipment, products, and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, transporting, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance or a substance listed in § 877.111, Florida Statutes]. The Court instructs you that (name of substance) **is a substance listed in § 877.111, Florida Statutes.**

1. **Kits used, intended for use, or designed for use in planting, propagating, cultivating, growing, or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived.**

2. **Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances.**

3. **Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substance.**

4. Testing equipment used, intended for use, or designed for use in identifying, or in analyzing the strength, effectiveness, or purity of, controlled substances, excluding narcotic-drug-testing products that are used solely to determine whether a controlled substance contains fentanyl, xylazine, [or (*insert dangerous fentanyl or fentanyl analogues as specified in § 893.135(1)(c)4.a.)*]**. This exclusion does not apply to a narcotic-drug-testing product that can measure or determine the quantity, weight, or potency of a controlled substance.**

5. Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances.

6. Diluents and adulterants, such as quinine hydrochloride, caffeine, dimethyl sulfone, mannitol, mannite, dextrose, and lactose used, intended for use, or designed for use in diluting controlled substances or substances such as damiana leaf, marshmallow leaf, and mullein leaf, used, intended for use, or designed for use as carrier mediums of controlled substances.

7. Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, cannabis.

8. Blenders, bowls, containers, spoons, and mixing devices used, intended for use, or designed for use in compounding controlled substances.

9. Capsules, balloons, envelopes, and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances.

10. Containers and other objects used, intended for use, or designed for use in storing or concealing controlled substances.

11. Hypodermic syringes, needles, and other objects used, intended for use, or designed for use in parenterally injecting controlled substances into the human body.

12. Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing controlled substances or a substance listed in § 877.111, Florida Statutes, into the human body, such as:

a. Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls.

b. Water pipes.

c. Carburetion tubes and devices.

d. Smoking and carburetion masks.

e. Roach clips: meaning objects used to hold burning material, such as a cannabis cigarette, that has become too small or too short to be held in the hand.

f. Miniature cocaine spoons, and cocaine vials.

g. Chamber pipes.

h. Carburetor pipes.

i. Electric pipes.

j. Air-driven pipes.

k. Chillums.

l. Bongs.

m. Ice pipes or chillers.

Relevant factors. § 893.146, Fla. Stat.

In addition to all other logically relevant factors, the following factors shall be considered in determining whether an object is drug paraphernalia:

1. Statements by an owner or by anyone in control of the object concerning its use.

2. The proximity of the object, in time and space, to a direct violation of the drug laws.

3. The proximity of the object to controlled substances.

4. The existence of any residue of controlled substances on the object.

5. **Evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons whom he knows, or should reasonably know, intend to use the object to facilitate a violation of the drug laws. The innocence of an owner, or of anyone in control of the object, as to a direct violation of the drug laws shall not prevent a finding that the object is intended for use, or designed for use, as drug paraphernalia.**

6. **Instructions, oral or written, provided with the object concerning its use.**

7. **Descriptive materials accompanying the object which explain or depict its use.**

8. **Any advertising concerning its use.**

9. **The manner in which the object is displayed for sale.**

10. **Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products.**

11. **Evidence of the ratio of sales of the object or objects to the total sales of the business enterprise.**

12. **The existence and scope of legitimate uses for the object in the community.**

13. **Expert testimony concerning its use.**

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comment

This instruction was adopted in 1981 and amended in 2007 [969 So. 2d 245], 2014 [153 So. 3d 192], 2016 [191 So. 3d 291], 2017 [216 So. 3d 497], on December 15, 2023, and on October 9, 2026.

25.17 CONTRABAND IN COUNTY DETENTION FACILITY

§ 951.22, Fla. Stat.

To prove the crime of Contraband in a County Detention Facility, the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **had knowledge of the presence of an item.**

2. (Defendant)

Give as applicable.

a. introduced the item into a county detention facility.

b. possessed the item upon the grounds of a county detention facility.

c. gave the item to an inmate of a county detention facility.

d. received the item from an inmate of a county detention facility.

e. took the item from a county detention facility.

f. attempted to [take] [send] the item from a county detention facility.

3. The item was:

Give as applicable.

a. a written communication to give to or receive from an inmate.

b. a recorded communication to give to or receive from an inmate.

c. currency or coin to give to or receive from an inmate.

d. an article of [food] [clothing] to give to or receive from an inmate.

e. a tobacco product.

f. a cigarette.

g. a cigar.

h. a beverage that causes or may cause an intoxicating effect.

i. a narcotic, hypnotic, or excitative drug or drug of any kind or nature.

j. a controlled substance.

k. a firearm.

l. any instrumentality customarily used or which is intended to be used as a dangerous weapon.

m. any instrumentality of any nature that may be or is intended to be used as an aid in effecting or attempting to effect an escape from a county facility.

n. any [cellular telephone] [or] [portable communication device] intentionally and unlawfully introduced inside the secure perimeter of a county detention facility.

o. any vapor-generating electronic device intentionally and unlawfully introduced inside the secure perimeter of a county detention facility.

Definitions.

Give in all cases. § 951.23(1)(a), Fla. Stat.

"County detention facility" means a county jail, a county stockade, a county work camp, a county residential probation center, and any other place except a municipal detention facility used by a county or county officer for the detention of persons charged with or convicted of either felony or misdemeanor.

§ 951.23(1)(b), Fla. Stat.

"County residential probation center" means a county-operated facility housing offenders serving misdemeanor sentences or first-time felony sentences.

§ 951.23(1)(d), Fla. Stat.

"Municipal detention facility" means a city jail, a city stockade, a city prison camp, and any other place except a county detention facility

used by a municipality or municipal officer for the detention of persons charged with or convicted of violation of municipal laws or ordinances.

Give as applicable.

To "introduce" means to put inside or into.

Give when the evidence involves an inmate who is not in the facility.

It is unlawful to [give] [receive] a contraband item [to] [from] an inmate of a county detention facility even if the inmate was outside the facility at the time the contraband item was [given] [received].

Give if clothing is alleged. State v. Becton, 665 So. 2d 358 (Fla. 5th DCA 1995).

"Clothing" means things worn to cover the body and limbs.

Give if currency is alleged. State v. Becton, 665 So. 2d 358 (Fla. 5th DCA 1995).

"Currency" means money or another commodity which is in circulation as a medium of exchange.

Give if dangerous weapon is alleged.

A "dangerous weapon" is any object that will likely cause death or great bodily harm if used in the ordinary and usual manner contemplated by its design and construction.

Give if applicable and if evidence shows defendant possessed the object in the detention facility or brought it into the detention facility or attempted to do so.

An object not designed to inflict bodily harm may nonetheless be a "dangerous weapon" if (defendant)

[knew it would be used] [intended it to be used] in a manner likely to cause death or great bodily harm

or

[knew it would be used] [intended it to be used] to threaten someone with death or great bodily harm.

Give if applicable and if evidence shows the object had been used as a dangerous weapon in a detention facility.

An object not designed to inflict bodily harm may nonetheless be a "dangerous weapon" if (defendant) **knew it had been used [in a manner likely to cause death or great bodily harm] [or] [to threaten someone with death or great bodily harm].**

"Great bodily harm" means great as distinguished from slight, trivial, minor, or moderate harm, and as such does not include mere bruises.

Give if tobacco product is alleged. § 210.25(11), Fla. Stat.

"Tobacco products" means loose tobacco suitable for smoking; snuff; snuff flour; cavendish; plug and twist tobacco; fine cuts and other chewing tobaccos; shorts; refuse scraps; clippings, cuttings, and sweepings of tobacco, and other kinds and forms of tobacco prepared in such manner as to be suitable for chewing; but "tobacco products" does not include cigarettes or cigars.

Give if cigarette is alleged. § 210.01(1), Fla. Stat.

"Cigarette" means any roll for smoking, except one of which the tobacco is fully naturally fermented, without regard to the kind of tobacco or other substances used in the inner roll or the nature or composition of the material in which the roll is wrapped, which is made wholly or in part of tobacco irrespective of size or shape and whether such tobacco is flavored, adulterated or mixed with any other ingredient.

Give if a drug or controlled substance is alleged.

A "drug of any kind" includes [nasal inhalators] [sleeping pills] [barbiturates] [marijuana] [hemp] [industrial hemp] [a controlled substance]. (Name of drug or controlled substance) is a [drug] [controlled substance].

Give if firearm is alleged. § 790.001, Fla. Stat.

"Firearm" means any weapon (including a starter gun) which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive [; the frame or receiver of any such weapon] [any firearm muffler or firearm silencer] [any destructive device] [any machine gun]. [A destructive device is *(insert definition in § 790.001, Fla. Stat.)***.] [A "machine gun" is** *(insert definition in § 790.001, Fla. Stat.)***.]**

Give if portable communication device is alleged. §§ 944.47(1)(a)6., and 951.22(1)(k), Fla. Stats.

"Portable communication device" means any device carried, worn, or stored which is designed or intended to receive or transmit verbal or written messages, access or store data, or connect electronically to the Internet or any other electronic device and which allows communications in any form. Such devices include, but are not limited to, portable two-way pagers, hand-held radios, cellular telephones, Blackberry-type devices, personal digital assistants or PDA's, laptop computers, or any components of these devices which are intended to be used to assemble such devices.

Give if marijuana is alleged. § 381.986(1)(f), Fla. Stat.

"Marijuana" means all parts of any plant of the genus *Cannabis*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin, including low-THC cannabis, which are dispensed from a medical marijuana treatment center for medical use by a qualified patient.

Give if hemp is alleged. § 581.217(3)(d), Fla. Stat.

"Hemp" means the plant *Cannabis sativa* L. and any part of that plant, including the seeds thereof, and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers thereof, whether growing or not, that has a total delta-9-tetrahydrocannabinol concentration that does not exceed 0.3 percent on a dry-weight basis.

Give if industrial hemp is alleged. § 1004.4473(1)(c), Fla. Stat.

"Industrial hemp" means all parts and varieties of the cannabis sativa plant, cultivated or possessed by an approved grower under the pilot project, whether growing or not, which contain a tetrahydrocannabinol concentration that does not exceed 0.3 percent on a dry-weight basis.

Give if vapor-generating electronic device is alleged. § 386.203(15), Fla. Stat.

"Vapor-generating electronic device" means any product that employs an electronic, a chemical, or a mechanical means capable of producing vapor or aerosol from a nicotine product or any other substances, including, but not limited to, an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product, any replacement cartridge for such device, and any other container of a solution or other substance intended to be used with

or within an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product.

Give if possession is alleged.

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

Give if possession alleged and if applicable.

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

Joint possession. Give if applicable.

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

Affirmative defense: Lack of knowledge of illicit nature. Give if applicable. § 893.101(2) and (3), Fla. Stat.

Lack of knowledge of the illicit nature of a controlled substance is a defense to possession of a controlled substance. Accordingly, the defendant is not guilty of possessing a controlled substance if [he] [she] did not know of the illicit nature of the substance.

You may but are not required to infer that (defendant) **was aware of the illicit nature of the controlled substance if you find that [he] [she] possessed the controlled substance.**

If you are convinced beyond a reasonable doubt that (defendant) **knew of the illicit nature of the controlled substance, and all of the elements of the charge have been proved, you should find [him] [her] guilty.**

If you have a reasonable doubt on the question of whether (defendant) **knew of the illicit nature of the controlled substance, you should find [him] [her] not guilty of possession of a controlled substance.**

Affirmative defense of permission. Give if the defendant has satisfied his or her burden of production. See Wright v. State, 442 So. 2d 1058 (Fla. 1st DCA 1983).

It is a defense to the crime of Contraband in a County Detention Facility if the defendant used regular channels and was authorized by the sheriff or officer in charge of the detention facility to [introduce] [possess] [give] [receive] [take] [attempt to take or send] the contraband item [into] [from] the facility. The defendant has raised this defense.

If you have a reasonable doubt as to whether the defendant used regular channels and had authorization from the sheriff or officer in charge of the detention facility, you should find [him] [her] not guilty.

If the State proved beyond a reasonable doubt that the defendant did not use regular channels or did not have authorization from the sheriff or officer in charge of the detention facility, you should find [him] [her] guilty, if all the elements of the charge have also been proven beyond a reasonable doubt.

Lesser Included Offenses

CONTRABAND IN COUNTY DETENTION FACILITIES — 951.22

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
*Possession of a Controlled Substance if a controlled substance is the contraband alleged		893.13(6)	25.7
	Carrying a Concealed Firearm	790.01(2)	10.1
	Carrying a Concealed Weapon	790.01(1)	10.1
	Attempt	777.04(1)	5.1

Comments

*It is unclear if the courts will determine that Possession of a Controlled Substance is necessarily included in a charge of Contraband in County Detention Facility, for elements other than #2b. Possession is not a necessary lesser-included offense of either Sale or Manufacture of a Controlled Substance. *State v. McCloud*, 577 So. 2d 939 (Fla. 1991); *Anderson v. State*, 447 So. 2d 236 (Fla. 1st DCA 1983).

If the contraband item is a written communication, § 951.22(1)(a), Fla. Stat., exempts any document or correspondence exchanged between a lawyer, paralegal or other legal staff and an inmate at a detention facility if the document or correspondence is otherwise lawfully possessed and disseminated and relates to the legal representation of the inmate. As of September 2020, it was unclear if the exemption is an affirmative defense, and if so, what the burden of persuasion is and who bears that burden for that defense. A special instruction will be necessary if the exemption is at issue.

A special instruction will be necessary in cases where the dangerous weapon was an animal or a substance or something that is not commonly referred to as an "object."

The term "portable communication device" includes any new technology that is developed for similar purposes. Judges will have to create a special instruction as technology develops.

Excluded from the definition of cellular telephone or other portable communication device is any device having communication capabilities which has been approved or issued by the sheriff or officer in charge for investigative or institutional security purposes or for conducting other official business. *See* § 951.22(1)(k), Fla. Stat. As of September 2020, it was unclear if the exception is an affirmative defense, and if so, what the burden of persuasion is and who bears that burden for that defense. A special instruction will be necessary if the exception is at issue.

If the contraband item alleged is a cellular telephone, portable communication device, or vapor-generating electronic device, the item must have been "intentionally and unlawfully introduced inside the secure perimeter" of the county detention facility. *See* §§ 951.22(1)(k),(1)(*l*), Fla. Stat. As of September 2020, there was no definition of "secure perimeter." Therefore, if the location in which the cellular telephone, portable communication device, or vapor-generating electronic device was introduced is at issue, a special instruction will be necessary.

Additionally, as of September 2020, there was no case law about what "unlawfully introduced" (for cellular telephones, portable communication devices, or vapor-generating electronic devices) means.

This instruction was adopted in 1987 and amended in 1989 [543 So. 2d 1205], 2014 [153 So. 3d 192], 2016 [191 So. 3d 291], 2017 [216 So. 3d 497], 2019 [272 So. 3d 243], on April 3, 2020, and on October 2, 2020.

25.18 CONTRABAND IN A JUVENILE [DETENTION FACILITY] [COMMITMENT PROGRAM]

§ 985.711, Fla. Stat.

To prove the crime of Contraband in a Juvenile [Detention Facility] [Commitment Program], the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **had knowledge of the presence of an item.**

2. (Defendant)

Give as applicable.

a. possessed an item while upon the grounds of a juvenile [detention facility] [commitment program].

b. introduced the item into or upon the grounds of a juvenile [detention facility] [commitment program].

c. [took] [attempted to take] [sent] [attempted to send] an item from a juvenile [detention facility] [commitment program].

d. [transmitted] [attempted to transmit] an item to a juvenile offender into or upon the grounds of a juvenile [detention facility] [commitment program].

e. [caused] [attempted to cause] an item to be [transmitted to] [received by] a juvenile offender upon the grounds of a juvenile [detention facility] [commitment program].

3. The item was:

Give as applicable.

a. an unauthorized article of food or clothing given or transmitted, or intended to be given or transmitted, to any youth in a [juvenile detention facility] [commitment program].

b. a beverage that causes or may cause an intoxicating effect.

c. a controlled substance. (Name of controlled substance alleged) **is a controlled substance.**

d. marijuana.

e. hemp.

f. industrial hemp.

g. a prescription or nonprescription drug that has a hypnotic, stimulating, or depressing effect.

h. a firearm.

i. a weapon of any kind.

j. an explosive substance.

k. any [cellular telephone] [or] [portable communication device] intentionally and unlawfully introduced inside the secure perimeter of a juvenile [detention facility] [commitment program].

l. any vapor-generating electronic device intentionally and unlawfully introduced inside the secure perimeter of a juvenile [detention facility] [commitment program].

m. any currency or coin given or transmitted, or intended to be given or transmitted, to any youth in a [juvenile detention facility] [commitment program].

n. any cigarettes or tobacco products given, or intended to be given, to any youth in a [juvenile detention facility] [commitment program].

Definitions. Give as applicable.

§ 985.03(19), Fla. Stat.

A "juvenile detention facility" is a facility used pending court adjudication or disposition or execution of a court order for the temporary care of a child alleged or found to have committed a violation of law.

A "juvenile commitment program" is a facility used for the commitment of adjudicated delinquents.

"Introduce" means to put inside or into.

Give if clothing is alleged. State v. Becton, 665 So. 2d 358 (Fla. 5th DCA 1995).

"Clothing" means things worn to cover the body and limbs.

Give if portable communication device is alleged. § 944.47(1)(a)(6), Fla. Stat.

"Portable communication device" means any device carried, worn, or stored which is designed or intended to receive or transmit verbal or written messages, access or store data, or connect electronically to the Internet or any other electronic device and which allows communications in any form. Such devices include, but are not limited to, portable two-way pagers, hand-held radios, cellular telephones, Blackberry-type devices, personal digital assistants or PDA's, laptop computers, or any components of these devices which are intended to be used to assemble such devices.

Give if marijuana is alleged. § 381.986(1)(f), Fla. Stat.

"Marijuana" means all parts of any plant of the genus *Cannabis*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin, including low-THC cannabis, which are dispensed from a medical marijuana treatment center for medical use by a qualified patient.

Give if hemp is alleged. § 581.217(3)(d), Fla. Stat.

"Hemp" means the plant *Cannabis sativa* L. and any part of that plant, including the seeds thereof, and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers thereof, whether growing or not, that has a total delta-9-tetrahydrocannabinol concentration that does not exceed 0.3 percent on a dry-weight basis.

Give if industrial hemp is alleged. § 1004.4473(1)(c), Fla. Stat.

"Industrial hemp" means all parts and varieties of the cannabis sativa plant, cultivated or possessed by an approved grower under the pilot project, whether growing or not, which contain a tetrahydrocannabinol concentration that does not exceed 0.3 percent on a dry-weight basis.

Give if vapor-generating electronic device is alleged. § 386.203(15), Fla. Stat.

"Vapor-generating electronic device" means any product that employs an electronic, a chemical, or a mechanical means capable of producing vapor or aerosol from a nicotine product or any other substances, including, but not limited to, an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product, any replacement cartridge for such device, and any other container of a solution or other substance intended to be used with or within an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product.

Give if cigarette is alleged. § 210.01(1), Fla. Stat.

"Cigarette" means any roll for smoking, except one of which the tobacco is fully naturally fermented, without regard to the kind of tobacco or other substances used in the inner roll or the nature or composition of the material in which the roll is wrapped, which is made wholly or in part of tobacco irrespective of size or shape and whether such tobacco is flavored, adulterated or mixed with any other ingredient.

Give if tobacco products is alleged. § 210.25(12), Fla. Stat.

"Tobacco products" means loose tobacco suitable for smoking; snuff; snuff flour; cavendish; plug and twist tobacco; fine cuts and other chewing tobaccos; shorts; refuse scraps; clippings, cuttings, and sweepings of tobacco, and other kinds and forms of tobacco prepared in such manner as to be suitable for chewing; but tobacco products does not include cigarettes or cigars.

Give if weapon is alleged.

A "weapon" is any object that will likely cause bodily harm if used in the ordinary and usual manner contemplated by its design and construction.

Give if applicable and if evidence shows defendant possessed the object in the detention facility/commitment program or brought it into the detention facility/commitment program or attempted to do so.

An object not designed to inflict bodily harm may nonetheless be a "weapon" if (defendant)

[knew it would be used] [intended it to be used] in a manner likely to cause bodily harm

or

[knew it would be used] [intended it to be used] to threaten someone with bodily harm.

Give if applicable and if evidence shows the object had been used as a weapon in a detention facility/commitment program.

An object not designed to inflict bodily harm may nonetheless be a "weapon" if (defendant) **knew it had been used [in a manner likely to cause bodily harm] [or] [to threaten someone with bodily harm].**

Give if firearm is alleged. § 790.001, Fla. Stat.

"Firearm" means any weapon (including a starter gun) which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive [; the frame or receiver of any such weapon] [any firearm muffler or firearm silencer] [any destructive device] [any machine gun]. [A destructive device is *(insert definition in § 790.001, Fla. Stat.)***.] [A "machine gun" is** *(insert definition in § 790.001, Fla. Stat.)***.]**

Give if possession is alleged.

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

Give if possession alleged and if applicable.

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

Joint possession. Give if applicable.

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

Affirmative defense: Lack of knowledge of illicit nature. Give if applicable. § 893.101(2) and (3), Fla. Stat.

Lack of knowledge of the illicit nature of a controlled substance is a defense to possession of a controlled substance. Accordingly, the

(defendant) **is not guilty of possessing a controlled substance if [he] [she] did not know of the illicit nature of the substance.**

You may but are not required to infer that (defendant) **was aware of the illicit nature of the controlled substance if you find that [he] [she] possessed the controlled substance.**

If you are convinced beyond a reasonable doubt that (defendant) **knew of the illicit nature of the controlled substance, and all of the elements of the charge have been proved, you should find [him] [her] guilty.**

If you have a reasonable doubt on the question of whether (defendant) **knew of the illicit nature of the controlled substance, you should find [him] [her] not guilty of possession of a controlled substance.**

Affirmative defense of permission. Give if the defendant has satisfied his or her burden of production. See Wright v. State, 442 So. 2d 1058 (Fla. 1st DCA 1983).

It is a defense to the crime of Contraband in a Juvenile [Detention Facility] [Commitment Program] if the defendant was authorized through program policy or operating procedure or had the permission of the facility superintendent, program director, or manager of the [detention facility] [commitment program] to [possess] [introduce] [take] [attempt to take] [send] [attempt to send] [transmit] [attempt to transmit] [cause to transmit] [attempt to cause to transmit] the contraband item [into] [from] the facility. The defendant has raised this defense.

If you have a reasonable doubt as to whether the defendant was authorized through program policy or operating procedure or had the permission of the facility superintendent, program director, or manager of the [detention facility] [commitment program], you should find [him] [her] not guilty of Contraband in a Juvenile [Detention Facility] [Commitment Program].

If the State proved beyond a reasonable doubt that the defendant did not have authorization through program policy or operating procedure or did not have the permission of the facility superintendent, program director, or manager of the [detention facility] [commitment program], you should find [him] [her] guilty, if all the elements of the charge have also been proven beyond a reasonable doubt.

Lesser Included Offenses

CONTRABAND IN A JUVENILE FACILITY — 985.711			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
*Possession of a Controlled Substance if a controlled substance is the contraband alleged			
	Attempt (although some attempts are included as elements)	777.04(1)	5.1

Comments

*It is unclear if the courts will determine that Possession of a Controlled Substance is necessarily included in a charge of Contraband in a Juvenile [Detention Facility] [Commitment Program], for elements other than #2a. Possession is not a necessary lesser-included offense of either Sale or Manufacture of a Controlled Substance. *State v. McCloud*, 577 So. 2d 939 (Fla. 1991); *Anderson v. State*, 447 So. 2d 236 (Fla. 1st DCA 1983).

A special instruction will be necessary in cases where the weapon was an animal or a substance or something that is not commonly referred to as an "object."

The term "portable communication device" includes any new technology that is developed for similar purposes. Judges will have to create a special instruction as technology develops.

Excluded from the definition of cellular telephone or other portable communication device is any device having communication capabilities which has been approved or issued by the facility superintendent, program director, or manager. *See* § 985.711(1)(a)5., Fla. Stat. As of January 2025, it was unclear if the exception is an affirmative defense, and if so, what the burden of persuasion is and who bears that burden for that defense. A special instruction will be necessary if the exception is at issue.

If the contraband item alleged is a cellular telephone, portable communication device, or vapor-generating electronic device, the item must have been "intentionally and unlawfully introduced inside the secure perimeter" of the state correctional institution. *See* §§ 985.711(1)(a)5., and 985.711(1)(a)6., Fla. Stat. As of January 2025, there was no definition of "secure perimeter." Therefore, if the location in which the cellular telephone,

portable communication device, or vapor-generating electronic device was introduced is at issue, a special instruction will be necessary.

Additionally, as of January 2025, there was no case law about what "unlawfully introduced" (for cellular telephones, portable communication devices, or vapor-generating electronic devices) means.

This instruction was adopted in March 2000 and amended in 2014 [153 So. 3d 192], 2016 [191 So. 3d 291], 2017 [216 So. 3d 497], 2019 [272 So. 3d 243], on April 3, 2020, on October 2, 2020, and on February 21, 2025.

25.19 UNLAWFUL SALE, MANUFACTURE, ALTERATION, DELIVERY, UTTERING OR POSSESSION OF COUNTERFEIT-RESISTANT PRESCRIPTION BLANKS FOR CONTROLLED SUBSTANCES

§ 831.311, Fla. Stat.

To prove the crime of Unlawful Sale, Manufacture, Alteration, Delivery, Uttering or Possession of Counterfeit-Resistant Prescription Blanks for Controlled Substances, the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **[sold] [manufactured] [altered] [delivered] [uttered] [possessed] any counterfeit-resistant prescription blanks for controlled substances.**

2. **The counterfeit-resistant prescription blanks for controlled substances were in the form and content established by the Department of Health pursuant to law.**

3. (Defendant) **intended [to injure or defraud any person] [to facilitate** (insert the alleged violation of § 893.13, Fla. Stat.)**].**

Definitions. Give as applicable.

To "utter" means to pass, present or publish.

Possession.

To prove (defendant) **"possessed counterfeit-resistant prescription blanks for controlled substances," the State must prove beyond a reasonable doubt that [he] [she] a) knew of the existence of the prescription blanks and b) intentionally exercised control over them.**

Give if applicable.

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

Joint possession. Give if applicable.

Possession of prescription blanks may be sole or joint, that is, two or more persons may possess prescription blanks.

Lesser Included Offenses

UNLAWFUL SALE, MANUFACTURE, ALTERATION, DELIVERY, UTTERING OR POSSESSION OF COUNTERFEIT-RESISTANT PRESCRIPTION BLANKS FOR CONTROLLED SUBSTANCES —831.311

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempt	777.04(1)	5.1

Comments

The Department of Health is directed by § 893.065, Fla. Stat., to develop and adopt by rule the form and content for a counterfeit-resistant prescription blank which may be used by practitioners for the purpose of prescribing a controlled substance listed in Schedule II, Schedule III, or Schedule IV.

This instruction was adopted in 2009 [3 So. 3d 1172] and amended in 2019.

25.20 POSSESSION OF CONTRABAND [IN] [UPON THE GROUNDS OF] A STATE CORRECTIONAL INSTITUTION

§ 944.47(1)(c) Fla. Stat.

To prove the crime of Possession of Contraband [In] [Upon the Grounds of] a State Correctional Institution, the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) **possessed**

Give as applicable.

a. [written or recorded communication] [currency or coin] [an article of [food] [clothing]] that was [given or transmitted] [intended to be given or transmitted] to an inmate of a state correctional institution.

b. [an intoxicating beverage] [a beverage which causes or may cause an intoxicating effect.]

c. a controlled substance. (Name of controlled substance) **is a controlled substance.**

d. marijuana.

e. hemp.

f. industrial hemp.

g. any prescription or non-prescription drug having a hypnotic, stimulating, or depressing effect.

h. [a firearm] [a weapon of any kind] [an explosive substance].

i. any [cellular telephone] [portable communication device] intentionally and unlawfully introduced inside the secure perimeter of the state correctional institution.

j. any vapor-generating electronic device intentionally and unlawfully introduced inside the secure perimeter of a state correctional institution.

2. At the time, (defendant) **was [an inmate] [upon the grounds] of a state correctional institution.**

Give if it is alleged that the crime was committed by an employee. §§ 944.47(2)(b) and 944.115(2)(b), Fla. Stats.

If you find (defendant) **guilty of Possession of Contraband [In] [Upon the Grounds of] a State Correctional Institution, you must then determine whether the State proved beyond a reasonable doubt that [he] [she] was an employee who used or attempted to use the powers, rights, privileges, duties, or position of [his] [her] employment in the commission of the crime.**

An "employee" means an employee of the Department of Corrections or a private vendor in a contractual relationship with either the Department of Corrections or the

Department of Management Services, and includes persons such as contractors, volunteers, or law enforcement officers who are within a state correctional facility to perform a professional service.

Give in all cases. § 944.02(8), Fla. Stat.

"State correctional institution" means any prison, road camp, prison industry, prison forestry camp, or any prison camp or prison farm or other correctional facility, temporary or permanent, in which prisoners are housed, worked, or maintained, under the custody and jurisdiction of the Department of Corrections.

Give if clothing is alleged. State v. Becton, 665 So. 2d 358 (Fla. 5th DCA 1995).

"Clothing" means things worn to cover the body and limbs.

Give if currency is alleged. State v. Becton, 665 So. 2d 358 (Fla. 5th DCA 1995).

"Currency" means money or another commodity which is in circulation as a medium of exchange.

Give if weapon is alleged.

A "weapon" is any object, other than a firearm, that will likely cause bodily harm if used in the ordinary and usual manner contemplated by its design and construction.

Give if applicable.

An object not designed to inflict bodily harm may nonetheless be a "weapon" if (defendant) **[used it] [intended it to be used] [or] [knew it would be used or threatened to be used] in a manner likely to cause bodily harm.**

Give if firearm is alleged. § 790.001, Fla. Stat.

"Firearm" means any weapon (including a starter gun) which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive [; the frame or receiver of any such weapon] [any firearm muffler or firearm silencer] [any destructive device] [any machine gun]. [A destructive device is *(insert definition in § 790.001, Fla. Stat.)***.] [A "machine gun" is** *(insert definition in § 790.001, Fla. Stat.)***.]**

Give if portable communication device is alleged. § 944.47(1)(a)6., Fla. Stat.

The term "portable communication device" means any device carried, worn, or stored which is designed or intended to receive or transmit verbal or written messages, access or store data, or connect electronically to the Internet or any other electronic device and which allows communications in any form. Such devices include, but are not limited to, portable two-way pagers, hand-held radios, cellular telephones, Blackberry-type devices, personal digital assistants or PDA's, laptop computers, or any components of these devices which are intended to be used to assemble such devices.

Give if marijuana is alleged. § 381.986(1)(f), Fla. Stat.

"Marijuana" means all parts of any plant of the genus *Cannabis*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin, including low-THC cannabis, which are dispensed from a medical marijuana treatment center for medical use by a qualified patient.

Give if hemp is alleged. § 581.217(3)(d), Fla. Stat.

"Hemp" means the plant *Cannabis sativa* L. and any part of that plant, including the seeds thereof, and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers thereof, whether growing or not, that has a total delta-9-tetrahydrocannabinol concentration that does not exceed 0.3 percent on a dry-weight basis.

Give if industrial hemp is alleged. § 1004.4473(1)(c), Fla. Stat.

"Industrial hemp" means all parts and varieties of the cannabis sativa plant, cultivated or possessed by an approved grower under the pilot project, whether growing or not, which contain a tetrahydrocannabinol concentration that does not exceed 0.3 percent on a dry-weight basis.

Give if vapor-generating electronic device is alleged. § 386.203(15), Fla. Stat.

"Vapor-generating electronic device" means any product that employs an electronic, a chemical, or a mechanical means capable of producing vapor or aerosol from a nicotine product or any other substances, including, but not limited to, an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product, any replacement cartridge for such device, and any other container of a solution or other substance intended to be used with or within an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product.

Possession.

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

Give if applicable.

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

Joint possession. Give if applicable.

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

Affirmative defense: Lack of knowledge of illicit nature. Give if applicable. § 893.101(2) and (3), Fla. Stat.

Lack of knowledge of the illicit nature of a controlled substance is a defense to the crime of Possession of a Controlled Substance. Accordingly, the defendant is not guilty of possessing a controlled substance if [he] [she] did not know of the illicit nature of the substance.

You may but are not required to infer that (defendant) **was aware of the illicit nature of the controlled substance if you find that [he] [she] possessed the controlled substance.**

If you are convinced beyond a reasonable doubt that (defendant) **knew of the illicit nature of the controlled substance, and all of the elements of the charge have been proved, you should find [him] [her] guilty.**

If you have a reasonable doubt on the question of whether (defendant) **knew of the illicit nature of the controlled substance, you should find [him] [her] not guilty of possession of a controlled substance.**

Affirmative defense: Authorization. Give if the defendant has satisfied his or her burden of production. See Wright v. State, 442 So. 2d 1058 (Fla. 1st DCA 1983).

It is a defense to the crime of Possession of Contraband [In] [Upon the Grounds of] a State Correctional Institution if the defendant was authorized by the officer in charge of the correctional institution to possess the item [in] [upon the grounds of] a state correctional institution. The defendant has raised this defense.

If you have a reasonable doubt as to whether the defendant had authorization from the officer in charge of the correctional institution, you should find [him] [her] not guilty.

If the State proved beyond a reasonable doubt that the defendant did not have authorization from the officer in charge of the correctional institution, you should find [him] [her] guilty, if all the elements of the charge have also been proven beyond a reasonable doubt.

Lesser Included Offenses

POSSESSION OF CONTRABAND [IN] [UPON THE GROUNDS OF] A STATE CORRECTIONAL INSTITUTION — 944.47(1)(c)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Possession of a Controlled Substance, if a controlled substance is the contraband alleged		893.13	25.7
	Possession of a Firearm or a Concealed Weapon by a Convicted Felon, if a firearm or concealed weapon is the contraband alleged and the possessor is an inmate.	790.23	10.15

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
	Carrying a Concealed Firearm	790.01(2)	10.1
	Carrying a Concealed Weapon	790.01(1)	10.1
	Attempt	777.04(1)	5.1

Comments

A special instruction will be necessary in cases where the weapon was an animal or a substance or something that is not commonly referred to as an "object."

The term "portable communication device" includes any new technology that is developed for similar purposes. Judges will have to create a special instruction as technology develops.

The definition of "portable communication device" excludes any device having communication capabilities which has been approved or issued by the Department of Corrections for investigative or institutional security purposes or for conducting other state business. *See* § 944.47(1)(a)6., Fla. Stat. As of September 2020, it was unclear if the exclusion is an affirmative defense, and if so, what the burden of persuasion is and who bears that burden for that defense. A special instruction will be necessary if the exclusion is at issue.

If the contraband item alleged is a cellular telephone, portable communication device, or vapor-generating electronic device, the item must have been "intentionally and unlawfully introduced inside the secure perimeter" of the state correctional institution. *See* §§ 944.47(1)(a)6., (1)(a)7., Fla. Stat. As of September 2020, there was no definition of "secure perimeter." Therefore, if the location in which the cellular telephone, portable communication device, or vapor-generating electronic device was introduced is at issue, a special instruction will be necessary.

Additionally, as of September 2020, there was no case law about what "unlawfully introduced" (for cellular telephones, portable communication devices, or vapor-generating electronic devices) means.

This instruction was adopted in 2014 [153 So. 3d 192] and amended in 2016 [191 So. 3d 291], 2017 [216 So. 3d 497], 2019 [272 So. 3d 243], on April 3, 2020, and on October 2, 2020.

25.21 [INTRODUCTION] [REMOVAL] OF CONTRABAND [INTO] [FROM] A STATE CORRECTIONAL INSTITUTION

§ 944.47(1)(a), Fla. Stat.

To prove the crime of [Introduction] [Removal] of Contraband [into] [from] a State Correctional Institution, the State must prove the following [three] [four] elements beyond a reasonable doubt:

1. (Defendant) **[introduced into or upon the grounds of] [took] [sent] [attempted to [take] [send]] an item [into] [from] a state correctional institution.**

2. (Defendant) **had knowledge of the presence of the item.**

3. The item was:

Give as applicable.

a. a [written] [recorded] communication.

b. [currency] [or] [coin].

c. an article of [food] [clothing].

d. an intoxicating beverage or a beverage which causes or may cause an intoxicating effect.

e. a controlled substance. (Name of controlled substance) **is a controlled substance.**

f. marijuana.

g. hemp.

h. industrial hemp.

i. any prescription or nonprescription drug having a hypnotic, stimulating, or depressing effect.

j. [a firearm] [a weapon of any kind] [an explosive substance].

k. any [cellular telephone] [or] [portable communication device] intentionally and unlawfully introduced inside the secure perimeter of a state correctional institution.

l. any vapor-generating electronic device intentionally and unlawfully introduced inside the secure perimeter of a state correctional institution.

Give element #4 if element #3a, 3b, or 3c is given.

4. (Defendant) **[gave or transmitted] [or] [intended to give or transmit] the [written communication] [recorded communication] [currency] [coin] [article of food] [article of clothing] to an inmate of the state correctional institution.**

Give if it is alleged that the crime was committed by an employee. §§ 944.47(2)(b) and 944.115(2)(b), Fla. Stats.

If you find (defendant) **guilty of [Introduction] [Removal] of Contraband [into] [from] a State Correctional Institution, you must then determine whether the State proved beyond a reasonable doubt that [he] [she] was an employee who used or attempted to use the powers, rights, privileges, duties, or position of [his] [her] employment in the commission of the crime.**

An "employee" means an employee of the Department of Corrections or a private vendor in a contractual relationship with either the Department of Corrections or the Department of Management Services, and includes persons such as contractors, volunteers, or law enforcement officers who are within a state correctional facility to perform a professional service.

Give in all cases. State Correctional Institution. § 944.02(8), Fla. Stat.

"State correctional institution" means any prison, road camp, prison industry, prison forestry camp, or any prison camp or prison farm or other correctional facility, temporary or permanent, in which prisoners are housed, worked, or maintained, under the custody and jurisdiction of the Department of Corrections.

Give if marijuana is alleged. § 381.986(1)(f), Fla. Stat.

"Marijuana" means all parts of any plant of the genus *Cannabis*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin, including low-THC cannabis, which are dispensed from a medical marijuana treatment center for medical use by a qualified patient.

Give if hemp is alleged. § 581.217(3)(d), Fla. Stat.

"Hemp" means the plant *Cannabis sativa* L. and any part of that plant, including the seeds thereof, and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers thereof, whether growing or not, that has a total delta-9-tetrahydrocannabinol concentration that does not exceed 0.3 percent on a dry-weight basis.

Give if industrial hemp is alleged. § 1004.4473(1)(c), Fla. Stat.

"Industrial hemp" means all parts and varieties of the cannabis sativa plant, cultivated or possessed by an approved grower under the pilot project, whether growing or not, which contain a tetrahydrocannabinol concentration that does not exceed 0.3 percent on a dry-weight basis.

Give if vapor-generating electronic device is alleged. § 386.203(15), Fla. Stat.

"Vapor-generating electronic device" means any product that employs an electronic, a chemical, or a mechanical means capable of producing vapor or aerosol from a nicotine product or any other substances, including, but not limited to, an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product, any replacement cartridge for such device, and any other container of a solution or other substance intended to be used with or within an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product.

Give if firearm is alleged. § 790.001, Fla. Stat.

"Firearm" means any weapon (including a starter gun) which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive [; the frame or receiver of any such weapon] [any firearm muffler or firearm silencer] [any destructive device] [any machine gun]. [A destructive device is *(insert definition in § 790.001, Fla. Stat.)***.] [A "machine gun" is** *(insert definition in § 790.001, Fla. Stat.)***.]**

Give if clothing is alleged. State v. Becton, 665 So. 2d 358 (Fla. 5th DCA 1995).

"Clothing" means things worn to cover the body and limbs.

Give if currency is alleged. State v. Becton, 665 So. 2d 358 (Fla. 5th DCA 1995).

"Currency" means money or another commodity which is in circulation as a medium of exchange.

Give if weapon is alleged.

A "weapon" is any object that will likely cause bodily harm if used in the ordinary and usual manner contemplated by its design and construction.

Give if applicable and if evidence shows defendant brought the object into the correctional institution or attempted to do so.

An object not designed to inflict bodily harm may nonetheless be a "weapon" if (defendant)

[knew it would be used] [intended it to be used] in a manner likely to cause bodily harm

or

[knew it would be used] [intended it to be used] to threaten someone with bodily harm.

Give if applicable and if evidence shows the object had been used as a weapon in a correctional institution.

An object not designed to inflict bodily harm may nonetheless be a "weapon" if (defendant) **knew it had been used or threatened to be used in a manner likely to cause bodily harm.**

Give if portable communication device is alleged. § 944.47(1)(a)(6), Fla. Stat.

"Portable communication device" means any device carried, worn, or stored which is designed or intended to receive or transmit verbal or written messages, access or store data, or connect electronically to the Internet or any other electronic device and which allows communications in any form. Such devices include, but are not limited to, portable two-way pagers, hand-held radios, cellular telephones, Blackberry-type devices, personal digital assistants or PDA's, laptop computers, or any components of these devices which are intended to be used to assemble such devices.

Affirmative defense: Lack of knowledge of illicit nature. Give if applicable. § 893.101(2) and (3), Fla. Stat.

Lack of knowledge of the illicit nature of a controlled substance is a defense to this charge. Accordingly, the defendant is not guilty of this

charge if [he] [she] did not know of the illicit nature of the controlled substance.

You may but are not required to infer that (defendant) **was aware of the illicit nature of the controlled substance if you find that [he] [she] possessed the controlled substance.**

To prove (defendant) **"possessed a substance," the State must prove beyond a reasonable doubt that [he] [she] a) knew of the existence of the substance and b) intentionally exercised control over that substance.**

Give if applicable.

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

Joint possession. Give if applicable.

Possession of a substance may be sole or joint, that is, two or more persons may possess a substance.

If you are convinced beyond a reasonable doubt that (defendant) **knew of the illicit nature of the controlled substance, and all of the elements of the charge have been proven, you should find [him] [her] guilty.**

If you have a reasonable doubt as to whether (defendant) **knew of the illicit nature of the controlled substance, you should find [him] [her] not guilty.**

Affirmative defense: Authorization. Give if the defendant has satisfied his or her burden of production. See Wright v. State, 442 So. 2d 1058 (Fla. 1st DCA 1983).

It is a defense to the crime of [Introduction] [Removal] of Contraband [into] [from] a State Correctional Institution if the defendant used regular channels and was authorized by the officer in charge of the correctional institution to [introduce] [take] [send] the item [into] [from] the state correctional institution. The defendant has raised this defense.

If you have a reasonable doubt as to whether the defendant used regular channels and had authorization from the officer in charge of the correctional institution, you should find [him] [her] not guilty.

If the State proved beyond a reasonable doubt that the defendant did not use regular channels or did not have authorization from the officer in charge of the correctional institution, you should find [him] [her] guilty, if all the elements of the charge have also been proven beyond a reasonable doubt.

Lesser Included Offenses

[INTRODUCTION] [REMOVAL] OF CONTRABAND [INTO] [FROM] A STATE CORRECTIONAL INSTITUTION — 944.47(1)(a)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
*Possession of a Controlled Substance, if a controlled substance is the contraband alleged		893.13	25.7
	Possession of a Firearm or a Concealed Weapon by a Convicted Felon, if a firearm or concealed weapon is the contraband alleged and the possessor is an inmate.	790.23	10.15
	Carrying a Concealed Firearm	790.01(2)	10.1
	Carrying a Concealed Weapon	790.01(1)	10.1

Comments

*It is unclear if the courts will determine that Possession of a Controlled Substance is necessarily included in a charge of [Introduction] [Removal] of Contraband [Into] [From] a State Correctional Institution. Possession is not a necessary lesser-included offense of either Sale or Manufacture of a Controlled Substance. *State v. McCloud*, 577 So. 2d 939 (Fla. 1991); *Anderson v. State*, 447 So. 2d 236 (Fla. 1st DCA 1983).

A special instruction will be necessary in cases where the weapon was an animal or a substance or something that is not commonly referred to as an "object."

The term "portable communication device" includes any new technology that is developed for similar purposes. Judges will have to create a special instruction as technology develops.

The definition of "portable communication device" excludes any device having communication capabilities which has been approved or issued by the Department of Corrections for investigative or institutional security purposes or for conducting other state business. *See* § 944.47(1)(a)6., Fla. Stat. As of September 2020, it was unclear if the exclusion is an affirmative defense, and if so, what the burden of persuasion is and who bears that burden for that defense. A special instruction will be necessary if the exclusion is at issue.

If the contraband item alleged is a cellular telephone, portable communication device, or vapor-generating electronic device, the item must have been "intentionally and unlawfully introduced inside the secure perimeter" of the state correctional institution. *See* §§ 944.47(1)(a)6., (1)(a)7., Fla. Stat. As of September 2020, there was no definition of "secure perimeter." Therefore, if the location in which the cellular telephone, portable communication device, or vapor-generating electronic device was introduced is at issue, a special instruction will be necessary.

Additionally, as of September 2020, there was no case law about what "unlawfully introduced" (for cellular telephones, portable communication devices, or vapor-generating electronic devices) means.

This instruction was adopted in 2014 [153 So. 3d 192] and amended in 2016 [191 So. 3d 291], 2017 [216 So. 3d 497], 2019 [272 So. 3d 243], on April 3, 2020, and on October 2, 2020.

25.22 UNLAWFUL DISTRIBUTION OF (NAME(S) OF ENUMERATED CONTROLLED SUBSTANCE(S)) **CAUSING AN OVERDOSE OR [SERIOUS BODILY INJURY**

§ 893.131, Fla. Stat.

To prove the crime of Unlawful Distribution of (name(s) of enumerated controlled substance(s)) **Causing an Overdose or Serious Bodily Injury, the State must prove the following five elements beyond a reasonable doubt:**

1. (Defendant) **unlawfully distributed** (name(s) of enumerated controlled substance(s))**.**

2. **At the time of the distribution,** (defendant) **had knowledge of the presence of the substance.**

3. **At the time of the distribution,** (defendant) **was 18 years of age or older.**

4. (Victim) **used the** (name(s) of enumerated controlled substance(s)) **that** (defendant) **had distributed.**

5. **The** (name(s) of enumerated controlled substance(s)) **that** (defendant) **unlawfully distributed caused or was a substantial factor in causing an overdose or serious bodily injury to** (victim)**.**

"Distribute" means to deliver, other than by administering or dispensing, a controlled substance and includes the direct or indirect delivery of a controlled substance to a user.

"Deliver" means the actual, constructive, or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship.

"Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body of a person or animal.

(Name(s) of enumerated controlled substance(s**)) [is] [are] [a] controlled substance[s]. It is unlawful to distribute** (name(s) of enumerated controlled substance(s)) **unless licensed by the State of Florida to do so.***

"Dispense" means the transfer of possession of one or more doses of a medicinal drug by a pharmacist or other licensed practitioner to the ultimate consumer thereof or to one who represents that it is his or her intention not to consume or use the same but to transfer the same to the

ultimate consumer or user for consumption by the ultimate consumer or user.

"Overdose or serious bodily injury" means drug toxicity or a physical condition that creates a substantial risk of death or substantial loss or impairment of the function of any bodily member or organ.

"Substantial factor" means that the use of a substance [or mixture] alone is sufficient to cause an overdose or serious bodily injury, regardless of whether any other substance or mixture used is also sufficient to cause an overdose or serious bodily injury.

Give if applicable.

You may but are not required to infer that a person experienced an overdose or serious bodily injury if you are convinced beyond a reasonable doubt that the person was administered medical care by an emergency responder, including, but not limited to, a law enforcement officer, a paramedic, or an emergency medical technician.

"Medical care" means the administration of treatment for the purposes of preserving or sustaining life or the administration of an emergency opioid antagonist.

"Emergency opioid antagonist" means naloxone hydrochloride or any similarly acting drug that blocks the effects of opioids administered from outside the body and that is approved by the United States Food and Drug Administration for the treatment of an opioid overdose.

Affirmative defense: Lack of knowledge of illicit nature. Give if applicable. § 893.101(2) and (3), Fla. Stat.

Lack of knowledge of the illicit nature of a controlled substance is a defense to the crime charged.

You may but are not required to infer that (defendant) **knew of the illicit nature of the controlled substance if you find that [he] [she] possessed the controlled substance.**

To prove (defendant) **"possessed a substance," the State must prove beyond a reasonable doubt that [he] [she] a) knew of the existence of the substance and b) intentionally exercised control over that substance.**

Give if applicable.

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

Joint possession. Give if applicable.

Possession of a substance may be sole or joint, that is, two or more persons may possess a substance.

If you are convinced beyond a reasonable doubt that (defendant) **knew of the illicit nature of the controlled substance, and if all of the elements of the charge have been proved, you should find [him] [her] guilty of the crime charged.**

If you have a reasonable doubt on the question of whether (defendant) **knew of the illicit nature of the controlled substance, you should find [him] [her] not guilty of the crime charged.**

Lesser Included Offense**

UNLAWFUL DISTRIBUTION OF (NAME(S) OF ENUMERATED CONTROLLED SUBSTANCE(S)) **CAUSING AN OVERDOSE OR SERIOUS BODILY INJURY — 893.131**

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS.NO.
Delivery of a controlled substance		893.13	25.2

Comments

The instruction indicates that the State must prove the defendant unlawfully distributed the enumerated controlled substance. However, as of April 2024, there was no case law that determined whether the State must prove the distribution was unlawful, or whether the defendant must provide evidence, as an affirmative defense, that the distribution was lawful. If lawfulness of the distribution (e.g., defendant was licensed in Florida to distribute the controlled substance) is an affirmative defense, the trial judge must determine which party has the burden of persuasion and what that burden is (preponderance of the evidence, clear and convincing, or beyond a reasonable doubt).

*A special instruction will be necessary if the defendant was licensed to distribute the enumerated controlled substance but did so in an unlawful manner. Trial judges can review §§ 893.05 and 893.13(8), Fla. Stats. to define an unlawful manner.

**As of April 2024, it is unclear whether Possession of a Controlled Substance is a lesser included offense. In *State v. McCloud*, 577 So. 2d 939 (Fla. 1991), the Court held that possession of a controlled substance was not a lesser of Sale of a Controlled Substance.

A person who violates § 893.131(2)(a), Fla. Stat., commits a second degree felony. However, a person who has a prior conviction for the same crime commits a first degree felony. As of April 2024, it was unclear whether the fact of a prior conviction is an element that must be proven to the jury or is a recidivist fact that can be proven to the judge at sentencing under a preponderance of the evidence standard.

If treated as an element, it is error to inform the jury of a prior conviction. Therefore, if the information or indictment contains an allegation of a prior conviction, do not read the allegation and do not send the information or indictment into the jury room. If the defendant is found guilty, the historical fact of a prior conviction must be determined beyond a reasonable doubt in a bifurcated proceeding. *State v. Harbaugh*, 754 So. 2d 691 (Fla. 2000).

This instruction was adopted on May 21, 2024.

25.23 RECKLESS EXPOSURE CAUSING AN OVERDOSE OR SERIOUS BODILY INJURY

§ 893.132, Fla. Stat.

To prove the crime of Reckless Exposure to (name(s) of enumerated controlled substance(s))* **Causing an Overdose or Serious Bodily Injury to a[n]** (type of first responder) **in the Course of Unlawful Possession of the** (name(s) of enumerated controlled substance(s))***, the State must prove the following five elements beyond a reasonable doubt:**

1. (Defendant) **unlawfully possessed** (name(s) of enumerated controlled substance(s))**.**

2. **In the course of [his] [her] unlawful possession of** (name(s) of enumerated controlled substance(s)), (defendant) **recklessly exposed** (victim) **to the** (name(s) of enumerated controlled substance(s))**.**

3. **At the time of the reckless exposure,** (victim) **was acting in [his] [her] official capacity as a[n] [law enforcement officer] [correctional officer] [correctional probation officer] [firefighter] [emergency medical technician] [paramedic].**

4. **The reckless exposure resulted in an overdose or serious bodily injury to** (victim)**.**

5. **At the time of the reckless exposure,** (defendant) **was 18 years of age or older.**

(Name(s) of enumerated controlled substance(s)) **[is] [are] [a] controlled substance[s]. The Court instructs you that it is unlawful to possess** (name(s) of enumerated controlled substance(s)*) **without a valid prescription.**

To prove (defendant) **possessed** (name(s) of enumerated controlled substance(s))**, the State must prove beyond a reasonable doubt that [he] [she] a) knew of the existence of the substance and b) intentionally exercised control over the substance.**

Give if applicable.

Control can be exercised over a substance whether the substance is carried on a person, near a person, or in a completely separate location. Mere proximity to a substance does not establish that the person intentionally exercised control over the substance in the absence of additional evidence. Control can be established by proof that

(defendant) **had direct personal power to control the substance or the present ability to direct its control by another.**

Joint possession. Give if applicable.

Possession of a substance may be sole or joint, that is, two or more persons may possess a substance.

Affirmative defense: Lack of knowledge of illicit nature. Give if applicable. § 893.101(2) and (3), Fla. Stat.

Lack of knowledge of the illicit nature of a controlled substance is a defense to this crime. You may but are not required to infer that (defendant) **was aware of the illicit nature of the controlled substance if you find that [he] [she] possessed the controlled substance.**

If you are convinced beyond a reasonable doubt that (defendant) **knew of the illicit nature of the controlled substance, and all of the elements of the charge have been proved, you should find [him] [her] guilty of this crime.**

If you have a reasonable doubt on the question of whether (defendant) **knew of the illicit nature of the controlled substance, you should find [him] [her] not guilty of this crime.**

"Recklessly" means a willful or wanton disregard for the safety of other persons.

"Exposed" or "exposure" means to cause any of the following, including, but not limited to, ingestion, inhalation, needlestick injury, or absorption through skin or mucous membranes.

Give as applicable.

A law enforcement officer is defined as (insert language from § 943.10(1), Fla. Stat.)

A correctional officer is defined as (insert language from § 943.10(2), Fla. Stat.)

A correctional probation officer is defined as ((insert language from § 943.10(3), Fla. Stat.)**.**

A firefighter is defined as (insert language from § 633.102, Fla. Stat.)**.**

An emergency medical technician is defined as (insert language from § 401.23, Fla. Stat.)**.**

A paramedic is defined as (insert language from § 401.23, Fla. Stat.)

"Overdose or serious bodily injury" means drug toxicity or a physical condition that creates a substantial risk of death or substantial loss or impairment of the function of any bodily member or organ.

Lesser Included Offenses

RECKLESS EXPOSURE CAUSING AN OVERDOSE OR SERIOUS BODILY INJURY — 893.132

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS.NO.
Possession of a controlled substance		893.13	25.7
	Culpable negligence (inflicting injury)	784.05(2)	8.9
	Culpable negligence (exposing another to injury)	784.05(1)	8.9

Comments

*The enumerated controlled substance(s) must be alfentanil; carfentanil; fentanyl; sufentanil; a fentanyl derivative as described in § 893.03(1)(a)63.; a controlled substance analog as described in § 893.0356, Fla. Stat. of alfentanil, carfentanil, fentanyl, sufentanil, or a fentanyl derivative; or a mixture containing any of these substances.

The instruction indicates that the State must prove the defendant unlawfully possessed the enumerated controlled substance. However, as of January 2025, there was no case law that determined whether the State must prove the possession was unlawful, or whether the defendant must provide evidence, as an affirmative defense, that the possession was lawful. If lawfulness of the possession is an affirmative defense, the trial judge must determine which party has the burden of persuasion and what that burden is (preponderance of the evidence, clear and convincing, or beyond a reasonable doubt).

This instruction was adopted on February 21, 2025.

CHAPTER 26 — RACKETEERING

26.1 RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT [RESERVED]

26.2 RICO — USE OR INVESTMENT OF PROCEEDS FROM PATTERN OF RACKETEERING ACTIVITY

§ 895.03(1), Fla. Stat.

To prove the crime of Unlawful Use or Investment of Proceeds from a Pattern of Racketeering Activity, the State must prove the following four elements beyond a reasonable doubt:

Elements #1 and #2 need to be reworded if only two incidents of racketeering conduct are alleged.

1. **At least two of the following incidents occurred.** *Read incidents of racketeering conduct alleged in information.*

2. **Of those incidents that occurred, at least two of them had the same or similar [intents] [results] [accomplices] [victims] [methods of commission] or were interrelated by distinguishing characteristics and were not isolated incidents.**

3. (Defendant), **with criminal intent, received proceeds that were derived directly or indirectly from such incidents.**

4. (Defendant) **[used] [invested] some of these proceeds [or proceeds derived from the investment or use thereof] either directly or indirectly [in acquiring some right, title, equity or interest in real property] [in establishing or operating an enterprise].**

Define the crimes alleged to be incidents of racketeering conduct.

§ 895.02(7), Fla. Stat. Give if there is no express stipulation regarding dates.

In order to find (defendant) **guilty of Unlawful Use or Investment of Proceeds from a Pattern of Racketeering Activity, you must also find the State proved beyond a reasonable doubt that:**

1. **at least one of the predicate incidents alleged occurred after October 1, 1977;**

   and

2. **the last of such incidents occurred within 5 years after a prior incident of racketeering conduct.**

Give in every case.

Receiving proceeds with criminal intent means that the defendant, at the time [he] [she] received the proceeds, either knew the source of the proceeds or had [his] [her] suspicions aroused but deliberately failed to make further inquiry as to the source of the proceeds.

Give if applicable. § 895.02(9), Fla. Stat.

"Real property" means land and whatever is erected on it. It includes but is not limited to any lease or mortgage or other interest in that property.

Give if applicable. § 895.02(5), Fla. Stat.

"Enterprise" means any individual,* sole proprietorship, partnership, corporation, business trust, union chartered under the laws of this state, or other legal entity, or any unchartered union, association, or group of individuals associated in fact although not a legal entity; and it includes illicit as well as licit enterprises and governmental, as well as other, entities.**

Gross v. State, 765 So. 2d 39 (Fla. 2000).

An "enterprise" is an ongoing organization, formal or informal, that functions both as a continuing unit and has a common purpose of engaging in a course of conduct.

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comments

*In *State v. Nishi*, 521 So. 2d 252 (Fla. 3d DCA 1988), the Third District Court of Appeal held that for purposes of § 895.03(2), Fla. Stat., a person cannot be employed or associated with himself.

**In *State v. Bowen*, 413 So. 2d 798 (Fla. 1st DCA 1982), the First District Court of Appeal held that for purposes of § 895.03(2), Fla. Stat., a person can be employed or associated with his own sole proprietorship. However, the Second District Court of Appeal disagreed in *Masonoff v. State*, 546 So. 2d 72 (Fla. 2d DCA 1989).

A criminal gang, as defined in § 874.03, Fla. Stat., constitutes an enterprise.

This instruction was adopted in 1989 and amended in 2003 and 2019.

26.3 RICO — USE OR INVESTMENT OF PROCEEDS FROM COLLECTION OF UNLAWFUL DEBT

§ 895.03(1), Fla. Stat.

To prove the crime of Unlawful Use or Investment of Proceeds from Collection of Unlawful Debt, the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant), **with criminal intent, received proceeds that were derived directly or indirectly through the collection of an unlawful debt.**

2. (Defendant) **[used] [invested] some of these proceeds [or proceeds derived from the investment or use thereof] either directly or indirectly [in acquiring some right, title, equity, or interest in real property] [in establishing or operating an enterprise].**

Give in every case.

Receiving proceeds with criminal intent means that the defendant, at the time [he] [she] received the proceeds, either knew the source of the proceeds or had [his] [her] suspicions aroused but deliberately failed to make further inquiry as to the source of the proceeds.

§ 895.02(12), Fla. Stat.

"**Unlawful debt" means any money or other thing of value constituting principal or interest of a debt that is legally unenforceable in Florida in whole or in part because the debt was incurred or contracted in violation of the following law:** (give applicable section and define applicable crime)**.**

Give if applicable. § 895.02(9), Fla. Stat.

"Real property" means land and whatever is erected on it. It includes but is not limited to any lease or mortgage or other interest in that property.

Give if applicable. § 895.02(5), Fla. Stat.

"Enterprise" means any individual,* sole proprietorship, partnership, corporation, business trust, union chartered under the laws of this state, or other legal entity, or any unchartered union, association, or group of individuals associated in fact although not a legal entity; and**

it includes illicit as well as licit enterprises and governmental, as well as other, entities.

Gross v. State, 765 So. 2d 39 (Fla. 2000).

An "enterprise" is an ongoing organization, formal or informal, that functions both as a continuing unit and has a common purpose of engaging in a course of conduct.

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comments

*In *State v. Nishi*, 521 So. 2d 252 (Fla. 3d DCA 1988), the Third District Court of Appeal held that for purposes of § 895.03(2), Fla. Stat., a person cannot be employed or associated with himself.

**In *State v. Bowen*, 413 So. 2d 798 (Fla. 1st DCA 1982), the First District Court of Appeal held that for purposes of § 895.03(2), Fla. Stat., a person can be employed or associated with his own sole proprietorship. However, the Second District Court of Appeal disagreed in *Masonoff v. State*, 546 So. 2d 72 (Fla. 2d DCA 1989).

A criminal gang, as defined in § 874.03, Fla. Stat., constitutes an enterprise.

This instruction was adopted in 1989 and amended in 2003 and 2019.

26.4 RICO — ACQUISITION OR MAINTENANCE OF AN INTEREST IN OR CONTROL OF [AN ENTERPRISE] [REAL PROPERTY] THROUGH A PATTERN OF RACKETEERING ACTIVITY

§ 895.03(2), Fla. Stat.

To prove the crime of Unlawfully [Acquiring] [Maintaining] an Interest in or Control of [an Enterprise] [Real Property] Through a Pattern of Racketeering Activity, the State must prove the following three elements beyond a reasonable doubt:

Elements #1 and #2 need to be reworded if only two incidents of racketeering conduct are alleged.

1. (Defendant) **engaged in at least two of the following incidents.** *Read names of incidents of racketeering conduct alleged in information.*

2. **Of those incidents in which** (defendant) **was engaged, at least two of them had the same or similar [intents] [results] [accomplices] [victims] [methods of commission] or were interrelated by distinguishing characteristics and were not isolated incidents.**

3. **As a result of such incidents,** (defendant) **[acquired] [maintained], directly or indirectly, interest in or control of [an enterprise] [real property].**

Define the crimes alleged to be incidents of racketeering conduct.

§ 895.02(7), Fla. Stat. Give if there is no express stipulation regarding dates.

In order to find (defendant) **guilty of Unlawfully [Acquiring] [Maintaining] an Interest in or Control of [an Enterprise] [Real Property] Through a Pattern of Racketeering Activity, you must also find the State proved beyond a reasonable doubt that:**

1. **at least one of the predicate incidents alleged occurred after October 1, 1977;**

   and

2. **the last of such incidents occurred within 5 years after a prior incident of racketeering conduct.**

Give if applicable. § 895.02(5), Fla. Stat.

"Enterprise" means any individual,* sole proprietorship, partnership, corporation, business trust, union chartered under the laws of this state, or other legal entity, or any unchartered union, association, or group of individuals associated in fact although not a legal entity; and it includes illicit as well as licit enterprises and governmental, as well as other, entities.**

Gross v. State, 765 So. 2d 39 (Fla. 2000).

An "enterprise" is an ongoing organization, formal or informal, that functions both as a continuing unit and has a common purpose of engaging in a course of conduct.

Give if applicable. § 895.02(9), Fla. Stat.

"Real property" means land and whatever is erected on it. It includes but is not limited to any lease or mortgage or other interest in that property.

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comments

*In *State v. Nishi*, 521 So. 2d 252 (Fla. 3d DCA 1988), the Third District Court of Appeal held that for purposes of § 895.03(2), Fla. Stat., a person cannot be employed or associated with himself.

**In *State v. Bowen*, 413 So. 2d 798 (Fla. 1st DCA 1982), the First District Court of Appeal held that for purposes of § 895.03(2), Fla. Stat., a person can be employed or associated with his own sole proprietorship. However, the Second District Court of Appeal disagreed in *Masonoff v. State*, 546 So. 2d 72 (Fla. 2d DCA 1989).

A criminal gang, as defined in § 874.03, Fla. Stat., constitutes an enterprise.

This instruction was adopted in 1989 and amended in 2003 and 2019.

26.5 RICO — ACQUISITION OR MAINTENANCE OF AN INTEREST IN OR CONTROL OF [AN ENTERPRISE] [REAL PROPERTY] THROUGH COLLECTION OF UNLAWFUL DEBT

§ 895.03(2), Fla. Stat.

To prove the crime of Unlawfully [Acquiring] [Maintaining] an Interest in or Control of [an Enterprise] [Real Property], the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) **[acquired] [maintained], directly or indirectly, interest in or control of [an enterprise] [real property].**

2. **[He] [She] did so through the knowing collection of an unlawful debt.**

Give in every case. § 895.02(12), Fla. Stat.

"**Unlawful debt" means any money or other thing of value constituting principal or interest of a debt that is legally unenforceable in Florida in whole or in part because the debt was incurred or contracted in violation of the following law:** (give applicable section and define applicable crime)**.**

Give if applicable. § 895.02(5), Fla. Stat.

"Enterprise" means any individual,* sole proprietorship, partnership, corporation, business trust, union chartered under the laws of this state, or other legal entity, or any unchartered union, association, or group of individuals associated in fact although not a legal entity; and it includes illicit as well as licit enterprises and governmental, as well as other, entities.**

Gross v. State, 765 So. 2d 39 (Fla. 2000).

An "enterprise" is an ongoing organization, formal or informal, that functions both as a continuing unit and has a common purpose of engaging in a course of conduct.

Give if applicable. § 895.02(9), Fla. Stat.

"Real property" means land and whatever is erected on it. It includes but is not limited to any lease or mortgage or other interest in that property.

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comments

*In *State v. Nishi*, 521 So. 2d 252 (Fla. 3d DCA 1988), the Third District Court of Appeal held that for purposes of § 895.03(2), Fla. Stat., a person cannot be employed or associated with himself.

**In *State v. Bowen*, 413 So. 2d 798 (Fla. 1st DCA 1982), the First District Court of Appeal held that for purposes of § 895.03(2), Fla. Stat., a person can be employed or associated with his own sole proprietorship. However, the Second District Court of Appeal disagreed in *Masonoff v. State*, 546 So. 2d 72 (Fla. 2d DCA 1989).

A criminal gang, as defined in § 874.03, Fla. Stat., constitutes an enterprise.

This instruction was adopted in 1989 and amended in 2003 and 2019.

26.6 RICO — CONDUCT OF OR PARTICIPATION IN AN ENTERPRISE THROUGH COLLECTION OF UNLAWFUL DEBT

§ 895.03(3), Fla. Stat.

To prove the crime of Unlawfully [Conducting] [Participating in] an Enterprise Through Collection of an Unlawful Debt, the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) **was [employed by] [or] [associated with] an enterprise.**

2. (Defendant) **[conducted] [or] [participated in], directly or indirectly, such enterprise through the knowing collection of an unlawful debt.**

§ 895.02(12), Fla. Stat.

"Unlawful debt" means any money or other thing of value constituting principal or interest of a debt that is legally unenforceable in Florida in whole or in part because the debt was incurred or contracted in violation of the following law: (give applicable section and define applicable crime)**.**

§ 895.02(5), Fla. Stat.

"Enterprise" means any [individual*], [sole proprietorship], partnership, corporation, business trust, union chartered under the laws of this state, or other legal entity, or any unchartered union, association, or group of individuals associated in fact although not a legal entity; and it includes illicit as well as licit enterprises and governmental, as well as other, entities.**

Gross v. State, 765 So. 2d 39 (Fla. 2000).

An "enterprise" is an ongoing organization, formal or informal, that functions both as a continuing unit and has a common purpose of engaging in a course of conduct.

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comments

*In *State v. Nishi*, 521 So. 2d 252 (Fla. 3d DCA 1988), the Third District Court of Appeal held that for purposes of § 895.03(2), Fla. Stat., a person cannot be employed or associated with himself.

**In *State v. Bowen*, 413 So. 2d 798 (Fla. 1st DCA 1982), the First District Court of Appeal held that for purposes of § 895.03(2), Fla. Stat., a person can be employed or associated with his own sole proprietorship. However, the Second District Court of Appeal disagreed in *Masonoff v. State*, 546 So. 2d 72 (Fla. 2d DCA 1989).

A criminal gang, as defined in § 874.03, Fla. Stat., constitutes an enterprise.

This instruction was adopted in 1989 and amended in 2003 and 2019.

26.7 RICO — CONDUCT OF OR PARTICIPATION IN AN ENTERPRISE THROUGH A PATTERN OF RACKETEERING ACTIVITY

§ 895.03(3), Fla. Stat.

To prove the crime of Unlawfully [Conducting] [Participating in] an Enterprise Through a Pattern or Racketeering Activity, the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **was [employed by] [associated with] an enterprise.**

2. (Defendant) **[conducted] [participated in], directly or indirectly, such enterprise by engaging in at least two of the following incidents**. *Read incidents of racketeering activity alleged in information.*

3. **Of those incidents in which** (defendant) **was engaged, at least two of them had the same or similar [intents] [results] [accomplices] [victims] [methods of commission] or were interrelated by distinguishing characteristics and were not isolated incidents.**

Define the crimes alleged to be incidents of racketeering activity.

§ 895.02(7), Fla. Stat. Give if there is no express stipulation regarding dates.

In order to find (defendant) **guilty of Unlawfully [Conducting] [Participating in] an Enterprise Through a Pattern or Racketeering Activity, you must also find the State proved beyond a reasonable doubt that:**

1. **at least one of the predicate incidents alleged occurred after October 1, 1977;**

   and

2. **the last of such incidents occurred within 5 years after a prior incident of racketeering conduct.**

Give if applicable. § 895.02(5), Fla. Stat.

"Enterprise" means any [individual*], [sole proprietorship], partnership, corporation, business trust, union chartered under the laws of this state, or other legal entity, or any unchartered union, association, or group of individuals associated in fact although not a legal entity; and it includes illicit as well as licit enterprises and governmental, as well as other, entities.**

Gross v. State, 765 So. 2d 39 (Fla. 2000).

An "enterprise" is an ongoing organization, formal or informal, that functions both as a continuing unit and has a common purpose of engaging in a course of conduct.

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comments

*In *State v. Nishi*, 521 So. 2d 252 (Fla. 3d DCA 1988), the Third District Court of Appeal held that for purposes of § 895.03(2), Fla. Stat., a person cannot be employed or associated with himself.

**In *State v. Bowen*, 413 So. 2d 798 (Fla. 1st DCA 1982), the First District Court of Appeal held that for purposes of § 895.03(2), Fla. Stat., a person can be employed or associated with his own sole proprietorship. However, the Second District Court of Appeal disagreed in *Masonoff v. State*, 546 So. 2d 72 (Fla. 2d DCA 1989).

A criminal gang, as defined in § 874.03, Fla. Stat., constitutes an enterprise.

This instruction was adopted in 1989 and amended in 2003 and 2019.

26.8 CONSPIRACY TO ENGAGE IN PATTERN OF RACKETEERING ACTIVITY

§ 895.03(4), Fla. Stat.

A "conspiracy" is a combination or agreement of two or more persons to join together to attempt to accomplish an offense which would be in violation of the law. It is a kind of "partnership in criminal purposes" in which each member becomes the agent of every other member.

The evidence in the case need not show that the alleged members of the conspiracy entered into any express or formal agreement or that they directly discussed between themselves the details of the scheme and its purpose or the precise ways in which the purpose was to be accomplished. Neither must it be proved that all of the persons charged to have been members of the conspiracy were such nor that the alleged conspirators actually succeeded in accomplishing their unlawful objectives nor that any alleged member of the conspiracy did any act in furtherance of the conspiracy.

What the evidence in the case must show beyond a reasonable doubt before you may find the defendant guilty of conspiring to violate the Racketeer Influenced and Corrupt Organization (RICO) Act is:

1. **Two or more persons, in some way or manner, came to a mutual understanding to try to accomplish a common and unlawful plan, namely to engage in a "pattern of racketeering activity" as charged in the information; and**

2. **The defendant knowingly and willfully became a member of such conspiracy; and**

3. **At the time the defendant joined such conspiracy, [he] [she] did so with the specific intent either to personally engage in at least two incidents of racketeering, as alleged in the information, or [he] [she] specifically intended to otherwise participate in the affairs of the "enterprise" with the knowledge and intent that other members of the conspiracy would engage in at least two incidents of racketeering, as alleged in the information, as part of a "pattern of racketeering activity."**

A person may become a member of a conspiracy without full knowledge of all of the details of the unlawful scheme or the names and identities of all of the other alleged conspirators. So, if a defendant has an understanding of the unlawful nature of a plan and knowingly and willfully

joins in that plan on one occasion, that is sufficient to convict [him] [her] for conspiracy, even though [he] [she] did not participate before and even though [he] [she] played only a minor part.

Of course, mere presence at the scene of a transaction or event or the mere fact that certain persons may have associated with each other and may have assembled together and discussed common aims and interests does not necessarily establish proof of the existence of a conspiracy. Also, a person who has no knowledge of a conspiracy but who happens to act in a way which advances some purpose of a conspiracy does not thereby become a conspirator.

Affirmative Defense. Give only if applicable. § 777.04(5)(c), Fla. Stat. Carroll v. State, 680 So. 2d 1065 (Fla. 3d DCA 1996). Harriman v. State, 174 So. 3d 1044 (Fla. 1st DCA 2015).

It is a defense to the charge of Conspiracy to Engage in a Pattern of Racketeering Activity that (defendant)**, after conspiring with one or more persons to engage in a pattern of racketeering activity, persuaded such person not to do so, or otherwise prevented commission of the pattern of racketeering activity, under circumstances indicating a complete and voluntary renunciation of [his] [her] criminal purpose.**

Renunciation is not complete and voluntary where the crime that was conspired to was not completed because of unanticipated difficulties, unexpected resistance, a decision to postpone the crime to another time, or circumstances known by the defendant that increased the probability of being apprehended.

If you find that the defendant proved by a preponderance of the evidence that [he] [she] persuaded (person alleged) **not to commit the pattern of racketeering activity, or otherwise prevented commission of the pattern of racketeering activity, under circumstances indicating a complete and voluntary renunciation of [his] [her] criminal purpose, you should find [him] [her] not guilty of Conspiracy to Engage in a Pattern of Racketeering Activity.**

If the defendant failed to prove by a preponderance of the evidence that [he] [she] persuaded (person alleged) **not to engage in a pattern of racketeering activity, or that [he] [she] did not otherwise prevent commission of the pattern of racketeering activity under circumstances indicating a complete and voluntary renunciation of [his] [her] criminal purpose, you should find [him] [her] guilty of Conspiracy to Engage in a Pattern of Racketeering Activity, if all the elements of the charge have been proven beyond a reasonable doubt.**

§ 895.02(7), Fla. Stat.

"Pattern of racketeering activity" means engaging in at least two incidents of racketeering conduct that have the same or similar intents, results, accomplices, victims, or methods of commission or that otherwise are interrelated by distinguishing characteristics and are not isolated incidents, provided at least one of such incidents occurred after October 1, 1977, and that the last of such incidents occurred within 5 years after a prior incident of racketeering conduct.

§ 895.02(5), Fla. Stat.

"Enterprise" means any [individual*], [sole proprietorship], partnership, corporation, business trust, union chartered under the laws of this state, or other legal entity, or any unchartered union, association, or group of individuals associated in fact although not a legal entity; and it includes illicit as well as licit enterprises and governmental, as well as other, entities.**

Gross v. State, 765 So. 2d 39 (Fla. 2000).

An "enterprise" is an ongoing organization, formal or informal, that functions both as a continuing unit and has a common purpose of engaging in a course of conduct.

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comments

*In *State v. Nishi*, 521 So. 2d 252 (Fla. 3d DCA 1988), the Third District Court of Appeal held that for purposes of § 895.03(2), Fla. Stat., a person cannot be employed or associated with himself.

**In *State v. Bowen*, 413 So. 2d 798 (Fla. 1st DCA 1982), the First District Court of Appeal held that for purposes of § 895.03(2), Fla. Stat., a person can be employed or associated with his own sole proprietorship. However, the Second District Court of Appeal disagreed in *Masonoff v. State*, 546 So. 2d 72 (Fla. 2d DCA 1989).

A criminal gang, as defined in § 874.03, Fla. Stat., constitutes an enterprise.

This instruction was adopted in 1989 and amended in 2003 and 2019.

26.9 MONEY LAUNDERING

§ 896.101(3)(a), (3)(b), or (3)(c), Fla. Stat.

Give if § 896.101(3)(a), Fla. Stat. is charged:

To prove the crime of Money Laundering, the State must prove the following five elements beyond a reasonable doubt:

1. (Defendant) [**conducted] [attempted to conduct] a financial transaction.**

2. **The money or property involved in the financial transaction represented the proceeds of** (name of the specified unlawful activity in § 895.02(8)(a)1.–50. alleged)**.**

3. (Defendant) **knew the money or property involved in the financial transaction represented the proceeds of some form of unlawful activity.**

Give 4a and/or 4b as applicable.

4. **a.** (Defendant) **did so with the intent to promote the carrying on of** (name of the specified unlawful activity in § 895.02(8)(a)1.–50. alleged)**.**

   b. (Defendant) **knew that the transaction was designed in whole or in part**

      i. **to [conceal] [disguise] the [nature] [location] [source] [ownership] [control] of the proceeds of** (name of the specified unlawful activity in § 895.02(8)(a)1.–50. alleged)**;**

      [or]

      ii. **to avoid a [transaction reporting requirement] [money transmitters' registration requirement] under state law.**

5. **The money or property involved in the financial transaction exceeded $300 in any 12-month period.**

Give if § 896.101(3)(b), Fla. Stat. is charged:

To prove the crime of Money Laundering, the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant**) [transported] [attempted to transport] [a monetary instrument] [funds].**

Give 2a and/or 2b as applicable.

2. a. (Defendant) did so with the intent to promote the carrying on of (name of the specified unlawful activity in § 895.02(8)(a)1.–50. alleged);

[or]

b. (Defendant) **knew that the [monetary instrument] [funds] involved in the transportation represented the proceeds of some form of unlawful activity and also knew that such transportation was designed in whole or in part**

i. [to conceal] [to disguise] the [nature] [location] [source] [ownership] [control] of the proceeds of (name of the specified unlawful activity in § 895.02(8)(a)1.–50. alleged)**;**

[or]

ii. to avoid a [transaction reporting requirement] [money transmitters' registration requirement] under state law.

3. The money or property involved in the financial transaction exceeded $300 in any 12-month period.

Give if § 896.101(3)(c), Fla. Stat. is charged:

To prove the crime of Money Laundering, the State must prove the following four elements beyond a reasonable doubt:

1. (Defendant) **[conducted] [attempted to conduct] a financial transaction.**

2. The financial transaction involved [property] [proceeds] which [an investigative or law enforcement officer] [someone acting under an investigative or law enforcement officer's direction] represented as being [derived from] [used to conduct or facilitate] (name of the specified unlawful activity in § 895.02(8)(a)1.–50. alleged)**.**

3. (Defendant) **did so with the intent to**

Give 3a and/or 3b and/or 3c as applicable.

a. promote the carrying on of (name of the specified unlawful activity in § 895.02(8)(a)1.–50. alleged)**;**

[or]

b. [conceal] [disguise] the [nature] [location] [source] [ownership] [control] of the [proceeds] [property believed to be the proceeds] of (name of the specified unlawful activity in § 895.02(8)(a)1.–50. alleged)**;**

[or]

c. avoid a transaction reporting requirement under state law.

4. The money or property involved in the financial transaction exceeded $300 in any 12-month period.

Give in all cases.

A[n] (name of the specified unlawful activity in § 895.02(8)(a)1.–50. alleged) **consists of** (give elements of the specified unlawful activity alleged)**.** *(If applicable, also explain attempt, conspiracy, solicitation, coercion, and/or intimidation to commit the specified unlawful activity.)*

Give if applicable. § 896.101(4), Fla. Stat.

It is not a defense to Money Laundering that:

(a) Any stratagem or deception, including the use of an undercover operative or law enforcement officer, was employed.

(b) A facility or an opportunity to engage in conduct in violation of this act was provided.

(c) A law enforcement officer, or person acting under direction of a law enforcement officer, solicited a person predisposed to engage in conduct in violation of any provision of this chapter to commit a violation of this chapter in order to gain evidence against that person, provided such solicitation would not induce an ordinary law-abiding person to violate this law.

Note to Judge: This subsection does not preclude the defense of entrapment. See jury instruction 3.6(j).

Definitions.

§ 896.101(2)(e), Fla. Stat.

Knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity means that the person knew the property involved in the transaction represented proceeds from some form, though not necessarily which form, of activity that constitutes a felony under state or federal law, regardless of whether such activity is (name the specified unlawful activity in § 895.02(8)(a)1.–50. alleged)**. A "felony" is a crime punishable by death or imprisonment in excess of one year.** (Name of crime) **is a felony.**

§ 896.101(2)(a), Fla. Stat.

Conducted includes initiating, concluding, or participating in initiating or concluding a transaction.

§ 896.101(2)(i), Fla. Stat.

"Transaction" means a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition, and with respect to a financial institution 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, use of a safety deposit box, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected.

§ 896.101(2)(c), Fla. Stat.

"Financial transaction" means a transaction involving the movement of funds by wire or other means or involving one or more monetary instruments, which in any way or degree affects commerce, or a transaction involving the transfer of title to any real property, vehicle, vessel, or aircraft, or a transaction involving the use of a financial institution which is engaged in, or the activities of which affect, commerce in any way or degree.

§ 896.101(2)(b), Fla. Stat.

"Financial institution" means [an insured bank] [a commercial bank or trust company] [a private banker] [an agency or branch of a foreign bank] [a credit union] [a thrift institution] [a broker or dealer in securities or commodities] [an investment banker or investment company] [a currency exchange] [an operator of a credit card system] [an insurance company] [a dealer in precious metals, stones, or jewels] [a pawnbroker] [a loan or finance company] [a travel agency] [a telegraph company] [the United States Postal Service] [(list one of the other institutions enumerated in 31 U.S.C. § 5312)**], that is located in Florida.**

§ 896.101(2)(f), Fla. Stat.

"Monetary instruments" means coin or currency of the United States or of any other country, virtual currency, travelers' checks, personal checks, bank checks, money orders, investment securities in bearer form or otherwise in such form that title thereto passes upon delivery, and negotiable instruments in bearer form or otherwise in such form that title thereto passes upon delivery.

§ 896.101(2)(j), Fla. Stat.

"Virtual currency" means a medium of exchange in electronic or digital format that is not a coin or currency of the United States or any other country.

§ 896.101(2)(d), Fla. Stat.

Knowing means that a person knew; or, with respect to any transaction or transportation involving more than $10,000 in U.S. currency or foreign equivalent, should have known after reasonable inquiry, unless the person has a duty to file a federal currency transaction report, IRS Form 8300, or a like report under state law and has complied with that reporting requirement in accordance with law.

§ 896.101(3)(d), Fla. Stat.

"Investigative or law enforcement officer" means any officer of the State of Florida or political subdivision thereof, of the United States, or of any other state or political subdivision thereof, who is empowered by law to conduct, on behalf of the government, investigations of, or to make arrests for, offenses enumerated in this subsection or similar federal offenses.

§ 896.101(5), Fla. Stat. Give as applicable

If you find the defendant guilty of Money Laundering, you must also determine if the State has proven beyond a reasonable doubt whether:

a. the financial transaction involved more than $300 but less than $20,000 during any 12-month period.

b. the financial transaction involved $20,000 or more but less than $100,000 during any 12-month period.

c. the financial transaction involved $100,000 or more during any 12-month period.

Lesser Included Offenses

MONEY LAUNDERING ($100,000 OR GREATER IN ANY 12-MONTH PERIOD) — 896.101(3) AND 896.101(5)(c)			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
Money Laundering ($20,000 but less than $100,000 in any 12-month period)		896.101(3) and 896.101(5)(b)	26.9
Money Laundering (more than $300 but less than $20,000 in any 12-month period)		896.101(3) and 896.101(5)(a)	26.9

Comment

This instruction was adopted in 2013 [123 So. 3d 54] and amended in 2018.

CHAPTER 27 — ESCAPE

27.1 [ATTEMPTED] ESCAPE

§ 944.40, Fla. Stat.

(including § 945.091(4), Fla. Stat. and § 951.24(4), Fla. Stat.)

To prove the crime of [Attempted] Escape, the State must prove the following two elements beyond a reasonable doubt:

Give as applicable.

1. (Defendant) **was a prisoner**

a. under arrest.

b. convicted of a crime, sentenced to a term of imprisonment, and confined to a [prison] [jail] [contractor-operated correctional facility] [road camp] [penal institution].

c. being transported to or from a place of confinement.

d. released on furlough from a [prison] [jail] [contractor-operated correctional facility] [road camp] [penal institution].

e. in a [prison] [jail] [contractor-operated correctional facility] [road camp] [penal institution] and was [working on a public road] [participating in a work release program].

2. (Defendant)

a. escaped,

b. attempted to escape by (read overt act from charge)**,**

c. willfully failed to return to [his] [her] place of confinement within the time prescribed,

d. willfully failed to remain within the extended limits of [his] [her] confinement,

intending to avoid confinement.

§ 944.02, Fla. Stat.

"Prisoner" means any person who is under civil or criminal arrest and in the lawful custody of any law enforcement official, or any person

committed to or detained in any municipal or county jail or state prison, prison farm, or penitentiary, or to the custody of the Department of Corrections pursuant to lawful authority.

Give if requested and applicable. See Kearse v. State, 662 So. 2d 677 (Fla. 1995), Applewhite v. State, 874 So. 2d 1276 (Fla. 5th DCA 2004), and Sweeney v. State, 633 So. 2d 66 (Fla. 4th DCA 1994).

"Transportation to a place of confinement" begins at the time an individual is placed under arrest.

An "arrest" takes place when the arresting officer intends to arrest; the arresting officer actually or constructively seizes the person to be arrested; the officer's intent to arrest is communicated by the arresting officer to the person to be arrested; and the person to be arrested understands that communication. [The communication from the officer to the person to be arrested may be by words or actions, or both, and would lead a reasonable person or the average citizen in similar circumstances to think that he or she was under arrest.] An "arrest" does not require that the law enforcement officer complete the act of acquiring total physical control over the person to be arrested.

Give if applicable. § 944.710, Fla. Stat.

A "contractor-operated correctional facility" is any facility, which is not operated by the Department of Corrections, for the incarceration of adults or juveniles who have been sentenced by a court and committed to the custody of the Department of Corrections.

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comments

The State is not required to prove the technical correctness of the original arrest. *Marquez v. State*, 450 So. 2d 345, 345 (Fla. 2d DCA 1984). Once under legal incarceration, a defendant must avail himself of help through the court system, not self-help via an escape. *Lawson v. State*, 312 So. 2d 522, 524 (Fla. 4th DCA 1975).

This instruction was adopted in 1981 and amended in 1989, 2007 [962 So. 2d 310], 2016 [199 So. 3d 234], 2020 [290 So. 3d 864], on April 1, 2022, and on September 20, 2024

CHAPTER 28 — TRANSPORTATION OFFENSES

28.1 DRIVING UNDER THE INFLUENCE

§ 316.193(1), Fla. Stat.

To prove the crime of Driving Under the Influence, the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) **drove [or was in actual physical control of] a vehicle.**

2. While driving [or in actual physical control of] the vehicle, (defendant)

Give 2a or 2b or both as applicable.

a. was under the influence of [alcoholic beverages] [a chemical substance] [a controlled substance] to the extent that [his] [her] normal faculties were impaired.

b. had a [blood] [breath]-alcohol level of .08 or more grams of alcohol per [100 milliliters of blood] [210 liters of breath].

Give if applicable. § 316.193(4), Fla. Stat.

If you find the defendant guilty of Driving Under the Influence, you must also determine whether the State has proven beyond a reasonable doubt whether:

a. the defendant had a [blood] [breath]-alcohol level of .15 or higher while driving [or in actual physical control of] the vehicle.

b. the defendant was accompanied in the vehicle by a person under the age of 18 years at the time of the Driving Under the Influence.

§ 316.003, Fla. Stat. Some of these terms have their own statutory definitions, which should be given if necessary.

"Vehicle" is every device, in, upon or by which any person or property is, or may be, transported or drawn upon a highway [, except personal delivery devices, mobile carriers, and devices used exclusively upon stationary rails or tracks].

§ 316.1934(1), Fla. Stat.

Normal faculties include but are not limited to the ability to see, hear, walk, talk, judge distances, drive an automobile, make judgments, act in emergencies and, in general, to normally perform the many mental and physical acts of our daily lives.

Shaw v. State, 783 So. 2d 1097 (Fla. 5th DCA 2001).

Impaired means diminished in some material respect.

Give if applicable. The option of "on a vehicle" pertains to vehicles such as motorcycles and bicycles.

Actual physical control of a vehicle means the defendant must be physically in [or on] the vehicle and have the capability to operate the vehicle, regardless of whether [he] [she] is actually operating the vehicle at the time.

§ 322.01(2), Fla. Stat.

Alcoholic beverages are considered to be substances of any kind and description which contain alcohol.

(_____) **is a controlled substance under Florida law.** *Ch. 893, Fla. Stat.*

(_____) **is a chemical substance under Florida law.** *§ 877.111(1), Fla. Stat.*

Give if appropriate. § 316.1934(2)(a) and (2)(b), Fla. Stat.

1. **If you find from the evidence that while driving or in actual physical control of a vehicle, the defendant had a blood or breath-alcohol level of .05 or less, you shall presume that the defendant was not under the influence of alcoholic beverages to the extent that [his] [her] normal faculties were impaired; but this presumption may be overcome by other evidence demonstrating that the defendant was under the influence of alcoholic beverages to the extent that [his] [her] normal faculties were impaired.**

2. **If you find from the evidence that while driving or in actual physical control of a vehicle, the defendant had a blood or breath-alcohol level in excess of .05 but less than .08, that fact does not give rise to any presumption that the defendant was or was not under the influence of**

alcoholic beverages to the extent that [his] [her] normal faculties were impaired. In such cases, you may consider that evidence along with other evidence in determining whether the defendant was under the influence of alcoholic beverages to the extent that [his] [her] normal faculties were impaired.

It is not necessary to instruct on the "prima facie evidence of impairment" in § 316.1934(2)(c), Fla. Stat., if the State charged the defendant with driving with a blood or breath-alcohol level of .08 or over. In those cases, if the jury finds that the defendant drove with an unlawful blood or breath-alcohol level, impairment becomes moot. Tyner v. State, 805 So. 2d 862 (Fla. 2d DCA 2001).

Give only if appropriate. State v. Burns, 661 So.2d 842 (Fla. 5th DCA 1995); Kurecka v. State, 67 So.3d 1052 (Fla. 4th DCA 2010).

A person [arrested] [being investigated] for Driving Under the Influence does not have the right to consult with an attorney before deciding whether to submit to a [breath] [urine] [blood] test.

Give only if appropriate

A person [arrested] [being investigated] for Driving Under the Influence does not have the right to consult with an attorney before deciding whether to submit to a [breath] [urine] [blood] test. However, if the defense maintains that the defendant mistakenly believed that [he] [she] did have such a right and refused to provide a [breath] [blood] [urine] sample because of that mistaken belief, you may consider that claim, as well as the state's competing claim that the defendant's refusal shows that [he] [she] did not want the police to obtain evidence regarding [his] [her] [[breath] [blood] alcohol level] [or] [drug consumption].

Defense of inoperability; give if applicable.

It is a defense to the charge of Driving Under the Influence if at the time of the alleged offense, the vehicle was inoperable. However, it is not a defense if the defendant was driving under the influence before the vehicle became inoperable. Therefore, if you are not convinced beyond a reasonable doubt that the vehicle was operable at the time of the alleged offense, you should find the defendant not guilty. However, if you are convinced that the vehicle was operable at the time of the alleged offense, then you should find the defendant guilty, if all the other elements of the charge have been proved beyond a reasonable doubt.

**§ 316.193(6)(b), Fla. Stat. and *§ 316.193(6)(c), Fla. Stat.*

See Comments regarding issue of whether a jury finding is required. The following instruction is suggested if the judge determines a jury finding required. The State's allegation of a prior conviction should not be read to the jury, and the trial must be bifurcated if a jury finding is required. Note: BUI and out-of-state DUI/DWI convictions count as prior convictions. See §316.193(6), Fla. Stat.

Now that you have found the defendant guilty of Driving Under the Influence, you must further determine whether the State proved beyond a reasonable doubt that the defendant was previously convicted of [Driving Under the Influence] [(insert qualifying conviction(s))**] and that the DUI for which you just found the defendant guilty was committed within [5 years] [10 years] after the date of a prior conviction.**

Lesser Included Offense

DRIVING UNDER THE INFLUENCE — 316.193(1)			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
None			
	Attempt	777.04(1)	5.1

Comments

*The penalties for DUI are increased if the defendant has one or more prior DUI or otherwise qualifying convictions. Because some of the increased penalties apply only to the recidivism fact of prior conviction(s), it is possible that a jury finding is not required for the existence of those prior conviction(s). Therefore, a jury finding may not be necessary for the increased penalties based on prior conviction(s) in § 316.193(2)(a), Fla. Stat., or in § 316.193(2)(b)2., Fla. Stat.

However, the judge must impose a jail sentence of at least 10 days if the second DUI conviction occurred within 5 years, or of at least 30 days if the third DUI conviction occurred within 10 years, of the date of a prior DUI or otherwise qualifying conviction. Because of *Erlinger v. United States*, 602 U.S. 821 (2024), the courts may require the jury to find that the "within 5-year" or "within 10-year" requirement has been proven beyond a reasonable doubt in cases where the State is seeking the minimum mandatory jail sentence.

A misdemeanor instruction was adopted in 1981 as part of Standard Jury Instructions in Misdemeanor Cases. In 1992, a similar instruction was adopted for Florida Standard Jury Instructions in Criminal Cases. That instruction was amended in 1995 and 1998; both instructions were merged into a revised instruction in 2000, which was amended in 2009 [6 So. 3d 574], 2016 [192 So. 3d 1190], 2019 [262 So. 3d 59], October 2, 2020, and on December 12, 2025.

28.1(a) DRIVING UNDER THE INFLUENCE CAUSING [OR CONTRIBUTING TO CAUSING] PROPERTY DAMAGE OR INJURY

§ 316.193(3)(a), (3)(b), (3)(c)1, Fla. Stat.

To prove the crime of Driving Under the Influence Causing [or Contributing to Causing] [Property Damage] [Injury], the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **drove [or was in actual physical control of] a vehicle.**

2. While driving [or in actual physical control of] the vehicle, (defendant)

Give 2a or 2b or both as applicable.

a. was under the influence of [alcoholic beverages] [a chemical substance] [a controlled substance] to the extent that [his] [her] normal faculties were impaired.

b. had a [blood] [breath]-alcohol level of .08 or more grams of alcohol per [100 milliliters of blood] [210 liters of breath].

3. As a result of operating the vehicle, (defendant) **caused [or contributed to causing] [damage to the property of** (victim)**] [injury to the person of** (victim)**].**

Give if applicable. Mizell v. State, 350 So. 3d 97 (Fla. 1st DCA 2022).

The conduct of [(victim)**] [another] [another person] is a defense to this crime only when that conduct was the sole cause of the crash that resulted in property damage or injury.**

Give a. or b. or both if applicable. § 316.193(4), Fla. Stat.

If you find the defendant guilty of Driving Under the Influence Causing [or Contributing to Causing] [Property Damage] [Injury], you must also determine whether the State proved beyond a reasonable doubt that:

a. the defendant had a [blood] [breath]-alcohol level of .15 or higher while driving [or in actual physical control of] the vehicle.

b. the defendant was accompanied in the vehicle by a person under the age of 18 years at the time of the crime.

Definitions. Give as applicable.

§ 316.003, Fla. Stat. Some of these terms have their own statutory definitions which should be given if necessary.

"Vehicle" is every device, in, upon or by which any person or property is, or may be, transported or drawn upon a highway[, except personal delivery devices, mobile carriers, and devices used exclusively upon stationary rails or tracks].

§ 316.1934, Fla. Stat.

Normal faculties include but are not limited to the ability to see, hear, walk, talk, judge distances, drive an automobile, make judgments, act in emergencies and, in general, to normally perform the many mental and physical acts of our daily lives.

Shaw v. State, 783 So. 2d 1097 (Fla. 5th DCA 2001).

Impaired means diminished in some material respect.

Give if applicable. The option of "on a vehicle" pertains to vehicles such as motorcycles and bicycles.

Actual physical control of a vehicle means the defendant must be physically in [or on] the vehicle and have the capability to operate the vehicle, regardless of whether [he] [she] is actually operating the vehicle at the time.

§ 322.01, Fla. Stat.

Alcoholic beverages are considered to be substances of any kind and description which contain alcohol.

(_____) **is a controlled substance under Florida law.** *Ch. 893, Fla. Stat.*

(_____) **is a chemical substance under Florida law.** *§ 877.111, Fla. Stat.*

Give if appropriate. § 316.1934(2)(a) and (2)(b), Fla. Stat.

1. If you find from the evidence that while driving or in actual physical control of a vehicle, the defendant had a blood or breath-alcohol level of .05 or less, you shall presume that the defendant was not under the influence of alcoholic beverages

to the extent that [his] [her] normal faculties were impaired; but this presumption may be overcome by other evidence demonstrating that the defendant was under the influence of alcoholic beverages to the extent that [his] [her] normal faculties were impaired.

2. If you find from the evidence that while driving or in actual physical control of a vehicle, the defendant had a blood or breath-alcohol level in excess of .05 but less than .08, that fact does not give rise to any presumption that the defendant was or was not under the influence of alcoholic beverages to the extent that [his] [her] normal faculties were impaired. In such cases, you may consider that evidence along with other evidence in determining whether the defendant was under the influence of alcoholic beverages to the extent that [his] [her] normal faculties were impaired.

It is not necessary to instruct on the "prima facie evidence of impairment" in § 316.1934(2)(c), Fla. Stat., if the State charged the defendant with driving with a blood or breath-alcohol level of .08 or over. In those cases, if the jury finds that the defendant drove with an unlawful blood or breath-alcohol level, impairment becomes moot. Tyner v. State, 805 So. 2d 862 (Fla. 2d DCA 2001).

Give only if appropriate. State v. Burns, 661 So. 2d 842 (Fla. 5th DCA 1995); Kurecka v. State, 67 So.3d 1052 (Fla. 4th DCA 2010).

A person [arrested] [being investigated] for Driving Under the Influence does not have the right to consult with an attorney before deciding whether to submit to a [breath] [urine] [blood] test.

Give only if appropriate

A person [arrested] [being investigated] for Driving Under the Influence does not have the right to consult with an attorney before deciding whether to submit to a [breath] [urine] [blood] test. However, if the defense maintains that the defendant mistakenly believed that [he] [she] did have such a right and refused to provide a [breath] [blood] [urine] sample because of that mistaken belief, you may consider that claim, as well as the state's competing claim that the defendant's refusal shows that [he] [she] did not want the police to obtain evidence regarding [his] [her] [[breath] [blood] alcohol level] [or] [drug consumption].

Defense of inoperability; give if applicable.

It is a defense to the charge of Driving Under the Influence Causing [or Contributing to Causing] [Property Damage] [Injury] if at the time of

the alleged offense, the vehicle was inoperable. However, it is not a defense if the defendant was driving under the influence before the vehicle became inoperable. Therefore, if you are not convinced beyond a reasonable doubt that the vehicle was operable at the time of the alleged offense, you should find the defendant not guilty. However, if you are convinced that the vehicle was operable at the time of the alleged offense, then you should find the defendant guilty, if all the other elements of the charge have been proved beyond a reasonable doubt.

**§ 316.193(6)(b), Fla. Stat. and *§ 316.193(6)(c), Fla. Stat.*

See Comments regarding issue of whether a jury finding is required. The following instruction is suggested if the judge determines a jury finding required. The State's allegation of a prior conviction should not be read to the jury, and the trial must be bifurcated if a jury finding is required. Note: BUI and out-of-state DUI/DWI convictions count as prior convictions. See §316.193(6), Fla. Stat.

Now that you have found the defendant guilty of Driving Under the Influence, you must further determine whether the State proved beyond a reasonable doubt that the defendant was previously convicted of [Driving Under the Influence] [(insert qualifying conviction(s))**] and that the DUI for which you just found the defendant guilty was committed within [5 years] [10 years] after the date of a prior conviction.**

Lesser Included Offenses

DRIVING UNDER THE INFLUENCE CAUSING [OR CONTRIBUTING TO CAUSING] PROPERTY DAMAGE OR INJURY — 316.193(3)(a), (3)(b), (3)(c)1.

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
DUI		316.193(1)	28.1
	Attempt	777.04(1)	5.1

Comments

*The penalties for DUI are increased if the defendant has one or more prior DUI or otherwise qualifying convictions. Because some of the increased penalties apply only to the recidivism fact of prior conviction(s), it is possible that a jury finding is not required for the existence of those prior conviction(s). Therefore, a jury finding may not be necessary for the increased penalties based on prior conviction(s) in § 316.193(2)(a), Fla. Stat., or in § 316.193(2)(b)2., Fla. Stat. However, the judge must impose a jail sentence of at least 10 days if the second DUI conviction occurred within 5 years, or of at least 30 days if the third DUI conviction occurred within 10 years, of the date of a prior DUI or otherwise qualifying conviction. Because of *Erlinger v. United States*, 602 U.S. 821 (2024), the courts may require the jury to find that the

"within 5-year" or "within 10-year" requirement is met in cases where the State is seeking the minimum mandatory jail sentence.

This instruction was adopted in 2009 [6 So. 3d 574] and amended in 2009 [18 So. 3d 523], 2016 [192 So. 3d 1190], 2019 [262 So. 3d 59], on October 2, 2020, on October 7, 2022, on June 12, 2026, and on October 9, 2026.

28.2 [FELONY] DRIVING UNDER THE INFLUENCE

§ 316.193(2)(b)1 or § 316.193(2)(b)3, Fla. Stat.

To prove the crime of Driving Under the Influence, the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) **drove [or was in actual physical control of] a vehicle.**

2. While driving [or in actual physical control of] the vehicle, (defendant)

Give 2a or 2b or both as applicable.

a. was under the influence of [alcoholic beverages] [a chemical substance] [a controlled substance] to the extent that [his] [her] normal faculties were impaired.

b. had a [blood] [breath]-alcohol level of .08 or more grams of alcohol per [100 milliliters of blood] [210 liters of breath].

Give a. or b. or both if applicable. § 316.193(4), Fla. Stat.

If you find the defendant guilty of Driving Under the Influence, you must also determine whether the State proved beyond a reasonable doubt that:

a. the defendant had a [blood] [breath]-alcohol level of .15 or higher while driving [or in actual physical control of] the vehicle.

b. the defendant was accompanied in the vehicle by a person under the age of 18 years at the time of the crime.

§ 316.003, Fla. Stat. Some of these terms have their own statutory definitions, which should be given if necessary.

"Vehicle" is every device, in, upon or by which any person or property is, or may be, transported or drawn upon a highway[, except personal delivery devices, mobile carriers, and devices used exclusively upon stationary rails or tracks].

§ 316.1934, Fla. Stat.

Normal faculties include but are not limited to the ability to see, hear, walk, talk, judge distances, drive an automobile, make judgments, act in emergencies and, in general, to normally perform the many mental and physical acts of our daily lives.

Shaw v. State, 783 So. 2d 1097 (Fla. 5th DCA 2001).

Impaired means diminished in some material respect.

Give if applicable. The option of "on a vehicle" pertains to vehicles such as motorcycles and bicycles.

Actual physical control of a vehicle means the defendant must be physically in [or on] the vehicle and have the capability to operate the vehicle, regardless of whether [he] [she] is actually operating the vehicle at the time.

§ 322.01, Fla. Stat.

Alcoholic beverages are considered to be substances of any kind and description which contain alcohol.

(_____) **is a controlled substance under Florida law.** *Ch. 893, Fla. Stat.*

(_____) **is a chemical substance under Florida law.** *§ 877.111, Fla. Stat.*

Give if appropriate. § 316.1934(2)(a) and (2)(b), Fla. Stat.

1. **If you find from the evidence that while driving or in actual physical control of a vehicle, the defendant had a blood or breath-alcohol level of .05 or less, you shall presume that the defendant was not under the influence of alcoholic beverages to the extent that [his] [her] normal faculties were impaired; but this presumption may be overcome by other evidence demonstrating that the defendant was under the influence of alcoholic beverages to the extent that [his] [her] normal faculties were impaired.**

2. **If you find from the evidence that while driving or in actual physical control of a vehicle, the defendant had a blood or breath-alcohol level in excess of .05 but less than .08, that fact does not give rise to any presumption that the defendant was or was not under the influence of alcoholic beverages to the extent that [his] [her] normal faculties**

were impaired. In such cases, you may consider that evidence along with other evidence in determining whether the defendant was under the influence of alcoholic beverages to the extent that [his] [her] normal faculties were impaired.

It is not necessary to instruct on the "prima facie evidence of impairment" in § 316.1934(2)(c), Fla. Stat., if the State charged the defendant with driving with a blood or breath-alcohol level of .08 or over. In those cases, if the jury finds that the defendant drove with an unlawful blood or breath-alcohol level, impairment becomes moot. Robertson v. State, 604 So. 2d 783, 792, n.14 (Fla. 1992); Tyner v. State, 805 So. 2d 862 (Fla. 2d DCA 2001).

Give only if appropriate. State v. Burns, 661 So.2d 842 (Fla. 5th DCA 1995); Kurecka v. State, 67 So.3d 1052 (Fla. 4th DCA 2010).

A person [arrested] [being investigated] for Driving Under the Influence does not have the right to consult with an attorney before deciding whether to submit to a [breath] [urine] [blood] test.

Give only if appropriate

A person [arrested] [being investigated] for Driving Under the Influence does not have the right to consult with an attorney before deciding whether to submit to a [breath] [urine] [blood] test. However, if the defense maintains that the defendant mistakenly believed that [he] [she] did have such a right and refused to provide a [breath] [blood] [urine] sample because of that mistaken belief, you may consider that claim, as well as the state's competing claim that the defendant's refusal shows that [he] [she] did not want the police to obtain evidence regarding [his] [her] [[breath] [blood] alcohol level] [or] [drug consumption].

Defense of inoperability; give if applicable.

It is a defense to the charge of Driving Under the Influence if at the time of the alleged offense, the vehicle was inoperable. However, it is not a defense if the defendant was driving under the influence before the vehicle became inoperable. Therefore, if you are not convinced beyond a reasonable doubt that the vehicle was operable at the time of the alleged offense, you should find the defendant not guilty. However, if you are convinced that the vehicle was operable at the time of the alleged offense, then you should find the defendant guilty, if all the other elements of the charge have been proved beyond a reasonable doubt.

See Comments regarding the issue of whether a jury finding is required. The instruction in a. below is suggested if the judge determines a jury finding is required. The State's allegation of prior convictions should not be read to the jury, and the trial must be bifurcated for jury findings on prior convictions. Note: BUI and out-of-state DUI/DWI convictions count as prior convictions. See §316.193(6)(k), Fla. Stat.

Now that you have found the defendant guilty of Driving Under the Influence, you must further determine whether the State proved beyond a reasonable doubt that:

a. **the defendant was previously convicted two times of [Driving Under the Influence] [**(insert qualifying convictions)**] and one of these prior convictions took place within 10 years of the Driving Under the Influence that you just found the defendant committed.**

b. **the defendant was previously convicted three times of [Driving Under the Influence] [**(insert qualifying convictions)**]**.

Give if applicable. 316.193(12), Fla. Stat.

If the records of the Department of Highway Safety and Motor Vehicles show that the defendant has been previously convicted of Driving Under the Influence, you may conclude that the State has established that prior Driving Under the Influence conviction. However, such evidence may be contradicted or rebutted by other evidence. Accordingly, this inference may be considered along with any other evidence in deciding whether the defendant has a prior Driving Under the Influence conviction.

Lesser Included Offenses

FELONY DRIVING UNDER THE INFLUENCE – [THIRD OFFENSE WITHIN 10 YEARS OF A PRIOR CONVICTION] [FOURTH OFFENSE] — 316.193(2)(b)1. OR 316.193(2)(b)3.

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Driving under the influence		316.193(1)	28.1
	Attempt	777.04(1)	5.1
	Driving under the influence causing or contributing to causing property damage or injury	316.193(3)(a), (3)(b), (3)(c)1.	28.1(a)

Comments

*It is a third degree felony if a person who commits a DUI has 3 prior DUIs or otherwise qualifying convictions. In *State v. Harbaugh*, 754 So. 2d 691 (Fla. 2000), the Florida Supreme Court indicated the 3 prior convictions for that type of felony DUI are questions of fact for the jury.

Another type of felony DUI occurs when a person commits a DUI, has two prior DUIs or otherwise qualifying convictions, and the third violation occurred within 10 years of a prior conviction. Because of *Erlinger v. United States*, 602 U.S. 821 (2024), the courts may require the jury to find that the 10-year requirement is met.

This instruction should be used for Felony Driving Under the Influence based on prior convictions. For Felony Driving Under the Influence based on prior convictions, it is error to inform the jury of prior convictions until the verdict on the underlying Driving Under the Influence charge is rendered. Therefore, if the information or indictment contains an allegation of prior convictions, do not read that allegation and do not send the information or indictment into the jury room. If the defendant is found guilty of Driving Under the Influence, the historical fact of prior convictions shall be determined separately by the jury in a bifurcated proceeding. *See State v. Harbaugh*, 754 So. 2d 691 (Fla. 2000).

This instruction was adopted in 2009 [6 So. 3d 574] and amended in 2016 [192 So. 3d 1190], 2019 [262 So. 3d 59], on October 2, 2020, on October 7, 2022, and on June 12, 2026.

28.3 DRIVING UNDER THE INFLUENCE CAUSING [OR CONTRIBUTING TO CAUSING] SERIOUS BODILY INJURY

§ 316.193(3)(a), (3)(b), (3)(c)2., Fla. Stat.

To prove the crime of Driving Under the Influence Causing [or Contributing to Causing] Serious Bodily Injury, the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **drove [or was in actual physical control of] a vehicle.**

2. **While driving [or in actual physical control of] the vehicle,** (defendant)

Give 2a or 2b or both as applicable.

   a. **was under the influence of [alcoholic beverages] [a chemical substance] [a controlled substance] to the extent that [his] [her] normal faculties were impaired.**

   b. **had a [blood] [breath]-alcohol level of .08 or more grams of alcohol per [100 milliliters of blood] [210 liters of breath].**

3. **As a result of operating the vehicle,** (defendant) **caused or contributed to causing serious bodily injury to** (victim)**.**

Give if applicable. Mizell v. State, 350 So. 3d 97 (Fla. 1st DCA 2022).

The conduct of [(victim)**] [another] [another person] is a defense to this crime only when that conduct was the sole cause of the crash that resulted in injury.**

Give a. or b. or both if applicable. § 316.193(4), Fla. Stat.

If you find the defendant guilty of Driving Under the Influence Causing [or Contributing to Causing] Serious Bodily Injury, you must also determine whether the State proved beyond a reasonable doubt that:

a. **the defendant had a [blood] [breath]-alcohol level of 0.15 or higher while driving [or in actual physical control of] the vehicle.**

b. **the defendant was accompanied in the vehicle by a person under the age of 18 years at the time of the crime.**

§ 316.003, Fla. Stat. Some of these terms have their own statutory definitions, which should be given if necessary.

"Vehicle" is every device, in, upon or by which any person or property is, or may be, transported or drawn upon a highway[, except personal delivery devices, mobile carriers, and devices used exclusively upon stationary rails or tracks].

§ 316.1934, Fla. Stat.

Normal faculties include but are not limited to the ability to see, hear, walk, talk, judge distances, drive an automobile, make judgments, act in emergencies and, in general, to normally perform the many mental and physical acts of our daily lives.

Shaw v. State, 783 So. 2d 1097 (Fla. 5th DCA 2001).

Impaired means diminished in some material respect.

Give if applicable. The option of "on a vehicle" pertains to vehicles such as motorcycles and bicycles.

Actual physical control of a vehicle means the defendant must be physically in [or on] the vehicle and have the capability to operate the vehicle, regardless of whether [he] [she] is actually operating the vehicle at the time.

§ 322.01, Fla. Stat.

Alcoholic beverages are considered to be substances of any kind and description which contain alcohol.

(_____) **is a controlled substance under Florida law.** *Ch. 893, Fla. Stat.*

(_____) **is a chemical substance under Florida law.** *§ 877.111, Fla. Stat., § 316.1933, Fla. Stat.*

Serious bodily injury means a physical condition that creates a substantial risk of death, serious personal disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

Give if appropriate. § 316.1934(2)(a) and (2)(b), Fla. Stat.

1. **If you find from the evidence that while driving or in actual physical control of a vehicle, the defendant had a blood or breath-alcohol level of .05 or less, you shall presume that the defendant was not under the influence of alcoholic beverages to the extent that [his] [her] normal faculties were impaired;**

but this presumption may be overcome by other evidence demonstrating that the defendant was under the influence of alcoholic beverages to the extent that [his] [her] normal faculties were impaired.

2. **If you find from the evidence that while driving or in actual physical control of a vehicle, the defendant had a blood or breath-alcohol level in excess of .05 but less than .08, that fact does not give rise to any presumption that the defendant was or was not under the influence of alcoholic beverages to the extent that [his] [her] normal faculties were impaired. In such cases, you may consider that evidence along with other evidence in determining whether the defendant was under the influence of alcoholic beverages to the extent that [his] [her] normal faculties were impaired.**

It is not necessary to instruct on the "prima facie evidence of impairment" in § 316.1934(2)(c), Fla. Stat., if the State charged the defendant with driving with a blood or breath-alcohol level of .08 or over. In those cases, if the jury finds that the defendant drove with an unlawful blood or breath-alcohol level, impairment becomes moot. Tyner v. State, 805 So. 2d 862 (Fla. 2d DCA 2001).

Give only if appropriate. State v. Burns, 661 So. 2d 842 (Fla. 5th DCA 1995); Kurecka v. State, 67 So.3d 1052 (Fla. 4th DCA 2010).

A person [arrested] [being investigated] for Driving Under the Influence does not have the right to consult with an attorney before deciding whether to submit to a [breath] [urine] [blood] test.

Give only if appropriate

A person [arrested] [being investigated] for Driving Under the Influence does not have the right to consult with an attorney before deciding whether to submit to a [breath] [urine] [blood] test. However, if the defense maintains that the defendant mistakenly believed that [he] [she] did have such a right and refused to provide a [breath] [blood] [urine] sample because of that mistaken belief, you may consider **that claim, as well as the state's competing claim that the defendant's refusal shows that [he] [she] did not want the police to obtain evidence regarding [his] [her] [[breath] [blood] alcohol level] [or] [drug consumption].**

Defense of inoperability; give if applicable.

It is a defense to the charge of Driving Under the Influence Causing [or Contributing to Causing] Serious Bodily Injury if at the time of the

alleged offense, the vehicle was inoperable. However, it is not a defense if the defendant was driving under the influence before the vehicle became inoperable. Therefore, if you are not convinced beyond a reasonable doubt that the vehicle was operable at the time of the alleged offense, you should find the defendant not guilty. However, if you are convinced that the vehicle was operable at the time of the alleged offense, then you should find the defendant guilty, if all the other elements of the charge have been proved beyond a reasonable doubt.

Lesser Included Offenses

DRIVING UNDER THE INFLUENCE CAUSING [OR CONTRIBUTING TO CAUSING] SERIOUS BODILY INJURY—316.193(3)(a), (3)(b), (3)(c)2.

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
DUI causing [or contributing to causing] damage to the person of another		316.193(3)(a), (3)(b), (3)(c)1.	28.1 28.1(a)
DUI		316.193(1)	28.1
	Attempt	777.04(1)	5.1

Comments

This instruction was adopted in 1992 and amended in 1998 [723 So. 2d 123], 2009 [6 So. 3d 574], 2013 [131 So. 3d 720], 2016 [192 So. 3d 1190], 2019 [262 So. 3d 59], on October 2, 2020, on October 7, 2022, on June 12, 2026, and on October 9, 2026.

28.4 LEAVING THE SCENE OF A CRASH INVOLVING [DEATH] [SERIOUS BODILY INJURY] [INJURY]

§ 316.027(2), Fla. Stat.

To prove the crime of Leaving the Scene of a Crash Involving [Death] [Serious Bodily Injury] [Injury], the State must prove the following four elements beyond a reasonable doubt:

1. (Defendant) **was the driver of a vehicle involved in a crash occurring on public or private property resulting in [injury to] [the death of]** (victim)**.**

2. (Defendant) **knew that [he] [she] was involved in a crash.**

Give 3a if death is charged or 3b if injury or serious bodily injury is charged.

3. a. (Defendant) **knew, or should have known from all of the circumstances, including the nature of the crash, of the injury to or death of** (victim)**.**

b. (Defendant) **knew, or should have known from all of the circumstances, including the nature of the crash, of the injury to** (victim)**.**

See Comment section for cases involving death.

4. (Defendant) **willfully failed to immediately stop at the scene of the crash or as close to the crash as possible and failed to remain until [he] [she] had completed two things:**

a. given identifying information to [(victim)**] [the driver] [an occupant] [a person attending the vehicle] and to any police officer investigating the crash;**

and

b. rendered reasonable assistance to (victim)**.**

"Willfully" means knowingly, intentionally, and purposely.

§ 316.062(1), Fla. Stat.

"Identifying information" means the name, address, vehicle registration number, and, if available and requested, the exhibition of the defendant's license or permit to drive.

"Reasonable assistance" includes carrying or making arrangements to carry an injured person to a physician or hospital for medical treatment if it is apparent that treatment is necessary, or if such carrying is requested by the injured person.

Gaulden v. State, 195 So. 3d 1123 (Fla. 2016); State v. Elder, 975 So.2d 481 (Fla. 2d DCA 2007).

A "crash" requires that a vehicle, though not necessarily the defendant's vehicle, must collide with another vehicle, person, or object.

If the defendant's vehicle did not collide with another vehicle, person, or object, you may find the defendant was involved in a crash if [he] [she] operated the vehicle that caused or contributed to causing a crash.

§ 316.003, Fla. Stat. Some of these terms have their own statutory definitions, which should be given if necessary.

A "vehicle" is any device in, upon, or by which any person or property is, or may be, transported or drawn upon a highway[, except personal delivery devices, mobile carriers, and devices used exclusively upon stationary rails or tracks].

Give if serious bodily injury is charged. § 316.027(1)(a), Fla. Stat.

§ 316.027(2)(b), Fla. Stat.

If you find that (defendant) **committed the crime of Leaving the Scene of a Crash Involving Injury, you must then determine whether the State proved beyond a reasonable doubt that the injury was a serious bodily injury.**

"Serious bodily injury" means an injury to a person, including the driver, which consists of a physical condition that creates a substantial risk of death, serious disfigurement, or protracted loss or impairment of the function of a bodily member or organ.

Give if it is alleged in the charging document the defendant caused victim injury or death. § 921.0021(7)(e), Fla. Stat. See Comment section.

If you find that (defendant) **committed the crime of Leaving the Scene of a Crash Involving [Death] [Serious Bodily Injury] [Injury], you must then determine whether the State proved beyond a reasonable doubt that [he] [she] caused [death] [or] [severe injury] [or] [moderate injury] [or] [slight injury] to** (victim)**.**

Give when the State alleged the victim was a "vulnerable road user."

§ 316.027(2)(f), Fla. Stat.

If you find that (defendant) **committed the crime of Leaving the Scene of a Crash Involving [Death] [Serious Bodily Injury] [or] [Injury], you must then determine whether the State proved beyond a reasonable doubt that** (victim) **was:**

[a pedestrian].

[actually engaged in work upon a highway].

[actually engaged in work upon utility facilities along a highway].

[engaged in the provision of emergency services within the right-of-way].

[operating a [bicycle] [an electric bicycle] [motorcycle] [scooter] [moped] lawfully on the roadway].

[riding an animal].

[lawfully operating [a farm tractor or similar vehicle designed primarily for farm use] [a skateboard] [roller-skates] [in-line skates] [a horse-drawn carriage] [an electric personal assistive mobility device] [a wheelchair] on [a public right-of-way] [crosswalk] [shoulder of the roadway]].

If the "vulnerable road user" enhancement is given, insert applicable definitions from § 316.003, Fla. Stat.

Lesser Included Offenses

LEAVING THE SCENE OF A CRASH INVOLVING DEATH — 316.027(2)(c)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Leaving the Scene of a Crash Involving Serious Bodily Injury*		316.027(2)(b)	28.4
Leaving the Scene of a Crash Involving Injury*		316.027(2)(a)	28.4

	Attempt	777.04(1)	5.1

LEAVING THE SCENE OF A CRASH INVOLVING SERIOUS BODILY INJURY — 316.027(2)(b)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Leaving the Scene of a Crash Involving Injury		316.027(2)(a)	28.4
	Attempt	777.04(1)	5.1

Comments

Element #4 will need to be modified in cases where a deceased cannot receive information or assistance to which he or she would have been entitled under § 316.062(1), Fla. Stat, if he or she had been alive. In *Paleveda v. State*, 429 So. 3d 583 (Fla. 2d DCA 2026), the court affirmed a special jury instruction by holding the statute implicitly requires that one remain at the scene of a crash at least until he or she has ascertained the condition of the other person(s) involved in the crash.

The special instruction will also depend on whether a police officer is present. In a case where someone died and no police officer was present, § 316.062(2), Fla. Stat., requires the driver of a vehicle involved in the crash to forthwith report the crash to the nearest office of a duly authorized police authority and provide the information specified in § 316.062(1), Fla. Stat.

§ 921.0021(7)(e), Fla. Stat. states that if a defendant is convicted for violating § 316.027, Fla. Stat., victim injury points may be assessed if the court finds the defendant caused victim injury. The logic in *Gaymon v. State,* 288 So. 3d 1087 (Fla. 2020) will likely require a jury finding on the issue of causation of victim injury.

*In *Williams v. State*, 732 So. 2d 431 (Fla. 2d DCA 1999), the court stated in dictum that Leaving the Scene of a Crash Involving Injury is a necessarily lesser-included offense of Leaving the Scene of a Crash Involving Death. In other areas, however, where there is no dispute that a person was killed as a result of an incident giving rise to criminal charges, non-death lessers are not appropriate. *See, e.g., State v. Barritt,* 531 So. 2d 338 (Fla. 1988); *Humphrey v. State*, 690 So. 2d 1351 (Fla. 3d DCA 1997).

This instruction was adopted in 1995 [665 So. 2d 212] and amended in 2008 [973 So. 2d 432], 2015 [166 So. 3d 161], 2016 [192 So. 3d 1190], 2018 [236 So. 2d 244], 2019 [262 So. 3d 59], on October 2, 2020, on April 1, 2022, on December 15, 2023, and on October 9, 2026.

28.4(a) LEAVING THE SCENE OF A CRASH INVOLVING ONLY DAMAGE TO AN ATTENDED VEHICLE OR ATTENDED PROPERTY

§ 316.061(1), Fla. Stat.

To prove the crime of Leaving the Scene of a Crash Involving Only Damage to an Attended Vehicle or Attended Property, the State must prove the following four elements beyond a reasonable doubt:

1. (Defendant) **was the driver of a vehicle involved in a crash.**

2. **The crash resulted only in damage to a vehicle or other property.**

3. **The [vehicle] [other property] was [driven] [attended] by** (name of person)**.**

4. (Defendant) **failed to stop at the scene of the crash or as close to the crash as possible and remain there until [he] [she] had given identifying information to** (name of person in element #3) **[and to any police officer at the scene of the crash or who is investigating the crash].**

Gaulden v. State, 195 So. 3d 1123 (Fla. 2016); State v. Elder, 975 So.2d 481 (Fla. 2d DCA 2007).

For the defendant to be "involved in a crash," a vehicle, though not necessarily the defendant's vehicle, must collide with another vehicle, person, or object.

Give if applicable. State v. Elder, 975 So.2d 481 (Fla. 2d DCA 2007).

"Involved" means to draw in as a participant, to implicate, to relate closely, to connect, to have an effect on, to concern directly, or to affect.

§ 316.062(1), Fla. Stat.

"Identifying information" means the name, address, vehicle registration number, and if available and requested, the exhibition of the defendant's license or permit to drive.

§ 316.003, Fla. Stat. Some of these terms have their own statutory definitions, which should be given if necessary.

"Vehicle" means every device, in, upon, or by which any person or property is or may be transported or drawn upon a highway[, except personal delivery devices, mobile carriers, and devices used exclusively upon stationary rails or tracks].

Lesser Included Offense

LEAVING THE SCENE OF A CRASH INVOLVING ONLY DAMAGE TO AN ATTENDED VEHICLE OR ATTENDED PROPERTY—316.061(1)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempt	777.04(1)	5.1

Comments

As of August 2025, there was no case law directly addressing the issue of whether the State must prove the defendant knew, or should have known, of either the crash or the property damage. *Compare State v. Dorsett*, 158 So. 3d 557 (Fla. 2015), and *Mancuso v. State*, 652 So. 2d 370 (Fla. 1995), dealing with § 316.027, Fla. Stat., which, unlike § 316.061, Fla. Stat., contains an explicit willfulness requirement.

As of October 1, 2025, a driver convicted of violating § 316.061, Fla. Stat., who caused or otherwise contributed to the crash, may be ordered to pay restitution to the owner of a vehicle or other property damaged in the crash for any damage that was caused by the crash. As of October 1, 2025, it was undetermined if a jury finding on causation and an adjudication of guilt are required for restitution to be ordered.

This instruction was adopted in 2013 [131 So. 3d 720] and amended in 2018 [236 So. 3d 244], 2019 [262 So. 3d 59], on October 2, 2020, on April 1, 2022, on December 15, 2023, and on September 5, 2025.

28.4(b) LEAVING THE SCENE OF A CRASH INVOLVING DAMAGE TO AN UNATTENDED VEHICLE OR UNATTENDED PROPERTY

§ 316.063(1), Fla. Stat.

To prove the crime of Leaving the Scene of a Crash Involving Damage to an Unattended Vehicle or Unattended Property, the State must prove the following four elements beyond a reasonable doubt:

1. (Defendant) **was the driver of a vehicle involved in a crash or collision.**

2. **The crash or collision resulted in damage to another vehicle or other property.**

3. **The vehicle or other property was not driven or attended by any person.**

4. (Defendant) **failed to immediately stop at the scene of the crash or collision and then and there either**

    a. **locate and notify the operator or owner of the vehicle or other property of [his] [her] name and address and the registration number of the vehicle [he] [she] was driving, or**

    b. **attach securely in a conspicuous place in or on the vehicle or other property a written notice giving [his] [her] name and address and the registration number of the vehicle [he] [she] was driving, and, without unnecessary delay, notify the nearest office of a duly authorized police authority.**

Gaulden v. State, 195 So. 3d 1123 (Fla. 2016); State v. Elder, 975 So.2d 481 (Fla. 2d DCA 2007).

For the defendant to be "involved in a crash," a vehicle, though not necessarily the defendant's vehicle, must collide with another vehicle, person, or object.

Give if applicable. State v. Elder, 975 So.2d 481 (Fla. 2d DCA 2007).

"Involved" means to draw in as a participant, to implicate, to relate closely, to connect, to have an effect on, to concern directly, or to affect.

§ 316.003, Fla. Stat. Some of these terms have their own statutory definitions, which should be given if necessary.

"Vehicle" means every device, in, upon, or by which any person or property is or may be transported or drawn upon a highway[, except personal delivery devices, mobile carriers, and devices used exclusively upon stationary rails or tracks].

Lesser Included Offense

LEAVING THE SCENE OF A CRASH INVOLVING DAMAGE TO AN UNATTENDED VEHICLE OR UNATTENDED PROPERTY—316.063(1)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempt	777.04(1)	5.1

Comments

As of November 2023, there was no case law directly addressing the issue of whether the State must prove the defendant knew, or should have known, of either the crash or the property damage. *Compare State v. Dorsett*, 158 So. 3d 557 (Fla. 2015), and *Mancuso v. State*, 652 So. 2d 370 (Fla. 1995), dealing with § 316.027, Fla. Stat., which, unlike § 316.063, Fla. Stat., contains an explicit willfulness requirement.

This instruction was adopted in 2016 [192 So. 3d 1190] and amended in 2018 [236 So. 3d 244], 2019 [262 So. 3d 59], on October 2, 2020, on April 1, 2022, and on December 15, 2023.

28.5 RECKLESS DRIVING

§ 316.192(1)(a) and (1)(b), Fla. Stat.

To prove the crime of Reckless Driving, the State must prove the following beyond a reasonable doubt:

Give if § 316.192(1)(a), Fla. Stat. is charged.

(Defendant) **drove a vehicle in Florida with a willful or wanton disregard for the safety of persons or property.**

Give if § 316.192(1)(b), Fla. Stat. is charged.

(Defendant)**, while driving a motor vehicle, fled from a law enforcement officer.**

Give if applicable. § 316.192(3), Fla. Stat.

If you find (defendant) **guilty of Reckless Driving, you must also determine whether the State has proven beyond a reasonable doubt that [he] [she] caused [damage to the [property] [or] [person] of another] [or] [serious bodily injury to another] as a result of operating the vehicle recklessly.**

Definitions. Give if applicable.

W.E.B. v. State, 553 So. 2d 323 (Fla. 1st DCA 1989).

"Willful" means intentionally, knowingly, and purposely.

"Wanton" means with a conscious and intentional indifference to consequences and with knowledge that damage is likely to be done to persons or property.

§ 316.003, Fla. Stat. Some of these terms have their own statutory definitions, which should be given if necessary.

A "vehicle" is any device in, upon, or by which any person or property is, or may be, transported or drawn upon a highway[, except personal delivery devices, mobile carriers, and devices used exclusively upon stationary rails or tracks].

§ 316.192(3)(c)2, Fla. Stat.

"Serious bodily injury" means an injury to another person which consists of a physical condition that creates a substantial risk of death,

serious personal disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

§ 316.003, Fla. Stat. Some of these terms have their own statutory definitions, which should be given if necessary.

A "motor vehicle" is a self-propelled vehicle not operated upon rails or guideway[, but not including any bicycle, electric bicycle, motorized scooter, electric personal assistive mobility device, mobile carrier, personal delivery device, swamp buggy, or moped].

Lesser Included Offenses

RECKLESS DRIVING CAUSING SERIOUS BODILY INJURY — 316.192(1); 316.192(3)(a)(b)(c)2

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Reckless Driving causing injury		316.192(3)(a)(b)(c)1	28.5
Reckless driving		316.192(1)(a)	28.5
	Reckless driving causing property damage	316.192(3)(a)(b)(c)1	28.5

Comment

This instruction was adopted in 1981 and amended in 2013 [131 So. 3d 692], 2019 [262 So. 3d 59], on October 2, 2020, and on April 25, 2023.

28.5(a) [RACING ON A HIGHWAY] [STREET TAKEOVERS] [STUNT DRIVING]
§ 316.191(2), § 316.191(3)(c), and § 316.191(3)(f), Fla. Stat.

To prove the crime of [Racing on a Highway] [Street Takeovers] [Stunt Driving], the State must prove the following element beyond a reasonable doubt:

Give as applicable.

(Defendant)

a. drove a motor vehicle in

b. [participated] [coordinated, through social media or otherwise] [facilitated] [collected monies] at any location for

c. knowingly rode as a passenger in

d. purposefully caused moving traffic, including pedestrian traffic, to slow, stop, or be impeded in any way for

e. operate a motor vehicle for the purpose of filming or recording the activities of participants in

f. operate a motor vehicle carrying any amount of fuel for the purposes of fueling a motor vehicle involved in

[a race] [a drag race] [an acceleration contest involving a motor vehicle] [a street takeover] [any stunt driving] [a speed competition or contest involving a motor vehicle] [a test of physical endurance involving a motor vehicle] [an exhibition of speed or acceleration involving a motor vehicle] [an attempt, involving a motor vehicle, to make a speed record] on a highway or roadway or a parking lot.

Give only if § 316.191(3)(c), Fla. Stat. is charged.

If you find (defendant) **guilty of [Racing on a Highway] [Street Takeover] [Stunt Driving], you must also determine whether the State proved beyond a reasonable doubt that in the course of committing the crime, [he] [she] knowingly impeded, obstructed, or interfered with an authorized emergency vehicle that was on call and that was responding to an emergency, other than the [Racing on a Highway] [Street Takeover] [Stunt Driving] that was alleged in this case.**

Give only if § 316.191(2)(a) or(2)(d) or (2)(e) or (2)(f) Fla. Stat., and § 316.191(3)(f) is charged.

If you find (defendant) **guilty of [Racing on a Highway] [Street Takeover] [Stunt Driving], you must also determine whether the State proved beyond a reasonable doubt that in the course of committing the crime, [he] [she] was engaged in a coordinated street takeover.**

Definitions. Give only if applicable.

§ 316.003, Fla. Stat. "Organ transport vehicle" has its own definition in § 316.003, Fla. Stat.

"Authorized emergency vehicle" means vehicles of the fire department (fire patrol), police vehicles, emergency management vehicles, organ transport vehicles, such ambulances and emergency vehicles of municipal and county departments, volunteer ambulance services, public service corporations operated by private corporations, the Fish and Wildlife Conservation Commission, the Department of Environmental Protection, the Department of Health, the Department of Transportation, Department of Agriculture and Consumer Services, and the Department of Corrections as are designated or authorized by their respective departments or the chief of police of an incorporated city or any sheriff of any of the various counties.

"Drag race" means the operation of two or more motor vehicles from a point side by side at accelerating speeds in a competitive attempt to outdistance each other, or the operation of one or more motor vehicles to the same point, for the purpose of comparing the relative speeds or power of acceleration of such motor vehicle or motor vehicles within a certain distance or time limit.

§ 316.191(1), Fla. Stat. Some of these terms have their own statutory definitions, which should be given if necessary.

"Motor vehicle" means a self-propelled vehicle not operated upon rails or guideway, including any motorcycle, autocycle, moped, all-terrain vehicle, off-road vehicle, or vehicle not licensed to operate on a highway or roadway, but not including a bicycle, electric bicycle, motorized scooter, electric personal assistive mobility device, mobile carrier, personal delivery device, or swamp buggy.

§ 316.003, Fla. Stat. Some of these terms have their own statutory definitions, which should be given if necessary.

"Vehicle" means every device in, upon, or by which any person or property is or may be transported or drawn upon a highway [, except personal delivery devices, mobile carriers, and devices used exclusively upon stationary rails or tracks].

§ 316.191(1), Fla. Stat.

"Race" means the use of one or more motor vehicles in competition, arising from a challenge to demonstrate superiority of a motor vehicle or driver and the acceptance or competitive response to that challenge, either through a prior arrangement or in immediate response, in which the competitor attempts to outgain or outdistance another motor vehicle, to prevent another motor vehicle from passing, to arrive at a given destination ahead of another motor vehicle or motor vehicles, or to test the physical stamina or endurance of drivers over long distance driving routes. A race may be prearranged or may occur through a competitive response to conduct on the part of one or more drivers which, under the totality of circumstances, can reasonably be interpreted as a challenge to race.

§ 316.003, Fla. Stat.

"Roadway" means that portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or shoulder. In the event a highway includes two or more separate roadways, the term roadway as used herein refers to any such roadway separately, but not to all such roadways collectively.

§ 316.003, Fla. Stat.

"Street or highway" means

a. The entire width between the boundary lines of every way or place of whatever nature when any part thereof is open to the use of the public for purposes of vehicular traffic;

b. The entire width between the boundary lines of any privately owned way or place used for vehicular travel by the owner and those having express or implied permission from the owner, but not by other persons, or any limited access road owned or controlled by a special district, whenever, by written agreement entered into under s. 316.006(2)(b) or (3)(b), a county or municipality exercises traffic control jurisdiction over said way or place;

c. Any area, such as a runway, taxiway, ramp, clear zone, or parking lot, within the boundary of any airport owned by the state, a county, a municipality, or a political subdivision, which area is used for vehicular traffic but which is not open for vehicular operation by the general public; or

d. Any way or place used for vehicular traffic on a controlled access basis within a mobile home park recreation district which has been created under s. 418.30 and the recreational facilities of which district are open to the general public.

§ 316.191(1), Fla. Stat.

"Coordinated street takeover" means 10 or more vehicles operated in an organized manner to effect a street takeover.

§ 316.191(1), Fla. Stat.

"Street takeover" means the taking over of a portion of a highway, roadway, or parking lot by blocking or impeding the regular flow of traffic to perform a race, drag race, burnout, doughnut, drifting, wheelie, or other stunt driving.

§ 316.191(1), Fla. Stat.

"Burnout" means a maneuver performed while operating a motor vehicle whereby the motor vehicle is kept stationary, or is in motion, while the wheels are spun, resulting in friction which causes the motor vehicle's tires to heat up and emit smoke.

§ 316.191(1), Fla. Stat.

"Doughnut" means a maneuver performed while operating a motor vehicle whereby the front or rear of the motor vehicle is rotated around the opposite set of wheels in a continuous motion which may cause a circular skid-mark pattern of rubber on the driving surface or the tires to heat up and emit smoke from friction, or both.

§ 316.191(1), Fla. Stat.

"Drifting" means a maneuver performed while operating a motor vehicle whereby the motor vehicle is steered so that it makes a controlled sideways skid through a turn with the front wheels pointed in a direction opposite to that of the turn.

§ 316.191(1), Fla. Stat.

"Stunt driving" means to perform or engage in any burnouts, doughnuts, drifting, wheelies, or other dangerous motor vehicle activity on a highway, roadway, or parking lot as part of a street takeover.

§ 316.191(1), Fla. Stat.

"Wheelie" means a maneuver performed while operating a motor vehicle whereby a motor vehicle is ridden for a distance with the front wheel or wheels raised off the ground.

Lesser Included Offenses

[RACING ON A HIGHWAY] [STREET TAKEOVERS] [STUNT DRIVING] — 316.191(3)(c) OR (3)(f)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
[Racing on a Highway] [Street Takeover] [Stunt Driving]		316.191(2)	28.5(a)
	Resisting an Officer Without Violence (depending on type of authorized emergency vehicle)	843.01	21.2
	Attempt	777.04(1)	5.1

Comments

The filming or recording the activities of participants covered in element e. above does not apply to bona fide members of the news media. *See* § 316.191(2)(e), Fla. Stat.

Pursuant to § 316.191(3), Fla. Stat., repeat offenders of § 316.191(2), Fla. Stat., are subject to higher penalties. As of January 2025, it was unclear whether the facts related to prior(s) should be considered elements to be proven to the jury or sentencing factors to be proven to the judge. If treated as an element, do not read the allegation of prior(s) and do not send the charging document into the jury room. If the defendant is found guilty, the historical fact of a previous conviction, which includes withholds of adjudication, shall be determined beyond a reasonable doubt in a bifurcated proceeding. *State v. Harbaugh*, 754 So. 2d 691 (Fla. 2000).

This instruction was adopted in 2009 [6 So. 3d 574] and amended in 2012 [95 So. 3d 868], 2013 [31 So. 3d 755], 2019 [262 So. 3d 59], on October 2, 2020, on December 21, 2022, and on February 21, 2025.

28.5(b) DANGEROUS EXCESSIVE SPEEDING

§ 316.1922, Fla. Stat.

To prove the crime of Dangerous, Excessive Speeding, the State must prove the following element beyond a reasonable doubt:

(Defendant) **operated a motor vehicle [in excess of the speed limit by 50 miles per hour or more] [or] [at 100 miles per hour or more in a manner that threatened the safety of other persons or property or interferes with the operation of any vehicle].**

§ 316.003, Fla. Stat. Some of these terms have their own statutory definitions, which should be given if necessary.

"Motor vehicle" means a self-propelled vehicle not operated upon rails or guideway, but not including any bicycle, electric bicycle, motorized scooter, electric personal assistive mobility device, mobile carrier, personal delivery device, swamp buggy, or moped.

"Vehicle" means every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except personal delivery devices, mobile carriers, and devices used exclusively upon stationary rails or tracks.

Lesser Included Offense

DANGEROUS EXCESSIVE SPEEDING — 316.1922

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Reckless Driving	316.191(1)(a)	28.5

Comments

A person may be imprisoned for up to 90 days and may be fined up to $1,000 for a second or subsequent conviction of § 316.1922, Fla. Stat. If the second or subsequent conviction occurred within 5 years after the date of a prior conviction, the person's driving privilege must be revoked for at least 180 days but for no more than 1 year. As of August 2025, it was unclear whether an adjudication of guilt is required for a conviction. It was also unclear whether the prior conviction and 5-year time period need to be found by a jury under the beyond a reasonable doubt standard.

This instruction was adopted on September 5, 2025.

28.6 FLEEING TO ELUDE A LAW ENFORCEMENT OFFICER

§ 316.1935(1), Fla. Stat.

To prove the crime of Fleeing to Elude a Law Enforcement Officer, the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **was operating a vehicle upon a street or highway in Florida.**

2. A duly authorized law enforcement officer ordered the defendant to stop or remain stopped.

Give 3a or 3b as applicable.

3. (Defendant)**, knowing [he] [she] had been ordered to stop by a duly authorized law enforcement officer,**

a. willfully refused or failed to stop the vehicle in compliance with the order.

b. having stopped the vehicle, willfully fled in a vehicle in an attempt to elude the officer.

§ 316.003, Fla. Stat.

"Street or highway" means the entire width between boundary lines of every way or place of whatever nature when any part thereof is open to the public for purposes of vehicular traffic.

§ 316.003, Fla. Stat. Some of these terms have their own statutory definitions, which should be given if necessary.

"Vehicle" means every device, in, upon, or by which any person or property is or may be transported or drawn upon a highway[, except personal delivery devices, mobile carriers, and devices used exclusively upon stationary rails or tracks].

Patterson v. State, 512 So. 2d 1109 (Fla. 1st DCA 1987).

"Willfully" means intentionally, knowingly, and purposely.

Lesser Included Offenses

FLEEING TO ELUDE A LAW ENFORCEMENT OFFICER — 316.1935(1)			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
Reckless Driving (if there was evidence that the fleeing was in a motor vehicle)		316.192(1)(b)	28.5
	Disobedience to Police or Fire Department Officials*	316.072(3)	28.18

Comments

*The Second District Court of Appeal requires Disobedience to Police to be given as a lesser when the charging document tracks the Fleeing statute. *See Koch v. State*, 39 So. 3d 464 (Fla. 2d DCA 2010); *Lucas v. State*, 192 So. 3d 1269 (Fla. 2d DCA 2016). The Committee retained Disobedience to Police in the Category Two box, however, because Disobedience to Police requires the police order or direction to be lawful and the crime of Fleeing to Elude LEO does not contain that element. *See State v. Kirer*, 120 So. 3d 60 (Fla. 4th DCA 2013); *Jackson v. State*, 463 So. 2d 372 (Fla. 5th DCA 1985).

This instruction was adopted in 2000 [765 So. 2d 692] and amended in 2008 [976 So. 2d 1081], 2011 [73 So. 3d 136], 2015 [166 So. 3d 161], 2018 [236 So. 3d 244], 2019 [262 So. 3d 59], 2020 [288 So. 3d 518], and on October 2, 2020.

28.7 FLEEING TO ELUDE A LAW ENFORCEMENT OFFICER (SIREN AND LIGHTS ACTIVATED)

§ 316.1935(2), Fla. Stat.

To prove the crime of Fleeing to Elude a Law Enforcement Officer, the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **was operating a vehicle upon a street or highway in Florida.**

2. (Defendant)**, knowing [he] [she] had been directed to stop by a duly authorized law enforcement officer, willfully fled in a vehicle in an attempt to elude a law enforcement officer.**

3. **The law enforcement officer was in an authorized law enforcement patrol vehicle with agency jurisdictional markings prominently displayed on the vehicle and with siren and lights activated.**

§ 316.003, Fla. Stat.

"Street or highway" means the entire width between boundary lines of every way or place of whatever nature when any part thereof is open to the public for purposes of vehicular traffic.

§ 316.003, Fla. Stat. Some of these terms have their own statutory definitions, which should be given if necessary.

"Vehicle" means every device, in, upon, or by which any person or property is or may be transported or drawn upon a highway[, except personal delivery devices, mobile carriers, and devices used exclusively upon stationary rails or tracks].

Patterson v. State, 512 So. 2d 1109 (Fla. 1st DCA 1987).

"Willfully" means intentionally, knowingly, and purposely.

Lesser Included Offenses

FLEEING TO ELUDE A LAW ENFORCEMENT OFFICER — 316.1935(2)			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
Fleeing to elude		316.1935(1)	28.6
Reckless Driving (if there is evidence that the fleeing was in a motor vehicle)		316.192(1)(b)	28.5
	Disobedience to Police or Fire Department Officials*	316.072(3)	28.18

Comments

For an offense that occurred before October 1, 2025, the State was also required to prove the law enforcement patrol vehicle had agency insignia prominently displayed on the vehicle.

*The Second District Court of Appeal requires Disobedience to Police to be given as a lesser when the charging document tracks the Fleeing statute. *See Koch v. State*, 39 So. 3d 464 (Fla. 2d DCA 2010); *Lucas v. State*, 192 So. 3d 1269 (Fla. 2d DCA 2016). The Committee retained Disobedience to Police in the Category Two box, however, because Disobedience to Police requires the police order or direction to be lawful and the crime of Fleeing to Elude LEO does not contain that element. *See State v. Kirer*, 120 So. 3d 60 (Fla. 4th DCA 2013); *Jackson v. State*, 463 So. 2d 372 (Fla. 5th DCA 1985).

This instruction was adopted in 2000 [765 So. 2d 692] and amended in 2008 [976 So. 2d 1081], 2011 [73 So. 3d 136], 2015 [166 So. 3d 161], 2018 [236 So. 3d 244], 2019 [262 So. 3d 59], 2020 [288 So. 3d 518], on October 2, 2020, and on November 13, 2025.

28.8 FLEEING TO ELUDE A LAW ENFORCEMENT OFFICER (SIREN AND LIGHTS ACTIVATED WITH HIGH SPEED OR RECKLESS DRIVING)

§ 316.1935(3)(a), Fla. Stat.

To prove the crime of Fleeing to Elude a Law Enforcement Officer, the State must prove the following four elements beyond a reasonable doubt:

1. (Defendant) **was operating a vehicle upon a street or highway in Florida.**

2. (Defendant)**, knowing [he] [she] had been directed to stop by a duly authorized law enforcement officer, willfully fled in a vehicle in an attempt to elude a law enforcement officer.**

3. **The law enforcement officer was in an authorized law enforcement patrol vehicle with agency jurisdictional markings prominently displayed on the vehicle and with siren and lights activated.**

4. **During the course of the fleeing or the attempt to elude,** (defendant) **drove at high speed or in any manner demonstrating a wanton disregard for the safety of persons or property.**

§ 316.003, Fla. Stat.

"Street or highway" means the entire width between boundary lines of every way or place of whatever nature when any part thereof is open to the public for purposes of vehicular traffic.

§ 316.003, Fla. Stat. Some of these terms have their own statutory definitions, which should be given if necessary.

"Vehicle" means every device, in, upon, or by which any person or property is or may be transported or drawn upon a highway[, except personal delivery devices, mobile carriers, and devices used exclusively upon stationary rails or tracks].

Patterson v. State, 512 So. 2d 1109 (Fla. 1st DCA 1987).

"Willfully" means intentionally, knowingly, and purposely.

Lesser Included Offenses

FLEEING TO ELUDE A LAW ENFORCEMENT OFFICER —316.1935 (3)(a)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Fleeing to elude		316.1935(2)	28.7
Fleeing to elude		316.1935(1)	28.6
Reckless Driving (if wanton disregard for the safety of persons or property is charged or if there is evidence that the fleeing was in a motor vehicle)		316.192(1)	28.5
	Disobedience to Police or Fire Department Officials*	316.072(3)	28.18

Comments

For an offense that occurred before October 1, 2025, the State was also required to prove the law enforcement patrol vehicle had agency insignia prominently displayed on the vehicle.

*The Second District Court of Appeal requires Disobedience to Police to be given as a lesser when the charging document tracks the Fleeing statute. *See Koch v. State*, 39 So. 3d 464 (Fla. 2d DCA 2010); *Lucas v. State*, 192 So. 3d 1269 (Fla. 2d DCA 2016). The Committee retained Disobedience to Police in the Category Two box, however, because Disobedience to Police requires the police order or direction to be lawful and the crime of Fleeing to Elude LEO does not contain that element. *See State v. Kirer*, 120 So. 3d 60 (Fla. 4th DCA 2013); *Jackson v. State*, 463 So. 2d 372 (Fla. 5th DCA 1985).

This instruction was adopted in 2000 [765 So. 2d 692] and amended in 2008 [976 So. 2d 1081], 2011 [73 So. 3d 136], 2015 [166 So. 3d 161], 2018 [236 So. 3d 244], 2019 [262 So. 3d 59], 2020 [288 So. 3d 518], on October 2, 2020, and on November 13, 2025.

28.8(a) FLEEING TO ELUDE A LAW ENFORCEMENT OFFICER (SIREN AND LIGHTS ACTIVATED WITH HIGH SPEED OR RECKLESS DRIVING CAUSING SERIOUS BODILY INJURY OR DEATH)

§ 316.1935(3)(b), Fla. Stat.

To prove the crime of Fleeing to Elude a Law Enforcement Officer, the State must prove the following five elements beyond a reasonable doubt:

1. (Defendant) **was operating a vehicle upon a street or highway in Florida.**

2. (Defendant)**, knowing [he] [she] had been directed to stop by a duly authorized law enforcement officer, willfully fled in a vehicle in an attempt to elude a law enforcement officer.**

3. **The law enforcement officer was in an authorized law enforcement patrol vehicle with agency jurisdictional markings prominently displayed on the vehicle and with siren and lights activated.**

4. **During the course of the fleeing or the attempt to elude,** (defendant) **drove at high speed or in any manner demonstrating a wanton disregard for the safety of persons or property.**

5. **As a result of** (defendant's) **fleeing or eluding at high speed or wanton disregard for safety, [he] [she] caused [the death of] [serious bodily injury to] [another person] [a law enforcement officer involved in pursuing or otherwise attempting to stop [his] [her] vehicle].**

§ 316.003, Fla. Stat.

"Street or highway" means the entire width between boundary lines of every way or place of whatever nature when any part thereof is open to the public for purposes of vehicular traffic.

§ 316.003, Fla. Stat. Some of these terms have their own statutory definitions, which should be given if necessary.

"Vehicle" means every device, in, upon, or by which any person or property is or may be transported or drawn upon a highway[, except personal delivery devices, mobile carriers, and devices used exclusively upon stationary rails or tracks].

Patterson v. State, 512 So. 2d 1109 (Fla. 1st DCA 1987).

"Willfully" means intentionally, knowingly, and purposely.

Lesser Included Offenses

FLEEING TO ELUDE A LAW ENFORCEMENT OFFICER — 316.1935(3)(b)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Fleeing to elude		316.1935(3)(a)	28.8
Fleeing to elude		316.1935(2)	28.7
Fleeing to elude		316.1935(1)	28.6
Reckless Driving (if wanton disregard for the safety of persons or property is charged or if there is evidence that the fleeing is in a motor vehicle)		316.192(1)	28.5
	Disobedience to Police or Fire Department Officials*	316.072(3)	28.18

Comments

For an offense that occurred before October 1, 2025, the State was also required to prove the law enforcement patrol vehicle had agency insignia prominently displayed on the vehicle.

*The Second District Court of Appeal requires Disobedience to Police to be given as a lesser when the charging document tracks the Fleeing statute. *See Koch v. State*, 39 So. 3d 464 (Fla. 2d DCA 2010); *Lucas v. State,* 192 So. 3d 1269 (Fla. 2d DCA 2016). The Committee retained Disobedience to Police in the Category Two box, however, because Disobedience to Police requires the police order or direction to be lawful and the crime of Fleeing to Elude LEO does not contain that element. *See State v. Kirer,* 120 So. 3d 60 (Fla. 4th DCA 2013); *Jackson v. State*, 463 So. 2d 372 (Fla. 5th DCA 1985).

This instruction was adopted in 2008 [976 So. 2d 1081] and amended in 2011 [73 So. 3d 136], 2015 [166 So. 3d 161], 2018 [236 So. 3d 244], 2019 [262 So. 3d 59], 2020 [288 So. 3d 518], on October 2, 2020, and on November 13, 2025.

28.8(b) AGGRAVATED FLEEING OR ELUDING (LEAVING A CRASH INVOLVING SERIOUS BODILY INJURY, INJURY, OR DEATH THEN CAUSING SERIOUS BODILY INJURY OR DEATH)

§ 316.1935(4)(b) and § 316.027, Fla. Stat.

To prove the crime of Aggravated Fleeing or Eluding, the State must prove the following seven elements beyond a reasonable doubt:

1. (Defendant) **was the driver of a vehicle involved in a crash occurring on public or private property resulting in [injury to] [death of]** (victim)**.**

2. (Defendant) **knew that [he] [she] was involved in a crash.**

Give 3a if death is charged or 3b if injury or serious bodily injury is charged.

3. a. (Defendant) **knew, or should have known from all of the circumstances, including the nature of the crash, of the injury to or death of** (victim)**.**

b. (Defendant) **knew, or should have known from all of the circumstances, including the nature of the crash, of the injury to** (victim)**.**

See Comment section for cases involving death.

4. (Defendant) willfully failed to immediately stop at the scene of the crash or as close to the crash as possible and failed to remain until [he] [she] had completed two things:

a. given identifying information to [(victim)] [the driver] [an occupant] [a person attending the vehicle] and to any police officer investigating the crash;

and

b. rendered reasonable assistance to (victim)**.**

5. A duly authorized law enforcement officer ordered (defendant) **to stop.**

6. (Defendant)**, knowing [he][she] had been ordered to stop by a law enforcement officer, [willfully refused or failed to stop [his][her] vehicle in compliance with the order to**

stop] [and after having stopped in knowing compliance with the order to stop, willfully fled in a vehicle in an attempt to elude the law enforcement officer.]

7. As a result of (defendant) **fleeing or eluding, [he] [she] caused [serious bodily injury to] [the death of]** (name of victim)**.**

Give if it is alleged in the charging document that the defendant caused victim injury or death as part of violating § 316.027, Fla. Stat. § 921.0021(7)(e), Fla. Stat.

If you find that (defendant) **committed Aggravated Fleeing, you must then determine whether the State proved beyond a reasonable doubt that [he] [she] caused [death] [or] [severe injury] [or] [moderate injury] [or] [slight injury] to** (victim)**.**

Give when the State alleged the victim was a "vulnerable road user." § 316.027(2)(f), Fla. Stat. Insert applicable definitions from § 316.003, Fla. Stat.

If you find that the State proved beyond a reasonable doubt that (defendant) **committed elements #1 – #4, you must then determine whether the State also proved beyond a reasonable doubt that** (victim) **in element #1 was:**

[a pedestrian].

[actually engaged in work upon a highway].

[actually engaged in work upon utility facilities along a highway].

[engaged in the provision of emergency services within the right-of-way].

[operating a [bicycle] [electric bicycle] [motorcycle] [scooter] [moped] lawfully on the roadway].

[riding an animal].

[lawfully operating [a farm tractor or similar vehicle designed primarily for farm use] [a skateboard] [roller-skates] [in-line skates] [a horse-drawn carriage] [an electric personal assistive mobility device] [a wheelchair] on [a public right-of-way] [crosswalk] [shoulder of the roadway]].

Gaulden v. State, 195 So. 3d 1123 (Fla. 2016); State v. Elder, 975 So.2d 481 (Fla. 2d DCA 2007).

For the defendant to be "involved in a crash," a vehicle, though not necessarily the defendant's vehicle, must collide with another vehicle, person, or object.

Give if applicable. State v. Elder, 975 So.2d 481 (Fla. 2d DCA 2007).

"Involved" means to draw in as a participant, to implicate, to relate closely, to connect, to have an effect on, to concern directly, or to affect.

Patterson v. State, 512 So. 2d 1109 (Fla. 1st DCA 1987).

"Willfully" means intentionally, knowingly, and purposely.

§ 316.062(1), Fla. Stat.

"Identifying information" means the name, address, vehicle registration number, and, if available and requested, the exhibition of the defendant's license or permit to drive.

"Reasonable assistance" includes carrying or making arrangement to carry the injured person to a physician or hospital for medical treatment if it is apparent that treatment is necessary, or if such carrying is requested by the injured person.

§ 316.003, Fla. Stat. Some of these terms have their own statutory definitions, which should be given if necessary.

"Vehicle" means every device, in, upon, or by which any person or property is or may be transported or drawn upon a highway[, except personal delivery devices, mobile carriers, and devices used exclusively upon stationary rails or tracks].

§ 316.027(1)(a), Fla. Stat.

"Serious bodily injury" means an injury to a person [including the driver,] which consists of a physical condition that creates a substantial risk of death, serious disfigurement, or protracted loss or impairment of the function of a bodily member or organ.

Lesser Included Offenses

AGGRAVATED FLEEING OR ELUDING (LEAVING A CRASH INVOLVING DEATH AND THEN CAUSING SERIOUS INJURY BODILY INJURY OR DEATH) — 316.1935(4)(b) AND 316.027(2)(c)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Leaving Scene of a Crash Involving Death*		316.027(2)(c)	28.4
Leaving the Scene of a Crash Involving Serious Bodily Injury*		316.027(2)(b)	28.4
Aggravated Fleeing		316.1935(4)(a)	28.8(d)
Leaving Scene of a Crash Involving Injury*		316.027(2)(a)	28.4
Fleeing to Elude LEO		316.1935(1)	28.6
	Fleeing to Elude LEO	316.1935(3)(b)	28.8(a)
	Fleeing to Elude LEO	316.1935(3)(a)	28.8
	Fleeing to Elude LEO	316.1935(2)	28.7
Reckless Driving (if there was evidence that the fleeing was in a motor vehicle)		316.192(1)(b)	28.5
	Disobedience to Police or Fire Department Officials**	316.072(3)	28.18

Comments

Element #4 will need to be modified in cases where someone died because the deceased cannot receive information or assistance to which he or she is entitled under § 316.062(1), Fla. Stat. The revised instruction on element #4 will also depend on whether a police officer is present. In a case where someone died and no police officer was present, § 316.062(2), Fla. Stat., requires the driver of a vehicle involved in the crash to forthwith report the crash to the nearest office of a duly authorized police authority and provide the information specified in § 316.062(1), Fla. Stat.

*§ 316.1935(4), Fla. Stat., states that a person may be charged with both Aggravated Fleeing or Eluding and Leaving the Scene of a Crash Involving Death, Serious Bodily Injury, or Injury. Therefore, if a Leaving the Scene crime is charged as a separate count, then Leaving the Scene should not be given as a lesser-included offense of Aggravated Fleeing or Eluding.

**The Second District Court of Appeal requires Disobedience to Police to be given as a lesser when the charging document tracks the Fleeing statute. *See Koch v. State*, 39 So. 3d 464 (Fla. 2d DCA 2010); *Lucas v. State*, 192 So. 3d 1269 (Fla. 2d DCA 2016). The Committee retained Disobedience to Police in the Category Two box, however, because Disobedience to Police requires the police order or direction to be lawful and the crime of Fleeing to Elude LEO does not contain that element. *See State v. Kirer*, 120 So. 3d 60 (Fla. 4th DCA 2013); *Jackson v. State*, 463 So. 2d 372 (Fla. 5th DCA 1985).

This instruction was adopted in 2008 [976 So. 2d 1081] and amended in 2011 [73 So. 3d 136], 2015 [166 So. 3d 161], 2016 [192 So. 3d 1190], 2018 [236 So. 3d 244], 2019 [262 So. 3d 59], on October 2, 2020, on April 1, 2022, and on December 15, 2023.

28.8(c) AGGRAVATED FLEEING OR ELUDING (LEAVING A CRASH INVOLVING DAMAGE TO A VEHICLE OR PROPERTY THEN CAUSING SERIOUS BODILY INJURY OR DEATH)

§ 316.1935(4)(b) and § 316.061, Fla. Stat.

To prove the crime of Aggravated Fleeing or Eluding, the State must prove the following seven elements beyond a reasonable doubt:

1. (Defendant) **was the driver of a vehicle involved in a crash.**

2. **The crash resulted only in damage to a vehicle or other property.**

3. **The [vehicle] [other property] was [driven] [attended] by [a person] [**(name of person)**].**

4. (Defendant) **failed to stop at the scene of the crash or as close to the crash as possible and remain there until [he] [she] had given "identifying information" to the [driver or occupant of the damaged vehicle] [person attending the damaged vehicle or property] [and to any police officer at the scene of the crash or who is investigating the crash.]**

5. **A duly authorized law enforcement officer ordered** (defendant) **to stop.**

6. (Defendant)**, knowing [he] [she] had been ordered to stop by a law enforcement officer, [willfully refused or failed to stop [his] [her] vehicle in compliance with the order to stop] [and after having stopped in knowing compliance with the order to stop, willfully fled in a vehicle in an attempt to elude the law enforcement officer].**

7. **As a result of** (defendant) **fleeing or eluding, [he] she] caused [serious bodily injury to] [the death of]** (name of victim)**.**

If the State proves beyond a reasonable doubt that the defendant failed to give any part of the "identifying information," the State satisfies this element of the offense.

Gaulden v. State, 195 So. 3d 1123 (Fla. 2016); State v. Elder, 975 So.2d 481 (Fla. 2d DCA 2007).

For the defendant to be "involved in a crash," a vehicle, though not necessarily the defendant's vehicle, must collide with another vehicle, person, or object.

Give if applicable. State v. Elder, 975 So.2d 481 (Fla. 2d DCA 2007).

"Involved" means to draw in as a participant, to implicate, to relate closely, to connect, to have an effect on, to concern directly, or to affect.

Patterson v. State, 512 So. 2d 1109 (Fla. 1st DCA 1987).

"Willfully" means intentionally, knowingly, and purposely.

§ 316.062(1), Fla. Stat.

"Identifying information" means the name, address, vehicle registration number, and, if available and requested, the exhibition of the defendant's license or permit to drive.

§ 316.003, Fla. Stat. Some of these terms have their own statutory definitions, which should be given if necessary.

"Vehicle" means every device, in, upon, or by which any person or property is or may be transported or drawn upon a highway[, except personal delivery devices, mobile carriers, and devices used exclusively upon stationary rails or tracks].

Lesser Included Offenses

AGGRAVATED FLEEING OR ELUDING (LEAVING A CRASH INVOLVING DAMAGE TO A VEHICLE OR PROPERTY THEN CAUSING SERIOUS BODILY INJURY OR DEATH) — 316.1935(4)(b) AND 316.061

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Aggravated Fleeing		316.1935(4)(a)	28.8(e)
Fleeing to Elude LEO		316.1935(1)	28.6
Leaving the Scene of a Crash Involving Damage to Vehicle or Property*		316.061	28.4(a)
	Fleeing to Elude LEO	316.1935(3)(b)	28.8(a)
	Fleeing to Elude LEO	316.1935(3)(a)	28.8
	Fleeing to Elude LEO	316.1935(2)	28.7
Reckless Driving (if there was evidence that the fleeing was in a motor vehicle)		316.192(1)(b)	28.5
	Disobedience to Police or Fire Department Officials**	316.072(3)	28.18

Comments

* § 316.1935(4), Fla. Stat., states that a person may be charged with both Aggravated Fleeing or Eluding and Leaving the Scene of a Crash Involving Damage to Attended Property. Therefore, if Leaving the Scene is charged as a separate count, then Leaving the Scene should not be given as a lesser-included offense of Aggravated Fleeing or Eluding.

As of November 2023, there was no case law directly addressing the issue of whether the State must prove the defendant knew, or should have known, of either the crash or the property damage to violate this statute. *Compare State v. Dorsett*, 158 So. 3d 557 (Fla. 2015), and *Mancuso v. State*, 652 So. 2d 370 (Fla. 1995), dealing with § 316.027, Fla. Stat., which, unlike § 316.061, Fla. Stat., contains an explicit willfulness requirement.

**The Second District Court of Appeal requires Disobedience to Police to be given as a lesser when the charging document tracks the Fleeing statute. *See Koch v. State*, 39 So. 3d 464 (Fla. 2d DCA 2010); *Lucas v. State*, 192 So. 3d 1269 (Fla. 2d DCA 2016). The Committee retained Disobedience to Police in the Category Two box, however, because Disobedience to Police requires the police order or direction to be lawful and the crime of Fleeing to Elude LEO does not contain that element. *See State v. Kirer*, 120 So. 3d 60 (Fla. 4th DCA 2013); *Jackson v. State*, 463 So. 2d 372 (Fla. 5th DCA 1985).

This instruction was adopted in 2008 [976 So. 2d 1081] and amended in 2011 [73 So. 3d 136], 2015 [166 So. 3d 161], 2016 [192 So. 3d 1190], 2018 [236 So. 3d 244], 2019 [262 So. 3d 59], on October 2, 2020, and on December 15, 2023.

28.8(d) AGGRAVATED FLEEING OR ELUDING (LEAVING A CRASH INVOLVING SERIOUS BODILY INJURY, INJURY, OR DEATH THEN CAUSING INJURY OR PROPERTY DAMAGE TO ANOTHER)

§ 316.1935(4)(a) and § 316.027 Fla. Stat.

To prove the crime of Aggravated Fleeing or Eluding, the State must prove the following seven elements beyond a reasonable doubt:

1. (Defendant) **was the driver of a vehicle involved in a crash occurring on public or private property resulting in [injury to] [death of]** (victim)**.**

2. (Defendant) **knew that [he] [she] was involved in a crash.**

Give 3a if death is charged or 3b if injury or serious bodily injury is charged.

3. a. (Defendant) **knew, or should have known from all of the circumstances, including the nature of the crash, of the injury to or death of** (victim)**.**

b. (Defendant) **knew, or should have known from all of the circumstances, including the nature of the crash, of the injury to** (victim)**.**

See Comment section for cases involving death.

4. (Defendant) **willfully failed to immediately stop at the scene of the crash or as close to the crash as possible and failed to remain until [he] [she] had completed two things:**

a. given identifying information to [(victim)**] [the driver] [an occupant] [a person attending the vehicle] and to any police officer investigating the crash;**

and

b. rendered reasonable assistance to (victim).

5. A duly authorized law enforcement officer ordered (defendant) **to stop.**

6. (Defendant) **knowing [he] [she] had been ordered to stop by a law enforcement officer, [willfully refused or failed to stop [his][her]vehicle in compliance with the order to**

stop] [and after having stopped in knowing compliance with the order to stop, willfully fled in a vehicle in an attempt to elude the law enforcement officer.]

7. **As a result of** (defendant) **fleeing or eluding, [he] [she] caused [an injury to] [damage to the property of]** (name of victim).

Give if it is alleged in the charging document that the defendant caused victim injury or death as part of violating § 316.027, Fla. Stat. § 921.0021(7)(e), Fla. Stat.

If you find that (defendant) **committed Aggravated Fleeing, you must then determine whether the State proved beyond a reasonable doubt that [he] [she] caused [death] [or] [severe injury] [or] [moderate injury] [or] [slight injury] to** (victim)**.**

Give when the State alleged the victim was a "vulnerable road user."

§ 316.027(2)(f), Fla. Stat. Insert applicable definitions from § 316.003, Fla. Stat.

If you find that the State proved beyond a reasonable doubt that (defendant) **committed elements #1 – #4, you must then determine whether the State also proved beyond a reasonable doubt that** (victim) **in element #1 was:**

[a pedestrian].

[actually engaged in work upon a highway].

[actually engaged in work upon utility facilities along a highway].

[engaged in the provision of emergency services within the right-of-way].

[operating a [bicycle] [electric bicycle] [motorcycle] [scooter] [moped] lawfully on the roadway].

[riding an animal].

[lawfully operating [a farm tractor or similar vehicle designed primarily for farm use] [a skateboard] [roller-skates] [in-line skates] [a horse-drawn carriage] [an electric personal assistive mobility device] [a wheelchair] on [a public right-of-way]

[crosswalk] [shoulder of the roadway]].

Gaulden v. State, 195 So. 3d 1123 (Fla. 2016); State v. Elder, 975 So.2d 481 (Fla. 2d DCA 2007).

For the defendant to be "involved in a crash," a vehicle, though not necessarily the defendant's vehicle, must collide with another vehicle, person, or object.

Give if applicable. State v. Elder, 975 So.2d 481 (Fla. 2d DCA 2007).

"Involved" means to draw in as a participant, to implicate, to relate closely, to connect, to have an effect on, to concern directly, or to affect.

Patterson v. State, 512 So. 2d 1109 (Fla. 1st DCA 1987).

"Willfully" means intentionally, knowingly, and purposely.

§ 316.062(1), Fla. Stat.

"Identifying information" means the name, address, vehicle registration number, and, if available and requested, the exhibition of the defendant's license or permit to drive.

"Reasonable assistance" includes carrying or making arrangement to carry the injured person to a physician or hospital for medical treatment if it is apparent that treatment is necessary, or if such carrying is requested by the injured person.

§ 316.003, Fla. Stat. Some of these terms have their own statutory definitions, which should be given if necessary.

"Vehicle" means every device, in, upon, or by which any person or property is or may be transported or drawn upon a highway[, except personal delivery devices, mobile carriers, and devices used exclusively upon stationary rails or tracks].

§ 316.027(1)(a), Fla. Stat.

"Serious bodily injury" means an injury to a person [including the driver,] which consists of a physical condition that creates a substantial risk of death, serious disfigurement, or protracted loss or impairment of the function of a bodily member or organ.

Lesser Included Offenses

AGGRAVATED FLEEING OR ELUDING (LEAVING A CRASH INVOLVING DEATH AND THEN CAUSING INJURY OR PROPERTY DAMAGE TO ANOTHER) — 316.1935(4)(a) AND § 316.027(2)(c)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Leaving Scene of a Crash Involving Death*		316.027(2)(c)	28.4
Leaving Scene of Crash Involving Serious Bodily Injury*		316.027(2)(b)	28.4
Leaving Scene of a Crash Involving Injury*		316.027(2)(a)	28.4
Fleeing to Elude LEO		316.1935(1)	28.6
	Fleeing to Elude LEO	316.1935(3)(b)	28.8(a)
	Fleeing to Elude LEO	316.1935(3)(a)	28.8
	Fleeing to Elude LEO	316.1935(2)	28.7
Reckless Driving (if there was evidence that the fleeing was in a motor vehicle)		316.192(1)(b)	28.5
	Disobedience to Police or Fire Department Officials**	316.072(3)	28.18

Comments

Element #4 will need to be modified in cases where someone died because the deceased cannot receive information or assistance to which he or she is entitled under § 316.062(1), Fla. Stat. The revised instruction on element #4 will also depend on whether a police officer is present. In a case where someone died and no police officer was present, § 316.062(2), Fla. Stat., requires the driver of a vehicle involved in the crash to forthwith report the crash to the nearest office of a duly authorized police authority and provide the information specified in § 316.062(1), Fla. Stat.

*§ 316.1935(4), Fla. Stat., states that a person may be charged with both Aggravated Fleeing or Eluding and Leaving the Scene of a Crash Involving Death, Serious Bodily Injury, or Injury. Therefore, if a Leaving the Scene crime is charged as a separate count, then Leaving the Scene should not be given as a lesser-included offense of Aggravated Fleeing or Eluding.

**The Second District Court of Appeal requires Disobedience to Police to be given as a lesser when the charging document tracks the Fleeing statute. *See Koch v. State*, 39 So. 3d 464 (Fla. 2d DCA 2010); *Lucas v. State*, 192 So. 3d 1269 (Fla. 2d DCA 2016). The Committee retained Disobedience to Police in the Category Two box, however, because Disobedience to Police requires the police order or direction to be lawful and the crime of Fleeing to Elude LEO does not contain that element. *See State v. Kirer*, 120 So. 3d 60 (Fla. 4th DCA 2013); *Jackson v. State*, 463 So. 2d 372 (Fla. 5th DCA 1985).

This instruction was adopted in 2008 [976 So. 2d 1081] and amended in 2011 [73 So. 3d 136], 2015 [166 So. 3d 161], 2016 [192 So. 3d 1190], 2018 [236 So. 3d 244], 2019 [262 So. 3d 59], on October 2, 2020, on April 1, 2022, and on December 15, 2023.

28.8(e) AGGRAVATED FLEEING OR ELUDING (LEAVING A CRASH INVOLVING DAMAGE TO A VEHICLE OR PROPERTY THEN CAUSING INJURY OR PROPERTY DAMAGE TO ANOTHER)

§ 316.1935(4)(a) and § 316.061, Fla. Stat.

To prove the crime of Aggravated Fleeing or Eluding, the State must prove the following seven elements beyond a reasonable doubt:

1. (Defendant) **was the driver of a vehicle involved in a crash.**

2. **The crash resulted only in damage to a vehicle or other property.**

3. **The [vehicle] [other property] was [driven] [attended] by [a person] [**(name of person)**].**

4. (Defendant) **failed to stop at the scene of the crash or as close to the crash as possible and remain there until [he] [she] had given "identifying information" to the [driver or occupant of the damaged vehicle] [person attending the damaged vehicle or property] [and to any police officer at the scene of the crash or who is investigating the crash].**

5. **A duly authorized law enforcement officer ordered** (defendant) **to stop.**

6. (Defendant)**, knowing [he] [she] had been ordered to stop by a law enforcement officer, [willfully refused or failed to stop [his] [her] vehicle in compliance with the order to stop] [and after having stopped in knowing compliance with the order to stop, willfully fled in a vehicle in an attempt to elude the law enforcement officer].**

7. **As a result of** (defendant) **fleeing or eluding, [he] [she] caused [injury to] [damage to the property of]** (name of victim)**.**

If the State proves beyond a reasonable doubt that the defendant failed to give any part of the "identifying information," the State satisfies this element of the offense.

Gaulden v. State, 195 So. 3d 1123 (Fla. 2016); State v. Elder, 975 So.2d 481 (Fla. 2d DCA 2007).

For the defendant to be "involved in a crash," a vehicle, though not necessarily the defendant's vehicle, must collide with another vehicle, person, or object.

Give if applicable. State v. Elder, 975 So.2d 481 (Fla. 2d DCA 2007).

"Involved" means to draw in as a participant, to implicate, to relate closely, to connect, to have an effect on, to concern directly, or to affect.

Patterson v. State, 512 So. 2d 1109 (Fla. 1st DCA 1987).

"Willfully" means intentionally, knowingly, and purposely.

§ 316.062(1), Fla. Stat.

"Identifying information" means the name, address, vehicle registration number, and, if available and requested, the exhibition of the defendant's license or permit to drive.

§ 316.003, Fla. Stat. Some of these terms have their own statutory definitions, which should be given if necessary.

"Vehicle" means every device, in, upon, or by which any person or property is or may be transported or drawn upon a highway[, except personal delivery devices, mobile carriers, and devices used exclusively upon stationary rails or tracks].

Lesser Included Offenses

AGGRAVATED FLEEING OR ELUDING (LEAVING A CRASH INVOLVING DAMAGE TO A VEHICLE OR PROPERTY THEN CAUSING INJURY OR PROPERTY DAMAGE TO ANOTHER) — 316.1935(4)(a) AND 316.061

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Fleeing to Elude LEO		316.1935(1)	28.6
Leaving the Scene of a Crash Involving Damage to Vehicle or Property*		316.061	28.4(a)
	Fleeing to Elude LEO	316.1935(3)(b)	28.8(a)
	Fleeing to Elude LEO	316.1935(3)(a)	28.8
	Fleeing to Elude LEO	316.1935(2)	28.7

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Reckless Driving (if there was evidence that the fleeing was in a motor vehicle)		316.192(1)(b)	28.5
	Disobedience to Police or Fire Department Officials**	316.072(3)	28.18

Comments

*§ 316.1935(4), Fla. Stat., states that a person may be charged with both Aggravated Fleeing or Eluding and Leaving the Scene of a Crash Involving Damage to Attended Property. Therefore, if Leaving the Scene is charged as a separate count, then Leaving the Scene should not be given as a lesser-included offense of Aggravated Fleeing or Eluding.

As of November 2023, there was no case law directly addressing the issue of whether the State must prove the defendant knew, or should have known, of either the crash or the property damage to violate this statute. *Compare State v. Dorsett,* 158 So. 3d 557 (Fla. 2015), and *Mancuso v. State,* 652 So. 2d 370 (Fla. 1995), dealing with § 316.027, Fla. Stat., which, unlike § 316.061, Fla. Stat., contains an explicit willfulness requirement.

**The Second District Court of Appeal requires Disobedience to Police to be given as a lesser when the charging document tracks the Fleeing statute. *See Koch v. State*, 39 So. 3d 464 (Fla. 2d DCA 2010); *Lucas v. State,* 192 So. 3d 1269 (Fla. 2d DCA 2016). The Committee retained Disobedience to Police in the Category Two box, however, because Disobedience to Police requires the police order or direction to be lawful and the crime of Fleeing to Elude LEO does not contain that element. *See State v. Kirer*, 120 So. 3d 60 (Fla. 4th DCA 2013); *Jackson v. State*, 463 So. 2d 372 (Fla. 5th DCA 1985).

This instruction was adopted in 2008 [976 So. 2d 1081] and amended in 2011 [73 So. 3d 136], 2015 [166 So. 3d 161], 2016 [192 So. 3d 1190], 2018 [236 So. 3d 244], 2019 [262 So. 3d 59], on October 2, 2020, and on December 15, 2023.

28.9 NO VALID DRIVER LICENSE

§ 322.03, Fla. Stat.

To prove the crime of No Valid Driver License, the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) **drove a motor vehicle upon a highway in this state.**

2. **At the time, [he] [she] did not have a valid driver license recognized by the Department of Highway Safety and Motor Vehicles of the State of Florida.**

§ 322.01, Fla. Stat.

"Drive" means to operate or be in actual physical control of a motor vehicle in any place open to the general public for purposes of vehicular traffic.

§ 322.01, Fla. Stat. Some of these terms (such as "vehicle" and electric bicycle") have their own statutory definitions, which should be given if necessary.

"Motor vehicle" means any self-propelled vehicle, including a motor vehicle combination, not operated upon rails or guideway, excluding vehicles moved solely by human power[, motorized wheelchairs, and electric bicycles].

"Valid driver license" means a driver license recognized by the Department of Highway Safety and Motor Vehicles that has not expired, been suspended, revoked, or canceled, or is not in "suspension or revocation equivalent status."

§ 322.01, Fla. Stat.

"Highway" means the entire width between the boundary lines of every way or place if any part thereof is open to the use of the public for purposes of vehicular traffic.

§ 322.03, Fla. Stat.

"Expired" means the license was not renewed on or before the expiration date and more than 6 months have passed since the expiration date.

§ 322.01, Fla. Stat.

"Suspended" means the privilege to drive a motor vehicle has been temporarily withdrawn.

"Revoked" means the privilege to drive a motor vehicle has been terminated.

"Canceled" means that a license has been declared void and terminated.

"Suspension or revocation equivalent status" is a designation for a person who does not have a driver license or driving privilege but would qualify for suspension or revocation of his or her driver license or driving privilege if licensed.

The option of "on a vehicle" pertains to a vehicle such as a motorcycle.

"Actual physical control" of a motor vehicle means the defendant must be physically in or on the vehicle and have the capability to operate the vehicle, regardless of whether [he] [she] is actually operating the vehicle at the time.

Lesser Included Offense

NO VALID DRIVER LICENSE — 322.03			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
None			
	Attempt	777.04(1)	5.1

Comments

A person driving a moped upon a highway requires a driver license. *Soto v. State*, 711 So. 2d 1275 (Fla. 4th DCA 1998).

A special instruction will be needed for violations of § 322.03 Fla. Stat. in cases where the driver license was issued by another state exclusively to undocumented immigrants who were unable to prove lawful presence in the United States when the license was issued. *See* § 322.033, Fla. Stat.

§ 322.03(1)(b), Fla. Stat., is bumped up from a second degree misdemeanor to a first degree misdemeanor if there were one prior conviction. A withhold of adjudication may qualify as a conviction because of *Raulerson v. State*, 763 So. 2d 285 (Fla. 2000), and § 322.01(11), Fla. Stat., although there was no case law directly on point as of June 2025. However, pursuant to Fla. R. Traf. Ct. 6.560 and *Raulerson*, a withhold of adjudication that was obtained pursuant to § 318.14(10), Fla. Stat., does not qualify as a conviction.

Although there is no caselaw on point, it is possible that the existence of a prior conviction can be proven to the trial judge at sentencing as a recidivist factor and may not be an element of the crime that must be proven to the jury, based on *State v. Haddix*, 668 So.2d 1064 (Fla. 4th DCA 1996) and because of the recidivism exception in *Almendarez-Torres v. United States*, 523 U.S. 224 (1998) and the language in *Erlinger v. United States*, 144 S. Ct. 1840 (2024).

If the defendant has two or more prior convictions, § 322.03(1)(b), Fla. Stat., remains a first degree misdemeanor, but carries a mandatory minimum sentence of 10 days in jail. In that circumstance, unless a court determines the existence of the prior convictions is an element, it is unclear if a jury finding regarding the existence of a prior conviction would be needed for the judge to impose the mandatory jail sentence because of the recidivism exception in *Almendarez-Torres v. United States,* 523 U.S. 224 (1998) and the language in *Erlinger v. United States*, 144 S. Ct. 1840 (2024).

If a court determines, however, that a jury finding is required, it would be error to inform the jury of prior convictions. Therefore, if the charging document contains an allegation of prior convictions, do not read that allegation and do not send the charging document into the jury room. If the defendant is found guilty, the historical fact of previous convictions would then be determined beyond a reasonable doubt in a bifurcated proceeding. *See State v. Harbaugh*, 754 So. 2d 691 (Fla. 2000).

This instruction was adopted in 1981 and amended in 2007 [958 So. 2d 361], 2013 [131 So. 3d 692], on April 1, 2020, on October 2, 2020, on December 15, 2023, and on June 27, 2025.

28.9(A) NO VALID COMMERCIAL DRIVER LICENSE

§ 322.53, Fla. Stat.

To prove the crime of No Valid Commercial Driver License, the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) **drove a commercial motor vehicle in this state.**

2. At the time, the defendant did not have a valid commercial driver license issued by the Department of Highway Safety and Motor Vehicles of the State of Florida.

§ 322.01, Fla. Stat.

To "drive a commercial motor vehicle" means to operate or be in actual physical control of a commercial motor vehicle in any place open to the general public for purposes of vehicular traffic.

§ 322.01, Fla. Stat.

"Commercial motor vehicle" means any motor vehicle used on the streets or highways, which:

a. Has a gross vehicle weight rating of 26,001 pounds or more;

b. Is designed to transport more than 15 persons, including the driver, or;

c. Is transporting hazardous materials and is required to be placarded in accordance with 49 C.F.R. part 172, subpart F.

§ 322.01, Fla. Stat. Some of these terms (such as "vehicle" and "electric bicycle") have their own statutory definitions, which should be given if necessary.

"Motor vehicle" means any self-propelled vehicle, including a motor vehicle combination, not operated upon rails or guideway, excluding vehicles moved solely by human power[, motorized wheelchairs, and electric bicycles].

§ 322.01, Fla. Stat.

"Valid commercial driver license" means a Class A, Class B, or Class C driver license issued by the Department of Highway Safety and Motor

Vehicles of the State of Florida that has not expired, been disqualified, suspended, revoked or canceled, or is not in "suspension or revocation equivalent status."

§ 322.01, Fla. Stat.

"Street or Highway" means the entire width between the boundary lines of every way or place if any part thereof is open to the use of the public for purposes of vehicular traffic.

§ 322.03(3)(c), Fla. Stat.

"Expired" means the license was not renewed on or before the expiration date and that more than 30 days have passed since the expiration date.

§ 322.01, Fla. Stat.

"Disqualification" means a prohibition, other than an out-of-service order, that precludes a person from driving a commercial motor vehicle.

"Suspended" means the privilege to drive a motor vehicle has been temporarily withdrawn.

"Revoked" means the privilege to drive a motor vehicle has been terminated.

"Canceled" means that a license has been declared void and terminated.

"Suspension or revocation equivalent status" is a designation for a person who does not have a driver license or driving privilege but would qualify for suspension or revocation of his or her driver license or driving privilege if licensed.

The option of "on a vehicle" pertains to a vehicle such as a motorcycle.

"Actual physical control" of a vehicle means the defendant must be physically in or on the vehicle and have the capability to operate the vehicle, regardless of whether [he] [she] is actually operating the vehicle at the time.

Lesser Included Offense

NO VALID COMMERCIAL DRIVER'S LICENSE — 322. 53			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
None			
	No Valid Driver License	322.03	28.9
	Attempt	777.04(1)	5.1

Comments

If any of the exemptions set forth in § 322.53(2), Fla. Stat., may apply, a special instruction will be necessary.

If the State is relying on the "transporting hazardous materials" alternative for the definition of "commercial motor vehicle," a special instruction regarding 49 C.F.R. part 172, subpart F will be necessary.

This instruction was adopted in 2007 [958 So. 2d 361] and amended in 2013 [131 So. 3d 692], on April 1, 2020, and on October 2, 2020.

28.10 RESTRICTED LICENSE

§ 322.16, Fla. Stat.

To prove the crime of Operating a Motor Vehicle in Violation of the Restrictions Imposed in a Restricted License, the State must prove the following four elements beyond a reasonable doubt:

1. (Defendant) **drove a motor vehicle upon a highway in this state.**

2. **The license was restricted by the Department of Highway Safety and Motor Vehicles of this state.**

3. **The restriction was noted upon the license.**

4. **The defendant operated the motor vehicle in violation of the restriction.**

§ 322.01, Fla. Stat. Some of these terms (such as "vehicle" and "electric bicycle") have their own statutory definitions, which should be given if necessary.

"Motor vehicle" means any self-propelled vehicle, including a motor vehicle combination, not operated upon rails or guideway, excluding vehicles moved solely by human power[, motorized wheelchairs, and electric bicycles].

"Restricted operator's or chauffeur's license" means a license issued by the Department of Highway Safety and Motor Vehicles which is restricted in any manner.

"Highway" means the entire width between the boundary lines of a way or place if any part of that way or place is open to public use for purposes of vehicular traffic.

Lesser Included Offense

RESTRICTED LICENSE — 322.16			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
None			
	Attempt	777.04(1)	5.1

Comments

Under § 322.16(5), Fla. Stat., violation of a restriction imposed pursuant to § 322.16(1)(c), Fla. Stat., is a second-degree misdemeanor. Under

§ 322.16(6), Fla. Stat., a violation of a restriction imposed pursuant to another subsection is a moving violation.

This instruction was adopted in 1981 and amended in 2013 [131 So. 3d 692] and on October 2, 2020.

28.11 DRIVING [WHILE [LICENSE] [DRIVING PRIVILEGE] SUSPENDED, REVOKED OR CANCELED] [OR] [UNDER SUSPENSION OR REVOCATION EQUIVALENT STATUS] WITH KNOWLEDGE

§ 322.34(2), Fla. Stat.

To prove the crime of Driving [While [License] [Driving Privilege] was [Suspended] [Revoked] [Canceled]] [Under Suspension or Revocation Equivalent Status], the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **drove a motor vehicle upon a highway in this state.**

Give as applicable.

2. At that time,

a. [his] [her] [license] [driving privilege] was [suspended] [revoked] [canceled].

b. [he] [she] was under suspension or revocation equivalent status.

Give as applicable.

3. At that time, (defendant) **knew that**

a. [his] [her] [license] [driving privilege] was [suspended] [revoked] [canceled].

b. [he] [she] was under suspension or revocation equivalent status.

Whether (defendant) **knew of the [suspension] [revocation] [cancellation] [suspension or revocation equivalent status] is a question to be determined by you from the evidence.**

Give as applicable. See § 322.251(1), (2), and § 322.34(2),(3),(4), Fla. Stat.

Proof that there exists an entry in the records of the Department of Highway Safety and Motor Vehicles showing that notice of the [suspension] [revocation] [cancellation] was given by personal delivery is proof that such notice was given.

Proof that there exists an entry in the records of the Department of Highway Safety and Motor Vehicles showing that notice of the [suspension] [revocation] [cancellation] was deposited in United States

mail, first class, postage prepaid, addressed to the licensee at [his] [her] last known mailing address furnished to the department, is proof that such notice was sent.

If you find that (defendant) **had been previously cited for driving [while license [suspended] [revoked] [canceled] and [his] [her] license had not been reinstated, you may conclude that** (defendant) **knew of the [suspension] [revocation] [cancellation].**

If you find that (defendant) **admitted to knowing of the [suspension] [revocation] [cancellation] [suspension or revocation equivalent status], you may conclude that** (defendant) **knew of the [suspension] [revocation] [cancellation] [suspension or revocation equivalent status].**

If you find that (defendant) **had received a traffic citation that contained a provision notifying** (defendant) **that [his] [her] license [had been suspended, revoked, or canceled] [was under suspension or revocation equivalent status], you may conclude that** (defendant) **knew of the [suspension] [revocation] [cancellation] [suspension or revocation equivalent status].**

Do not give if the suspension was for failure to pay a traffic fine or for a financial responsibility violation. See § 322.34(2) and § 322.251(1), (2), Fla. Stat.

If you find that (defendant) **had received a [judgment] [order] rendered by [a court] [an adjudicatory body] which contained a provision notifying** (defendant) **that [his] [her] license had been [suspended] [revoked] [canceled], you may conclude that** (defendant) **knew of the [suspension] [revocation] [cancellation].**

If you find that the records of the Department of Highway Safety and Motor Vehicles include a [judgment] [order] rendered by [a court] [an adjudicatory body] that contains a provision notifying (defendant) **that [his] [her] license [had been [suspended] [revoked] [canceled]] [was under suspension or revocation equivalent status], you may conclude that** (defendant) **knew [his] [her] license was [suspended] [revoked] [canceled] [under suspension or revocation equivalent status]. You may accept or reject the inference depending upon the circumstances of the crime and the facts presented at trial.**

§ 322.01, Fla. Stat.

"Drive" means to operate [or be in actual physical control of] a motor vehicle in any place open to the general public for purposes of vehicular traffic.

§ 322.01, Fla. Stat. Some of these terms (such as "vehicle" and "electric bicycle") have their own statutory definitions, which should be given if necessary.

"Motor vehicle" means any self-propelled vehicle, including a motor vehicle combination, not operated upon rails or guideway, excluding vehicles moved solely by human power[, motorized wheelchairs, and electric bicycles].

§ 322.01, Fla. Stat.; State v. Tucker, 761 So. 2d 1248 (Fla. 2d DCA 2000).

"Highway" means the entire width between the boundary lines of every way or place if any part thereof is open to the use of the public for purposes of vehicular traffic. [A privately owned parking lot, that is open to public use by vehicles, is considered to be a highway.]

§ 322.251, Fla. Stat.

"Notice" means personal delivery or deposit in the United States mail, first class, postage prepaid, addressed to the defendant at [his] [her] last known address furnished to the Department of Highway Safety and Motor Vehicles. Mailing by the department shall constitute notification.

§ 322.01, Fla. Stat.

"Suspension or revocation equivalent status" is a designation by the Florida Department of Highway Safety and Motor Vehicles for a person who does not have a driver license or driving privilege but would qualify for suspension or revocation of his or her driver license or driving privilege if licensed.

"Suspended" means the privilege to drive a motor vehicle has been temporarily withdrawn.

"Revoked" means the privilege to drive a motor vehicle has been terminated.

"Canceled" means that a license has been declared void and terminated.

The option of "on a motor vehicle" pertains to motor vehicles such as motorcycles and mopeds.

"Actual physical control" of a motor vehicle means the defendant must be physically in [or on] the motor vehicle and have the capability to

operate the motor vehicle, regardless of whether [he] [she] is actually operating the motor vehicle at the time.

See the Comment section below regarding recidivism issues that do not require any finding other than the fact of a prior conviction.

Give if applicable in a bifurcated proceeding. § 322.34(2)(c), Fla. Stat.

A third or subsequent conviction is a first degree misdemeanor and requires a minimum sentence of 10 days in jail. However, a third or subsequent conviction becomes a third degree felony if the current alleged violation or the most recent prior violation of § 322.34(2), Fla. Stat., are related to and resulted from a violation of an enumerated crime.

Now that you have found the defendant guilty of Driving [While [License] [Driving Privilege] was [Suspended] [Revoked] [Canceled]] [Under Suspension or Revocation Equivalent Status], you must make two further findings.

First, you must determine whether the State proved beyond a reasonable doubt that the defendant has two prior convictions for Driving [While [License] [Driving Privilege] was [Suspended] [Revoked] [Canceled]] [Under Suspension or Revocation Equivalent Status]. A "conviction" means a determination of guilt that was the result of a plea or a trial, regardless of whether adjudication was withheld or a plea of nolo contendere was entered.

Second, you must determine whether the State proved beyond a reasonable doubt that the current case or the most recent conviction are related to Driving [While [License] [Driving Privilege] was [Suspended] [Revoked] [Canceled]] [Under Suspension or Revocation Equivalent Status] resulting from a violation of [Driving Under the Influence] [Refusal to Submit to a Urine, Breath-Alcohol, or Blood Alcohol test] [a traffic crime that caused death or serious bodily injury] [Fleeing or Eluding].

Lesser Included Offenses

DRIVING WHILE LICENSE SUSPENDED, REVOKED OR CANCELED OR DRIVING UNDER SUSPENSION OR REVOCATION EQUIVALENT STATUS, WITH KNOWLEDGE — 322.34(2)

CATEGORY ONE	CATEGORY TWO	FLA. STAT	INS. NO.
No Valid Driver's License		322.03	28.9
	Attempt	777.04(1)	5.1

Comments

This instruction should not be used for people who are alleged to have driven a motor vehicle while designated as a habitual traffic offender. For habitual traffic offenders, use instruction 28.11(a).

A person driving a moped upon a highway requires a valid driver license. *Soto v. State*, 711 So. 2d 1275 (Fla. 4th DCA 1998).

Pursuant to § 322.251(1), Florida Statutes, failure to receive the mailed order shall not affect or stay the effective date or term of the cancellation, suspension, or revocation of the defendant's driving privilege.

§ 322.34(2), Fla. Stat., is bumped up from a second degree misdemeanor to a first degree misdemeanor if there were one prior conviction. As of June 2025, a withhold of adjudication qualifies as a conviction because of *Raulerson v. State*, 763 So. 2d 285 (Fla. 2000), with one exception. Under Fla. R. Traf. Ct. 6.560 and *Raulerson*, a withhold of adjudication that was obtained pursuant to § 318.14(10), Fla. Stat., does not qualify as a conviction

Although there is no caselaw on point, it is possible that the existence of a prior conviction can be proven to the trial judge at sentencing as a recidivist factor and not as an element of the crime that must be proven to the jury, based on *State v. Haddix*, 668 So.2d 1064 (Fla. 4th DCA 1996) and because of the recidivism exception in *Almendarez-Torres v. United States*, 523 U.S. 224 (1998) and the language in *Erlinger v. United States*, 144 S. Ct. 1840 (2024).

If the defendant has two or more prior convictions, § 322.34(2)(b)2., Fla. Stat., remains a first degree misdemeanor, but carries a mandatory minimum sentence of 10 days in jail. In that circumstance, unless a court determines the existence of the prior convictions is an element, it is unclear if a jury finding regarding the existence of a prior conviction would be needed for the judge to impose the mandatory jail sentence because of the recidivism exception in *Almendarez-Torres v. United States*, 523 U.S. 224 (1998) and the language in *Erlinger v. United States*, 144 S. Ct. 1840 (2024).

If the court determines, however, that a jury finding is required, then it would be error to inform the jury of prior convictions. Therefore, if the charging document contains an allegation of prior convictions, do not read that allegation and do not send the charging document into the jury room. If the defendant is found guilty, the historical fact of previous convictions would then be determined beyond a reasonable doubt in a bifurcated proceeding. *See State v. Harbaugh*, 754 So. 2d 691 (Fla. 2000). However, an exception to the foregoing may occur when a prior conviction is necessary to prove the knowledge requirement in element 3 above of the current suspension.

This instruction was adopted in 1981 and amended in 2007 [958 So. 2d 361], 2013 [131 So. 3d 692], 2017 [231 So. 3d 384], on April 1, 2020, on October 2, 2020, and on June 27, 2025.

28.11(a) DRIVING WHILE DESIGNATED AS A HABITUAL TRAFFIC OFFENDER

§ 322.34(5), Fla. Stat.

To prove the crime of Driving While Designated as a Habitual Traffic Offender, the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) **drove a motor vehicle upon a highway in this state.**

2. **At the time, [he] [she] was designated as a habitual traffic offender.**

§ 322.01, Fla. Stat. Some of these terms (such as "vehicle" and "electric bicycle") have their own statutory definitions, which should be given if necessary.

"Drive" means to operate or be in actual physical control of a motor vehicle in any place open to the general public for purposes of vehicular traffic.

"Motor vehicle" means any self-propelled vehicle, including a motor vehicle combination, not operated upon rails or guideway, excluding vehicles moved solely by human power [, motorized wheelchairs, and electric bicycles].

State v. Tucker, 761 So. 2d 1248 (Fla. 2d DCA 2000).

"Highway" means the entire width between the boundary lines of every way or place if any part thereof is open to the use of the public for purposes of vehicular traffic. [A privately owned parking lot, that is open to public use by vehicles, is considered to be a highway.]

"Habitual traffic offender" is any person whose record, as maintained by the Department of Highway Safety and Motor Vehicles, shows that [he] [she] has been designated a Habitual Traffic Offender.

The option of "on a vehicle" pertains to a vehicle such as a motorcycle.

"Actual physical control" of a vehicle means the defendant must be physically in or on the vehicle and have the capability to operate the vehicle, regardless of whether [he] [she] is actually operating the vehicle at the time.

Lesser Included Offenses

DRIVING WHILE DESIGNATED AS A HABITUAL TRAFFIC OFFENDER — 322.34(5)			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
No Valid Driver's License		322.03	28.9
	Attempt	777.04(1)	5.1

Comments

A person driving a moped upon a highway requires a driver license. *Soto v. State*, 711 So. 2d 1275 (Fla. 4th DCA 1998).

§ 322.34(5), Fla. Stat. states that Driving While Designated as a Habitual Traffic Offender (HTO) is a third degree felony. However, § 322.34(10), Fla. Stat. creates the possibility that the crime could be a misdemeanor depending on whether the defendant has a prior forcible felony conviction and the reasons for the driver license suspensions that led to the HTO designation. As of June 2025, it was unclear whether a withhold of adjudication for a forcible felony qualifies as a conviction.

If the charging document contains an allegation of one or more prior forcible felony convictions, do not read that allegation and do not send the information or indictment into the jury room. If the defendant is found guilty, and if the prior forcible felony conviction is determined by a judge or appellate court to be an element, the historical fact of a conviction shall be determined beyond a reasonable doubt in a bifurcated proceeding. *State v. Harbaugh*, 754 So. 2d 691 (Fla. 2000).

If the defendant does not have a forcible felony conviction and if the HTO designation resulted from three driver license suspension cases that came about because of reasons listed in § 322.34(10)(a)1.-5., Fla. Stat., this crime will be a misdemeanor. However, if at least one of the three prior driver license suspensions that resulted in the HTO designation was for a reason other than a circumstance listed in § 322.34(10)(a)1.-5., Fla. Stat., this crime will be a felony, regardless of whether the defendant had a prior forcible felony conviction. *See Wyrick v. State*, 50 So.3d 674 (Fla. 5th DCA 2010).

This instruction was adopted in 2007 [958 So. 2d 361] and amended in 2013 [131 So. 3d 692], on April 1, 2020, on October 2, 2020, on December 21, 2022, and on June 27, 2025.

28.11(b) DRIVING A COMMERCIAL MOTOR VEHICLE WHILE [[DRIVER LICENSE] [DRIVING PRIVILEGE] [CANCELED] [SUSPENDED] [REVOKED] [DISQUALIFIED]] [UNDER SUSPENSION OR REVOCATION EQUIVALENT STATUS]

§ 322.34(7), Fla. Stat.

To prove the crime of Driving a Commercial Motor Vehicle While [[Driver License] [Driving Privilege] [Canceled] [Suspended] [Revoked] [Disqualified]] [Under Suspension or Revocation Equivalent Status], the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) **drove a commercial motor vehicle upon a highway in this state**.

Give as applicable.

2. **At that time,**

    a. **[his] [her] [license] [driving privilege] was [canceled] [suspended] [revoked] [disqualified].**

    b. **[he] [she] was under suspension or revocation equivalent status].**

§ 322.01, Fla. Stat.

To "drive a commercial motor vehicle" means to operate or be in actual physical control of a commercial motor vehicle in any place open to the general public for purposes of vehicular traffic.

"Commercial motor vehicle" means any motor vehicle used on the streets or highways, which:

a. **Has a gross vehicle weight rating of 26,001 pounds or more;**

b. **Is designed to transport more than 15 persons, including the driver; or**

c. **Is transporting hazardous materials and is required to be placarded in accordance with 49 C.F.R. part 172, subpart F.**

Some of these terms (such as "vehicle" and "electric bicycle") have their own statutory definitions, which should be given if necessary.

"Motor vehicle" means any self-propelled vehicle, including a motor vehicle combination, not operated upon rails or guideway, excluding

vehicles moved solely by human power[, motorized wheelchairs, and electric bicycles].

State v. Tucker, 761 So. 2d 1248 (Fla. 2d DCA 2000).

"Highway" means the entire width between the boundary lines of every way or place if any part thereof is open to the use of the public for purposes of vehicular traffic. [A privately owned parking lot, that is open to public use by vehicles, is considered to be a highway.]

"Suspension or revocation equivalent status" is a designation by the Florida Department of Highway Safety and Motor Vehicles for a person who does not have a driver license or driving privilege but would qualify for suspension or revocation of his or her driver license or driving privilege if licensed.

"Suspended" means the privilege to drive a motor vehicle has been temporarily withdrawn.

"Revoked" means the privilege to drive a motor vehicle has been terminated.

"Canceled" means that a license has been declared void and terminated.

"Disqualified" means a prohibition, other than an out-of-service order, that precludes a person from driving a commercial motor vehicle.

The option of "on a motor vehicle" pertains to motor vehicles such as motorcycles and mopeds.

"Actual physical control" of a motor vehicle means the defendant must be physically in [or on] the motor vehicle and have the capability to operate the motor vehicle, regardless of whether [he] [she] is actually operating the motor vehicle at the time.

Lesser Included Offenses

DRIVING A COMMERCIAL MOTOR VEHICLE WHILE [[DRIVER LICENSE] [DRIVING PRIVILEGE] [CANCELED] [SUSPENDED] [REVOKED] [DISQUALIFIED]] [UNDER SUSPENSION OR REVOCATION EQUIVALENT STATUS] — 322.34(7)

CATEGORY ONE	CATEGORY TWO	FLA. STAT	INS. NO.
No Valid Commercial Driver License		322.53	28.9(a)
	No Valid Driver License	322.03	28.9
	Driving While License/Driving Privilege Canceled, Suspended, Revoked or While Under Suspension or Revocation Status, With Knowledge	322.34(2)	28.11
	Attempt	777.04(1)	5.1

Comments

Pursuant to § 322.251(1), Fla. Stat., failure to receive the mailed order shall not affect or stay the effective date or term of the cancellation, suspension, or revocation of the defendant's driving privilege.

The crime in § 322.34(7), Fla. Stat., is bumped up from a first degree misdemeanor to a third degree felony if the defendant had a prior conviction for § 322.34(7), Fla. Stat. It is possible that a withhold of adjudication qualifies as a conviction because of *Raulerson v. State*, 763 So. 2d 285 (Fla. 2000), and § 322.01(11), Fla. Stat., although there was no case law directly on point as of June 2025. However, pursuant to Fla. R. Traf. Ct. 6.560 and *Raulerson*, a withhold of adjudication that was obtained pursuant to § 318.14(10), Fla. Stat., does not qualify as a conviction.

Although there is no caselaw on point, it is possible that the existence of the prior conviction can be proven to the trial judge at sentencing as a recidivist factor and not an element of the crime that must be proven to the jury, based on *State v. Haddix*, 668 So.2d 1064 (Fla. 4th DCA 1996) and because of the recidivism exception in *Almendarez-Torres v. United States*, 523 U.S. 224 (1998) and the language in *Erlinger v. United States*, 144 S. Ct. 1840 (2024).

If a court determines, however, that a jury finding is required, it would be error to inform the jury of prior convictions. Therefore, if the charging document contains an allegation of prior convictions, do not read that

allegation and do not send the charging document into the jury room. If the defendant is found guilty, the historical fact of previous convictions would then be determined beyond a reasonable doubt in a bifurcated proceeding. *See State v. Harbaugh*, 754 So. 2d 691 (Fla. 2000).

If any of the exemptions set forth in § 322.53(2), Fla. Stat., may apply, a special instruction will be necessary.

If the State is relying on the "transporting hazardous materials" alternative for the definition of "commercial motor vehicle," a special instruction regarding 49 C.F.R. part 172, subpart F will be necessary.

This instruction was adopted on April 1, 2020 and was amended on October 2, 2020, and on June 27, 2025.

28.12 OPERATING A MOTOR VEHICLE CARELESSLY OR NEGLIGENTLY CAUSING [SERIOUS BODILY INJURY] [DEATH] [WITHOUT HAVING A DRIVER LICENSE] [WHILE DRIVER LICENSE CANCELED, SUSPENDED, OR REVOKED FOR SPECIFIED REASON]

§ 322.34(6)(a) or (b), Fla. Stat.

To prove the crime of Operating a Motor Vehicle Carelessly or Negligently Causing [Serious Bodily Injury] [Death] [Without Having a Driver License] [While Driver License Suspended, Revoked, Canceled for Specified Reason], the State must prove the following four elements beyond a reasonable doubt:

1. (Defendant) **operated a motor vehicle in a careless or negligent manner.**

2. *Give 2a or 2b or both as applicable. If 2a is applicable, the reason for the suspension, revocation, or cancellation must come from §§ 316.655, 322.26(8), 322.27(2), 322.28(2), or 322.28(4), Fla. Stats.*

a. At the time, [his] [her] [driver license] [driving privilege] was [suspended] [revoked] [canceled] for (insert specified reason)**.**

b. At the time, [he] [she] did not have a driver license.

Give 3a or 3b or both as applicable.

3. At the time, (defendant) **knew**

a. [his] [her]] [driver license] [driving privilege] was [suspended] [revoked] [canceled].

b. [he] [she] did not have a driver license.

4. As a result of the careless or negligent operation, (defendant) **caused [the death of** (victim)**] [serious bodily injury to** (victim)**].**

§ 322.01, Fla. Stat. Some of these terms (such as "vehicle" and "electric bicycle") have their own statutory definitions, which should be given if necessary.

"Motor vehicle" means any self-propelled vehicle, including a motor vehicle combination, not operated upon rails or guideway, excluding vehicles moved solely by human power[, motorized wheelchairs, and electric bicycles].

§ 316.1925, Fla. Stat.

"Careless" means failing to operate a motor vehicle in a careful and prudent manner having regard for the width, grade, curves, corners, traffic, and all other attendant circumstances, so as not to endanger the life, limb, or property of any person.

"Negligent" means the failure to use reasonable care under the circumstances.

Give as applicable. § 322.01, Fla. Stat.

"Suspended" means the privilege to drive a motor vehicle has been temporarily withdrawn.

"Revoked" means the privilege to drive a motor vehicle has been terminated.

"Canceled" means that a driver license has been declared void and terminated.

Lesser Included Offenses

28.12 OPERATING A MOTOR VEHICLE CARELESSLY OR NEGLIGENTLY CAUSING [SERIOUS BODILY INJURY] [DEATH] [WITHOUT HAVING A DRIVER LICENSE] [WHILE DRIVER LICENSE CANCELED, SUSPENDED, OR REVOKED FOR SPECIFIED REASON] — 322.34(6)(a) OR (b)

CATEGORY ONE	CATEGORY TWO	FLA. STAT	INS. NO.
Driving While License Suspended, Revoked or Canceled with Knowledge if 322.34(6)(b) is charged.		322.34(2)	28.11
	No Valid Driver License	322.03	28.9

Comments

Although the statute does not explicitly require knowledge of the invalidity of the license, the Supreme Court of Florida has recognized such a requirement. *See State v. Smith*, 638 So. 2d 509 (Fla. 1994). *See also Waites v. State*, 702 So. 2d 1373 (4th DCA 1997).

A person driving a moped upon a highway requires a driver license. *Soto v. State,* 711 So. 2d 1275 (Fla. 4th DCA 1998).

This instruction was adopted in 2013 [131 So. 3d 720] and amended on April 1, 2020, on October 2, 2020, and on September 5, 2025.

28.13 REFUSAL TO SUBMIT TO TESTING – DRIVING UNDER THE INFLUENCE

§ 316.1939, Fla. Stat.

To prove the crime of Refusal to Submit to Testing – Driving Under the Influence, the State must prove the following five elements beyond a reasonable doubt:

Give 1a or 1b or both as applicable.

1. **A law enforcement officer had probable cause to believe** (defendant) **[drove] [was in actual physical control of] a motor vehicle in this state while**

   a. **under the influence of [an alcoholic beverage] [**(a chemical substance listed in 877.111 Fla. Stat.)**] [**(a controlled substance listed in Chapter 893)**] to the extent** (Defendant's) **normal faculties were impaired.**

   b. **[his] [her] [breath] [blood] alcohol level was .08 or higher.**

2. **The law enforcement officer lawfully arrested** (defendant) **for Driving Under the Influence.**

3. (Defendant) **was informed that if [he] [she] refused to submit to a [chemical] [physical] test of [his] [her] [breath] [urine], [his] [her] privilege to operate a motor vehicle would be suspended for a period of one year, or, in the case of a second or subsequent refusal, for a period of 18 months.**

4. (Defendant) **was informed that a refusal to submit to a lawful test of [his] [her] [breath] [urine] is a misdemeanor of the second degree, or if either [his] [her] driving privilege had been previously suspended, or if [he] [she] was previously fined under s. 327.35215, for a prior refusal to submit to a lawful test of [his] [her] [breath] [blood] [urine], is a misdemeanor in the first degree.**

5. (Defendant)**, after being so informed, refused to submit to a [chemical] [physical] test of [his] [her] [breath] [urine] when requested to do so by a [law enforcement officer] [correctional officer].**

BUI refusal

§ 327.35215 is the Florida statute that covers refusal to submit to testing after an arrest for Boating Under the Influence.

Inference. § 316.1939(3), Fla. Stat. Give if applicable.

You are permitted to conclude that (defendant's) **driving privilege had been previously suspended for a prior refusal to submit to a lawful test of [his] [her] [breath] [blood] [urine] if a record from the Department of Highway Safety and Motor Vehicles shows such a suspension.**

§ 316.003, Fla. Stat. Some of these terms have their own statutory definitions, which should be given if necessary.

"Motor vehicle" means any self-propelled vehicle not operated upon rails or guideway[, but not including any bicycle, electric bicycle. motorized scooter, electric personal assistive mobility device, mobile carrier, personal delivery device, swamp buggy, or moped].

"Vehicle" is every device, in, upon or by which any person or property is, or may be, transported or drawn upon a highway[, except personal delivery devices, mobile carriers, and devices used exclusively upon stationary rails or tracks].

Mathis v. Coats, 24 So. 3d 1284 (Fla. 2d DCA 2010).

"Probable cause" exists where the totality of circumstances, from the perspective of the law enforcement officer's knowledge, training, and experience, gave the officer reasonable grounds and a fair probability to believe that a crime had been committed.

Give if applicable. The option of "on a vehicle" pertains to vehicles such as motorcycles.

"Actual physical control" means the defendant must be physically in or on the motor vehicle and have the capability to operate the motor vehicle, regardless of whether [he] [she] is actually operating the vehicle at the time.

Give only if applicable.

Under Florida law, a person does not have the right to consult with a lawyer before deciding whether to submit to a [breath] [urine] test after being arrested for DUI. Therefore, a mistaken belief that there is such a right is not a defense to this crime.

Lesser Included Offense

No lesser included crimes have been identified for this offense.

Comments

Where the lawfulness of the arrest is at issue, a special instruction will be necessary.

This instruction was adopted in 2007 [965 So. 2d 811] and amended in 2013 [131 So. 3d 692], 2019 [262 So. 3d 59], on October 2, 2020, on January 7, 2022, on June 12, 2026, and on October 9, 2026.

28.13(a) REFUSAL TO SUBMIT TO TESTING – BOATING UNDER THE INFLUENCE

§ 327.359, Fla. Stat.

To prove the crime of Refusal to Submit to Testing – Boating Under the Influence, the State must prove the following six elements beyond a reasonable doubt:

Give 1a or 1b or both as applicable.

1. **A law enforcement officer had probable cause to believe** (defendant) **operated [or was in actual physical control of] a vessel in this state while**

   a. **under the influence of [an alcoholic beverage] [**(a chemical substance listed in 877.111 Fla. Stat.)**] [**(a controlled substance listed in Chapter 893)**] to the extent [his] [her] normal faculties were impaired.**

   b. **[his] [her] [breath] [blood] alcohol level was .08 or higher.**

2. **The law enforcement officer lawfully arrested** (defendant) **for Boating Under the Influence.**

3. (Defendant) **was informed that if [he] [she] refused to submit to a [chemical] [physical] test of [his] [her] [breath] [urine], [he] [she] would be subject to a fine of $500.**

4. (Defendant) **was informed that it is a misdemeanor to refuse to submit to a lawful test of [his] [her] [breath] [urine], if either [he] [she] had been previously fined under s. 327.35215, or if [his] [her] driving privilege had been previously suspended, for a prior refusal to submit to a lawful test of [his] [her] [breath] [blood] [urine].**

5. (Defendant)**, after being so informed, refused to submit to a [chemical] [physical] test of [his] [her] [breath] [urine] when requested to do so by a [law enforcement officer] [correctional officer].**

6. (Defendant) **had been previously fined under s. 327.35215 or [his] [her] driving privilege had been previously suspended for a prior refusal to submit to a lawful test of [his] [her] [breath] [blood] [urine].**

BUI refusal

s. 327.35215 is the Florida statute that covers refusal to submit to testing after an arrest for Boating Under the Influence.

Inference. § 316.1939(3), Fla. Stat. Give if applicable.

You are permitted to conclude that (defendant's) **driving privilege had been previously suspended for a prior refusal to submit to a lawful test of [his] [her] [breath] [blood] [urine] if a record from the Department of Highway Safety and Motor Vehicles shows such a suspension.**

§ 327.02, Fla. Stat. Some of these terms have their own definitions in § 327.02, Fla. Stat., which should be given if necessary. See State v. Davis, 110 So. 3d 27 (Fla. 2d DCA 2013) (holding that for a BUI prosecution, the state is not required to prove that the boat defendant was operating was subject to a license tax).

"Vessel" means a boat and includes every description of watercraft, barge, and airboat, other than a seaplane, on the water, used or capable of being used, as a means of transportation on water.

Mathis v. Coats, 24 So. 3d 1284 (Fla. 2d DCA 2010).

"Probable cause" exists where the totality of circumstances, from the perspective of the law enforcement officer's knowledge, training and experience, gave the officer reasonable grounds and a fair probability to believe that a crime had been committed.

§ 327.02, Fla. Stat. Give if applicable. "Operate" means to be in charge of or in command of [or in actual physical control of] a vessel upon the waters of this state, or to exercise control over or to have responsibility for a vessel's navigation or safety while the vessel is underway upon the waters of this state, or to control or steer a vessel being towed by another vessel upon the waters of the state.

"Actual physical control" means the defendant must be physically in or on the vessel and have the capability to operate the vessel, regardless of whether [he] [she] is actually operating the vessel at the time.

Lesser Included Offense

No lesser included crimes have been identified for this offense.

Comments

Where the lawfulness of the arrest is at issue, a special instruction will be necessary.

This instruction was adopted on January 7, 2022.

28.14 BOATING UNDER THE INFLUENCE

§ 327.35(1), Fla. Stat.

To prove the crime of Boating Under the Influence, the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) **operated a vessel.**

2. While operating the vessel, [he] [she]

Give 2a or 2b or both as applicable.

a. was under the influence of [alcoholic beverages] [a chemical substance] [a controlled substance] to the extent that [his] [her] normal faculties were impaired.

b. had a [blood] [breath]-alcohol level of .08 or more grams of alcohol per [100 milliliters of blood] [210 liters of breath].

Give if applicable. § 327.35(4), Fla. Stat.

If you find the defendant guilty of Boating Under the Influence, you must also determine whether the State has proven beyond a reasonable doubt whether:

a. the defendant had a [blood] [breath]-alcohol level of .15 or higher while operating the vessel.

b. the defendant was accompanied in the vessel by a person under the age of 18 years at the time of the Boating Under the Influence.

§ 327.02, Fla. Stat.

"Operate" means to be in charge of or in command of or in actual physical control of a vessel upon the waters of this state, or to exercise control over or to have responsibility for a vessel's navigation or safety while the vessel is underway upon the waters of this state, or to control or steer a vessel being towed by another vessel upon the waters of the state.

§ 327.02, Fla. Stat.; State v. Davis, 110 So. 3d 27 (Fla. 2d DCA 2013).

"Vessel" means a boat and includes every description of watercraft, barge, and airboat, other than a seaplane, on the water used or capable of being used as a means of transportation on water.

§ 327.354, Fla. Stat.

"Normal faculties" include but are not limited to the ability to see, hear, walk, talk, judge distances, operate a vessel, make judgments, act in emergencies and, in general, to normally perform the many mental and physical acts of our daily lives.

Shaw v. State, 783 So. 2d 1097 (Fla. 5th DCA 2001).

Impaired means diminished in some material respect.

§ 322.01, Fla. Stat.

"Alcoholic beverages" are considered to be substances of any kind and description which contain alcohol.

(_____) **is a controlled substance under Florida law.** *Ch. 893, Fla. Stat.*

(_____) **is a chemical substance under Florida law.** *§ 877.111, Fla. Stat.*

Give if appropriate. § 327.354(2)(a) and (2)(b), Fla. Stat.

1. **If you find from the evidence that while operating or in actual physical control of the vessel, the defendant had a [blood] [breath]-alcohol level of .05 or less, you shall presume that the defendant was not under the influence of alcoholic beverages to the extent that [his] [her] normal faculties were impaired; but this presumption may be overcome by other evidence demonstrating that the defendant was under the influence of alcoholic beverages to the extent that [his] [her] normal faculties were impaired.**

2. **If you find from the evidence that while operating or in actual physical control of the vessel, the defendant had a [blood] [breath]-alcohol level in excess of .05 but less than .08, that fact does not give rise to any presumption that the defendant was or was not under the influence of alcoholic beverages to the extent that [his] [her] normal faculties were impaired. In such cases, you may**

consider that evidence along with other evidence in determining whether the defendant was under the influence of alcoholic beverages to the extent that [his] [her] normal faculties were impaired.

It is not necessary to instruct on the "prima facie evidence of impairment" in § 327.354(2)(c), Fla. Stat., if the State charged the defendant with boating with a blood or breath-alcohol level of .08 or over. In those cases, if the jury finds that the defendant operated a vessel with an unlawful blood or breath-alcohol level, impairment becomes moot. Tyner v. State, 805 So. 2d 862 (Fla. 2d DCA 2001).

Give only if appropriate. State v. Burns, 661 So.2d 842 (Fla. 5th DCA 1995); Kurecka v. State, 67 So.3d 1052 (Fla. 4th DCA 2010).

A person [arrested] [being investigated] for Boating Under the Influence does not have the right to consult with an attorney before deciding whether to submit to a [breath] [urine] [blood] test.

Give only if appropriate

A person [arrested] [being investigated] for Boating Under the Influence does not have the right to consult with an attorney before deciding whether to submit to a [breath] [urine] [blood] test. However, if the defense maintains that the defendant mistakenly believed that [he] [she] did have such a right and refused to provide a [breath] [blood] [urine] sample because of that mistaken belief, you may consider that claim, as well as the state's competing claim that the defendant's refusal shows that [he] [she] did not want the police to obtain evidence regarding [his] [her] [[breath] [blood] alcohol level] [or] [drug consumption].

Defense of inoperability; give if applicable.

It is a defense to the charge of Boating Under the Influence if the vessel was inoperable at the time of the alleged offense, unless the defendant was controlling or steering the vessel while it was being towed by another vessel upon the waters of the state. However, it is not a defense if the defendant was boating under the influence before the vessel became inoperable.

**§ 327.35(6)(b), Fla. Stat. and § 327.35(6)(c), Fla. Stat.*

See Comments regarding issue of whether a jury finding is required. The following instruction is suggested if the judge determines a jury finding required. The State's allegation of a prior conviction should not be read to the jury, and the

trial must be bifurcated if a jury finding is required. Note: BUI and out-of-state DUI/DWI convictions count as prior convictions. See §316.193(6), Fla. Stat.

Now that you have found the defendant guilty of Boating Under the Influence, you must further determine whether the State proved beyond a reasonable doubt that the defendant was previously convicted of [Boating Under the Influence] [(insert qualifying conviction(s)**] and that the BUI for which you just found the defendant guilty was committed within [5 years] [10 years] after the date of a prior conviction.**

Lesser Included Offense

BOATING UNDER THE INFLUENCE — 327.35(1)			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
None			
	Attempt	777.04(1)	5.1

Comments

*The penalties for BUI are increased if the defendant has one or more prior BUI or otherwise qualifying convictions. Because some of the increased penalties apply only to the recidivism fact of prior conviction(s), it is possible that a jury finding is not required for the existence of those prior conviction(s). Therefore, a jury finding may not be necessary for the increased penalties based on prior conviction(s) in § 327.35(2)(a), Fla. Stat., or in § 327.35(2)(b)2., Fla. Stat. However, the judge must impose a jail sentence of at least 10 days if the second BUI conviction occurred within 5 years, or of at least 30 days if the third BUI conviction occurred within 10 years, of the date of a prior BUI or otherwise qualifying conviction. Because of *Erlinger v. United States*, 602 U.S. 821 (2024), the courts may require the jury to find that the "within 5-year" or "within 10-year" requirement has been proven beyond a reasonable doubt in cases where the State is seeking the minimum mandatory jail sentence.

This instruction was adopted in 2009 [6 So. 3d 574] and amended in 2012 [87 So. 3d 679], 2014 [146 So. 3d 1110], 2016 [192 So. 3d 1190], and on June 12, 2026.

28.15 BOATING UNDER THE INFLUENCE CAUSING PROPERTY DAMAGE OR INJURY

§ 327.35(3)(a), (3)(b), (3)(c)1, Fla. Stat.

To prove the crime of Boating Under the Influence Causing [Property Damage] [Injury], the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **operated a vessel.**

2. While operating the vessel, [he] [she]

Give 2a or 2b or both as applicable.

a. was under the influence of [alcoholic beverages] [a chemical substance] [a controlled substance] to the extent that [his] [her] normal faculties were impaired.

b. had a [blood] [breath]-alcohol level of .08 or more grams of alcohol per [100 milliliters of blood] [210 liters of breath].

3. As a result of operating the vessel, (defendant) **caused or contributed to causing [damage to the property of** (victim)**] [injury to the person of** (victim)**].**

Give if applicable. Mizell v. State, 350 So. 3d 97 (Fla. 1st DCA 2022).

The conduct of [(victim)**] [another] [another person] is a defense to this crime only when that conduct was the sole cause of the crash that resulted in property damage or injury.**

Give if applicable. § 327.35(4), Fla. Stat.

If you find the defendant guilty of Boating Under the Influence Causing [Property Damage] [Injury], you must also determine whether the State has proven beyond a reasonable doubt whether:

a. the defendant had a [blood] [breath]-alcohol level of .15 or higher while operating the vessel.

b. the defendant was accompanied in the vessel by a person under the age of 18 years at the time of the Boating Under the Influence.

§ 327.02, Fla. Stat.

"Operate" means to be in charge of or in command of or in actual physical control of a vessel upon the waters of this state, or to exercise control over or to have responsibility for a vessel's navigation or safety while the vessel is underway upon the waters of this state, or to control or steer a vessel being towed by another vessel upon the waters of the state.

§ 327.02, Fla. Stat.; State v. Davis, 110 So. 3d 27 (Fla. 2d DCA 2013).

"Vessel" means a boat and includes every description of watercraft, barge, and airboat, other than a seaplane, on the water used or capable of being used as a means of transportation on water.

§ 327.354, Fla. Stat.

"Normal faculties" include but are not limited to the ability to see, hear, walk, talk, judge distances, operate a vessel, make judgments, act in emergencies and, in general, to normally perform the many mental and physical acts of our daily lives.

Shaw v. State, 783 So. 2d 1097 (Fla. 5th DCA 2001).

Impaired means diminished in some material respect.

§ 322.01, Fla. Stat.

"Alcoholic beverages" are considered to be substances of any kind and description which contain alcohol.

(_____) **is a controlled substance under Florida law.** *Ch. 893, Fla. Stat.*

(_____) **is a chemical substance under Florida law.** *§ 877.111, Fla. Stat.*

Give if appropriate. § 327.354(2)(a) and (2)(b), Fla. Stat.

1. **If you find from the evidence that while operating or in actual physical control of the vessel, the defendant had a [blood] [breath]-alcohol level of .05 or less, you shall presume that the defendant was not under the influence of alcoholic beverages to the extent that [his] [her] normal faculties were impaired; but this presumption may be overcome by other evidence demonstrating that the defendant was under the influence of alcoholic beverages to the extent that [his] [her] normal faculties were impaired.**

2. If you find from the evidence that while operating or in actual physical control of the vessel, the defendant had a [blood] [breath]-alcohol level in excess of .05 but less than .08, that fact does not give rise to any presumption that the defendant was or was not under the influence of alcoholic beverages to the extent that [his] [her] normal faculties were impaired. In such cases, you may consider that evidence along with other evidence in determining whether the defendant was under the influence of alcoholic beverages to the extent that [his] [her] normal faculties were impaired.

It is not necessary to instruct on the "prima facie evidence of impairment" in § 327.354(2)(c), Fla. Stat., if the State charged the defendant with boating with a blood or breath-alcohol level of .08 or over. In those cases, if the jury finds that the defendant operated a vessel with an unlawful blood or breath-alcohol level, impairment becomes moot. Tyner v. State, 805 So. 2d 862 (Fla. 2d DCA 2001).

Give only if appropriate

A person [arrested] [being investigated] for Boating Under the Influence does not have the right to consult with an attorney before deciding whether to submit to a [breath] [urine] [blood] test. However, if the defense maintains that the defendant mistakenly believed that [he] [she] did have such a right and refused to provide a [breath] [blood] [urine] sample because of that mistaken belief, you may consider that claim, as well as the state's competing claim that the defendant's refusal shows that [he] [she] did not want the police to obtain evidence regarding [his] [her] [[breath] [blood] alcohol level] [or] [drug consumption].

Defense of inoperability; give if applicable.

It is a defense to the charge of Boating Under the Influence Causing [Property Damage] [Injury] if the vessel was inoperable at the time of the alleged offense, unless the defendant was controlling or steering the vessel while it was being towed by another vessel upon the waters of the state. However, it is not a defense if the defendant was boating under the influence before the vessel became inoperable.

**§ 327.35(6)(b), Fla. Stat. and § 327.35(6)(c), Fla. Stat.*

See Comments regarding issue of whether a jury finding is required. The following instruction is suggested if the judge determines a jury finding required. The State's allegation of a prior conviction should not be read to the jury, and the

trial must be bifurcated if a jury finding is required. Note: BUI and out-of-state DUI/DWI convictions count as prior convictions. See §316.193(6), Fla. Stat.

Now that you have found the defendant guilty of Boating Under the Influence, you must further determine whether the State proved beyond a reasonable doubt that the defendant was previously convicted of [Boating Under the Influence] [(insert qualifying conviction(s)**] and that the BUI for which you just found the defendant guilty was committed within [5 years] [10 years] after the date of a prior conviction.**

Lesser Included Offenses

BOATING UNDER THE INFLUENCE CAUSING PROPERTY DAMAGE OR INJURY — 327.35(3)(a), (3)(b), (3)(c)1.

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Boating under the Influence		327.35(1)	28.14
	Attempt	777.04(1)	5.1

Comments

*The penalties for BUI are increased if the defendant has one or more prior BUI or otherwise qualifying convictions. Because some of the increased penalties apply only to the recidivism fact of prior conviction(s), it is possible that a jury finding is not required for the existence of those prior conviction(s). Therefore, a jury finding may not be necessary for the increased penalties based on prior conviction(s) in § 327.35(2)(a), Fla. Stat., or in § 327.35(2)(b)2., Fla. Stat. However, the judge must impose a jail sentence of at least 10 days if the second BUI conviction occurred within 5 years, or of at least 30 days if the third BUI conviction occurred within 10 years, of the date of a prior BUI or otherwise qualifying conviction. Because of *Erlinger v. United States*, 602 U.S. 821 (2024), the courts may require the jury to find that the "within 5-year" or "within 10-year" requirement has been proven beyond a reasonable doubt in cases where the State is seeking the minimum mandatory jail sentence.

This instruction was adopted in 2009 [6 So. 3d 574] and amended in 2012 [87 So. 3d 679], 2014 [146 So. 3d 1110], 2016 [192 So. 3d 1190], on June 12, 2026, and on October 9, 2026.

28.16 [FELONY] BOATING UNDER THE INFLUENCE

§ 327.35(2)(b)1. or § 327.35(2)(b)3., Fla. Stat.

To prove the crime of Boating Under the Influence, the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) **operated a vessel.**

2. While operating the vessel, [he] [she]

Give 2a or 2b or both as applicable.

a. was under the influence of [alcoholic beverages] [a chemical substance] [a controlled substance] to the extent that [his] [her] normal faculties were impaired.

b. had a [blood] [breath]-alcohol level of .08 or more grams of alcohol per [100 milliliters of blood] [210 liters of breath].

Give if applicable. § 327.35(4), Fla. Stat.

If you find the defendant guilty of Boating Under the Influence, you must also determine whether the State has proven beyond a reasonable doubt whether:

a. the defendant had a [blood] [breath]-alcohol level of .15 or higher while operating the vessel.

b. the defendant was accompanied in the vessel by a person under the age of 18 years at the time of the Boating Under the Influence.

§ 327.02, Fla. Stat.

"Operate" means to be in charge of or in command of or in actual physical control of a vessel upon the waters of this state, or to exercise control over or to have responsibility for a vessel's navigation or safety while the vessel is underway upon the waters of this state, or to control or steer a vessel being towed by another vessel upon the waters of the state.

§ 327.02, Fla. Stat.; State v. Davis, 110 So. 3d 27 (Fla. 2d DCA 2013).

"Vessel" means a boat and includes every description of watercraft, barge, and airboat, other than a seaplane, on the water used or capable of being used as a means of transportation on water.

§ 327.354, Fla. Stat.

"Normal faculties" include but are not limited to the ability to see, hear, walk, talk, judge distances, operate a vessel, make judgments, act in emergencies and, in general, to normally perform the many mental and physical acts of our daily lives.

Shaw v. State, 783 So. 2d 1097 (Fla. 5th DCA 2001).

Impaired means diminished in some material respect.

§ 322.01, Fla. Stat.

"Alcoholic beverages" are considered to be substances of any kind and description which contain alcohol.

(_____) **is a controlled substance under Florida law.** *Ch. 893, Fla. Stat.*

(_____) **is a chemical substance under Florida law.** *§ 877.111, Fla. Stat.*

Give if appropriate. § 327.354(2)(a) and (2)(b), Fla. Stat.

1. **If you find from the evidence that while operating or in actual physical control of the vessel, the defendant had a [blood] [breath]-alcohol level of .05 or less, you shall presume that the defendant was not under the influence of alcoholic beverages to the extent that [his] [her] normal faculties were impaired; but this presumption may be overcome by other evidence demonstrating that the defendant was under the influence of alcoholic beverages to the extent that [his] [her] normal faculties were impaired.**

2. **If you find from the evidence that while operating or in actual physical control of the vessel, the defendant had a [blood] [breath]-alcohol level in excess of .05 but less than .08, that fact does not give rise to any presumption that the defendant was or was not under the influence of alcoholic beverages to the extent that [his] [her] normal faculties were impaired. In such cases, you may consider that evidence along with other evidence in determining whether the defendant was under the influence of alcoholic beverages to the extent that [his] [her] normal faculties were impaired.**

It is not necessary to instruct on the "prima facie evidence of impairment" in § 327.354(2)(c), Fla. Stat., if the State charged the defendant with boating with a blood or breath-alcohol level of .08 or over. In those cases, if the jury finds that the defendant operated a vessel with an unlawful blood or breath-alcohol level, impairment becomes moot. Tyner v. State, 805 So. 2d 862 (Fla. 2d DCA 2001).

Give only if appropriate. State v. Burns, 661 So.2d 842 (Fla. 5th DCA 1995); Kurecka v. State, 67 So.3d 1052 (Fla. 4th DCA 2010).

A person [arrested] [being investigated] for Boating Under the Influence does not have the right to consult with an attorney before deciding whether to submit to a [breath] [urine] [blood] test.

Give only if appropriate

A person [arrested] [being investigated] for Boating Under the Influence does not have the right to consult with an attorney before deciding whether to submit to a [breath] [urine] [blood] test. However, if the defense maintains that the defendant mistakenly believed that [he] [she] did have such a right and refused to provide a [breath] [blood] [urine] sample because of that mistaken belief, you may consider that claim, as well as the state's competing claim that the defendant's refusal shows that [he] [she] did not want the police to obtain evidence regarding [his] [her] [[breath] [blood] alcohol level] [or] [drug consumption].

Defense of inoperability; give if applicable.

It is a defense to the charge of Boating Under the Influence if the vessel was inoperable at the time of the alleged offense, unless the defendant was controlling or steering the vessel while it was being towed by another vessel upon the waters of the state. However, it is not a defense if the defendant was boating under the influence before the vessel became inoperable.

See Comments regarding the issue of whether a jury finding is required. The instruction in a. below is suggested if the judge determines a jury finding is required. The State's allegation of prior convictions should not be read to the jury, and the trial must be bifurcated for jury findings on prior convictions Note: A BUI or a DUI/DWI conviction, whether in Florida or out-of-state, counts as a prior conviction. See § 327.35(6), Fla. Stat.

Since you have found the defendant guilty of Boating Under the Influence, you must now determine whether the State has proven beyond a reasonable doubt whether:

a. the defendant was previously convicted two times of [Boating Under the Influence] [(insert qualifying convictions)] and one of the prior convictions took place within 10 years of the Boating Under the Influence that you just found the defendant committed.

b. the defendant was previously convicted three times of [Boating Under the Influence] [(insert qualifying convictions)].

Lesser Included Offenses

[FELONY] BOATING UNDER THE INFLUENCE — PRIOR CONVICTIONS — 327.35(2)(b)1. OR 327.35(2)(b)3.

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
BUI		327.35(1)	28.14
	Attempt	777.04(1)	5.1
	BUI causing property damage or injury	327.35(3)(a), (3)(b), (3)(c)1.	28.15

Comments

*It is a third degree felony if a person who commits a BUI has 3 prior BUIs or otherwise qualifying convictions. In *State v. Harbaugh*, 754 So. 2d 691 (Fla. 2000), the Florida Supreme Court indicated the 3 prior convictions for that type of felony DUI are questions of fact for the jury to determine.

Another type of felony BUI occurs when a person commits a BUI, has two prior BUIs or otherwise qualifying convictions, and the third violation occurred within 10 years of a prior conviction. Because of *Erlinger v. United States*, 602 U.S. 821 (2024), the courts may require the jury to find that the 10-year requirement is met.

This instruction should be used for Felony BUI based on prior convictions. For Felony BUI based on prior convictions, it is error to inform the jury of prior convictions before the verdict on the underlying BUI charge is rendered. Therefore, if the information or indictment contains an allegation of prior convictions, do not read that allegation and do not send the information or indictment into the jury room. If the defendant is found guilty of BUI, the historical fact of prior convictions shall be determined separately by the jury in a bifurcated proceeding. See State v. Harbaugh, 754 So. 2d 691 (Fla. 2000).

This instruction was adopted in 2009 [6 So. 3d 574] and amended in 2012 [87 So. 3d 679], 2014 [146 So. 3d 1110], 2016 [192 So. 3d 1190], and on June 12, 2026.

28.17 BOATING UNDER THE INFLUENCE CAUSING SERIOUS BODILY INJURY

§ 327.35(3)(a), (3)(b), (3)(c)2, Fla. Stat.

To prove the crime of Boating Under the Influence Causing Serious Bodily Injury, the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **operated a vessel.**

2. **While operating the vessel, [he] [she]**

Give 2a or 2b or both as applicable.

   a. **was under the influence of [alcoholic beverages] [a chemical substance] [a controlled substance] to the extent that [his] [her] normal faculties were impaired.**

   b. **had a [blood] [breath]-alcohol level of .08 or more grams of alcohol per [100 milliliters of blood] [210 liters of breath].**

3. **As a result of operating the vessel,** (defendant) **caused or contributed to causing serious bodily injury to** (victim)**.**

Give if applicable. Mizell v. State, 350 So. 3d 97 (Fla. 1st DCA 2022).

The conduct of [(victim)**] [another] [another person] is a defense to this crime only when that conduct was the sole cause of the crash that resulted in injury.**

Give if applicable. § 327.35(4), Fla. Stat.

If you find the defendant guilty of Boating Under the Influence Causing Serious Bodily Injury, you must also determine whether the State has proven beyond a reasonable doubt whether:

   a. **the defendant had a [blood] [breath]-alcohol level of .15 or higher while operating the vessel.**

   b. **the defendant was accompanied in the vessel by a person under the age of 18 years at the time of the Boating Under the Influence.**

§ 327.02, Fla. Stat.

"Operate" means to be in charge of or in command of or in actual physical control of a vessel upon the waters of this state, or to exercise control over or to have responsibility for a vessel's navigation or safety while the vessel is underway upon the waters of this state, or to control or steer a vessel being towed by another vessel upon the waters of the state.

§ 327.02, Fla. Stat.; State v. Davis, 110 So. 3d 27 (Fla. 2d DCA 2013).

"Vessel" means a boat and includes every description of watercraft, barge, and airboat, other than a seaplane, on the water used or capable of being used as a means of transportation on water.

§ 327.354, Fla. Stat.

"Normal faculties" include but are not limited to the ability to see, hear, walk, talk, judge distances, operate a vessel, make judgments, act in emergencies and, in general, to normally perform the many mental and physical acts of our daily lives.

Shaw v. State, 783 So. 2d 1097 (Fla. 5th DCA 2001).

Impaired means diminished in some material respect.

§ 322.01, Fla. Stat.

"Alcoholic beverages" are considered to be substances of any kind and description which contain alcohol.

(_____) **is a controlled substance under Florida law.** *Ch. 893, Fla. Stat.*

(_____) **is a chemical substance under Florida law.** *§ 877.111, Fla. Stat.*

§ 327.353(1)(b), Fla. Stat.

"Serious bodily injury" means a physical condition that creates a substantial risk of death, serious personal disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

Give if appropriate. § 327.354(2)(a) and (2)(b), Fla. Stat.

1. **If you find from the evidence that while operating or in actual physical control of the vessel, the defendant had a [blood] [breath]-alcohol level of .05 or less, you shall presume that the defendant was not under the influence of alcoholic beverages to the extent that [his] [her] normal faculties were impaired;**

but this presumption may be overcome by other evidence demonstrating that the defendant was under the influence of alcoholic beverages to the extent that [his] [her] normal faculties were impaired.

2. **If you find from the evidence that while operating or in actual physical control of the vessel, the defendant had a [blood] [breath]-alcohol level in excess of .05 but less than .08, that fact does not give rise to any presumption that the defendant was or was not under the influence of alcoholic beverages to the extent that [his] [her] normal faculties were impaired. In such cases, you may consider that evidence along with other evidence in determining whether the defendant was under the influence of alcoholic beverages to the extent that [his] [her] normal faculties were impaired.**

It is not necessary to instruct on the "prima facie evidence of impairment" in § 327.354(2)(c), Fla. Stat., if the State charged the defendant with boating with a blood or breath-alcohol level of .08 or over. In those cases, if the jury finds that the defendant operated a vessel with an unlawful blood or breath-alcohol level, impairment becomes moot. Tyner v. State, 805 So. 2d 862 (Fla. 2d DCA 2001).

Give only if appropriate. State v. Burns, 661 So.2d 842 (Fla. 5th DCA 1995); Kurecka v. State, 67 So.3d 1052 (Fla. 4th DCA 2010).

A person [arrested] [being investigated] for Boating Under the Influence does not have the right to consult with an attorney before deciding whether to submit to a [breath] [urine] [blood] test.

Give only if appropriate

A person [arrested] [being investigated] for Boating Under the Influence does not have the right to consult with an attorney before deciding whether to submit to a [breath] [urine] [blood] test. However, if the defense maintains that the defendant mistakenly believed that [he] [she] did have such a right and refused to provide a [breath] [blood] [urine] sample because of that mistaken belief, you may consider that claim, as well as the state's competing claim that the defendant's refusal shows that [he] [she] did not want the police to obtain evidence regarding [his] [her] [[breath] [blood] alcohol level] [or] [drug consumption].

Defense of inoperability; give if applicable.

It is a defense to the charge of Boating Under the Influence Causing Serious Bodily Injury if the vessel was inoperable at the time of the

alleged offense, unless the defendant was controlling or steering the vessel while it was being towed by another vessel upon the waters of the state. However, it is not a defense if the defendant was boating under the influence before the vessel became inoperable.

Lesser Included Offenses

BOATING UNDER THE INFLUENCE CAUSING SERIOUS BODILY INJURY — 327.35(3)(a),(3)(b),(3)(c)2.

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Boating under the Influence Causing Injury		327.35(3)(a)(b)(c)1.	28.15
Boating under the influence		327.35(1)	28.14
	Attempt	777.04(1)	5.1
	Boating under the influence causing property damage	327.35(3)(a), (3)(b), (3)(c)1.	28.15

Comment

This instruction was adopted in 2009 [6 So. 3d 574] and amended in 2012 [87 So. 3d 679], 2014 [146 So. 3d 1110], 2016 [192 So. 3d 1190], on June 12, 2026, and on October 9, 2026.

28.18 FAILURE TO OBEY THE LAWFUL ORDER OF A [POLICE] [FIRE] [TRAFFIC] OFFICIAL

§ 316.072(3), Fla. Stat.

To prove the crime of Failure to Obey the Lawful Order of a (*insert type of official from the list in § 316.072(3), Fla. Stat.*)**, the State must prove the following five elements beyond a reasonable doubt:**

1. (Defendant) **was [operating a [vehicle] [bicycle]] [walking] upon [a state-maintained highway] [county-maintained highway] [municipal street or alley] [place where vehicles have the right to travel].**

2. (Name of official) **gave a lawful [order] [or] [direction] to** (defendant) **regarding the operation of a vehicle or bicycle or the movement of a pedestrian.**

3. At the time, (name of official) **was acting in [his] [her] capacity as a [law enforcement officer] [traffic crash investigation officer] [traffic infraction enforcement officer] [member of the fire department who was at the scene of a fire, rescue operation, or other emergency].**

4. (Defendant) **knew that [he] [she] had been given a[n] [order] [direction] by a [law enforcement officer] [traffic crash investigation officer] [traffic infraction enforcement officer] [member of the fire department who was at the scene of a fire, rescue operation, or other emergency].**

5. (Defendant) **willfully failed to obey [or] [willfully refused to comply] with the [order] [or] [direction] given.**

Give as applicable.

§ 316.003, Fla. Stat. Some of these terms have their own statutory definitions, which should be given if necessary.

A "vehicle" is every device, in, upon, or by which any person or property is or may be transported or drawn upon a highway[, except personal delivery devices, mobile carriers, and devices used exclusively upon stationary rails or tracks].

Patterson v. State, 512 So. 2d 1109 (Fla. 1st DCA 1987).

"Willfully" means intentionally, knowingly, and purposely.

§ 316.003, Fla. Stat.

A "bicycle" is every vehicle propelled solely by human power having two tandem wheels, and including any device generally recognized as a bicycle though equipped with two front or two rear wheels. [The term does not include a scooter or similar device.]

§ 316.640, Fla. Stat.

A "traffic crash investigation officer" is an individual who successfully completed instruction in traffic accident investigation and court presentation through the Selective Traffic Enforcement Program as approved by the Criminal Justice Standards and Training Commission and funded through the National Highway Traffic Safety Administration or a similar program approved by the Criminal Justice Standards and Training Commission, and who is employed by (insert relevant agency listed in § 316.640, Fla. Stat.)**.**

A "traffic infraction enforcement officer" is an individual who successfully completed instruction in traffic enforcement procedures and court presentation through the Selective Traffic Enforcement Program as approved by the Division of Criminal Justice Standards and Training of the Department of Law Enforcement, or through a similar program, and who is employed by (insert relevant agency listed in § 316.640, Fla. Stat.)**.**

Lesser Included Offense

FAILURE TO OBEY LAWFUL ORDER— 316.072(3)			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
None			
	Attempt	777.04(1)	5.1

Comments

A special instruction will be necessary in cases where the defense claims the order or direction was not lawful.

This instruction was adopted in 2015 [166 So. 3d 161] and amended in 2017 [211 So. 3d 995], 2019 [262 So. 3d 59], and on October 2, 2020.

28.19 RECKLESS [OPERATION OF A VESSEL] [MANIPULATION]

§ 327.33(1), Fla. Stat.

To prove the crime of Reckless [Operation of a Vessel] [Manipulation], the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **[operated a vessel] [manipulated any [water skis] [aquaplane or similar device]].**

2. (Defendant) **did so with a willful or wanton disregard for the safety of persons or property.**

3. (Defendant) **[operated the vessel] [manipulated the [water skis] [aquaplane or similar device]] at a speed or in a manner as to [endanger or that was likely to endanger life or limb] [or] [injure a person] [or] [damage the property of a person].**

Give a. or b. or both as applicable.

If you find the defendant guilty of Reckless [Operation of a Vessel] [Manipulation], you must also determine whether the State proved beyond a reasonable doubt that the defendant's reckless [operation of a vessel] [manipulation]:

a. resulted in an accident that caused damage to the property or person of another.
b. resulted in an accident that caused serious bodily injury.

Give if applicable. § 316.192, Fla. Stat.

Serious bodily injury means a physical condition that creates a substantial risk of death, serious personal disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

Give if applicable. Reaves v. State, 979 So. 2d 1066 (Fla. 1st DCA 2008).

The conduct of [(victim)**] [another] [another person] is a defense to this crime only when that conduct was the sole cause of the accident that resulted in [property damage] [injury] [serious bodily injury].**

Give as applicable.

§ 327.02, Fla. Stat.

"Operate" means to be in charge of, in command of, or in actual

physical control of a vessel upon the waters of this state, to exercise control over or to have responsibility for a vessel's navigation or safety while the vessel is underway upon the waters of this state, or to control or steer a vessel being towed by another vessel upon the waters of the state.

§ 327.02, Fla. Stat.; State v. Davis, 110 So. 3d 27 (Fla. 2d DCA 2013).

"Vessel" means a boat and includes every description of watercraft, barge, and airboat, other than a seaplane, on the water used or capable of being used as a means of transportation on water.

W.E.B. v. State, 553 So. 2d 323 (Fla. 1st DCA 1989).

"Willful" means intentionally, knowingly, and purposely.

"Wanton" means with a conscious and intentional indifference to consequences and with knowledge that damage is likely to be done to persons or property.

§ 327.02, Fla. Stat.

"Person" means an individual, partnership, firm, corporation, association, or other entity.

Give if applicable and insert additional instructions from § 327.331, Fla. Stat. as necessary.

A vessel other than a law-enforcement or rescue vessel that approaches within [100 feet of a divers-down warning device on a river, inlet, or navigation channel] [or] [300 feet of a divers-down warning device on waters other than a river, inlet, or navigation channel] must proceed no faster than necessary to maintain headway and steerageway. A violation of this law constitutes Reckless Operation of a Vessel.

Lesser Included Offense

RECKLESS [OPERATION OF A VESSEL] [MANIPULATION] — 327.33(1)			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
None			
	Culpable Negligence	784.05(1)	8.9

Comment

This instruction was adopted in 2018 [238 So. 3d 192] and amended on March 20, 2026.

28.20 IMPERSONATING A TRANSPORTATION NETWORK COMPANY DRIVER

§ 316.2021, Fla. Stat.

To prove the crime of Impersonating a Transportation Network Company Driver, the State must prove the following element beyond a reasonable doubt:

Give as applicable.

1. (Defendant) **willfully impersonated a transportation network company driver by:**

    a. **making a false statement.**

    b. **displaying counterfeit signage or emblems of a trade dress, trademark, brand, or logo of a transportation network company.**

    c. **engaging in an act that falsely represented that [he] [she] represented a transportation network company.**

    d. **engaging in an act that falsely represented that [he] [she] was responding to a passenger ride request for a transportation network company.**

"Transportation network company driver" means an individual who:

1. **Receives connections to potential riders and related services from a transportation network company; and**

2. **In return for compensation, uses a transportation network company vehicle to offer or provide a prearranged ride to a rider upon connection through a digital network.**

"Transportation network company" means an entity operating in Florida pursuant to Section 627.748 of Florida Statutes using a digital network to connect a rider to a transportation network company driver, who provides prearranged rides. A transportation network company does not include a taxicab association or an individual, corporation, partnership, sole proprietorship, or other entity that arranges medical transportation for individuals qualifying for Medicaid or Medicare pursuant to a contract with the state or a managed care organization.

"Digital network" means any online-enabled technology application service, website, or system offered or used by a transportation network

company which enables the prearrangement of rides with transportation network company drivers.

Define "ridesharing" and "carpool" from § 341.031, Fla. Stat. and § 450.28, Fla. Stat. if necessary.

"Prearranged ride" means the provision of transportation by a driver to a rider, beginning when a transportation network company driver accepts a ride requested by a rider through a digital network controlled by a transportation network company, continuing while the transportation network company driver transports the rider, and ending when the last rider exits from and is no longer occupying the transportation network company vehicle. The term does not include a taxicab or street hail service and does not include ridesharing, carpool, or any other type of service in which the driver receives a fee that does not exceed the driver's cost to provide the ride.

"Rider" means an individual who uses a digital network to connect with a transportation network company driver in order to obtain a prearranged ride in the transportation network company driver's transportation network company vehicle between points chosen by the rider. A person may use a digital network to request a prearranged ride on behalf of a rider.

"Street hail" means an immediate arrangement on a street with a driver by a person using any method other than a digital network to seek immediate transportation.

"Transportation network company vehicle" means a vehicle that is not a taxicab or jitney and that is:

1. **Used by a transportation network company driver to offer or provide a prearranged ride; and**

2. **Owned, leased, or otherwise authorized to be used by the transportation network company driver.**

A vehicle that is let or rented to another for consideration, or a motor vehicle that is compliant with the Americans with Disabilities Act and is owned and used by a company that uses a digital network to facilitate prearranged rides to persons with disabilities for compensation, may be used as a transportation network company vehicle.

Give only if § 316.2021(2)(b), Fla. Stat. is charged.

If you find the defendant guilty of Impersonating a Transportation Network Company Driver, you must further determine whether the State proved beyond a reasonable doubt that the crime occurred [during the commission of a separate felony offense] [or] [to facilitate the commission of a separate felony offense].

The Court instructs you that the crime of (insert name of felony) **is a felony offense.**

The felony offense of (insert name of felony**) is committed when the following occurs:** (Insert elements of the felony offense but do not include a burden of proof).

Lesser Included Offense

IMPERSONATING A TRANSPORTATION NETWORK COMPANY DRIVER — 316.2021			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
None			
	Theft	812.014	14.1

Comment

This instruction was adopted on September 12, 2025.

28.21 USING A PROHIBITED LIGHT TO [STOP] [ATTEMPT TO STOP] ANOTHER VEHICLE

§ 316.2397, Fla. Stat.

To prove the crime of Using a Prohibited Light to [Stop] [Attempt to Stop] another vehicle, the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **[drove] [moved] [caused to be moved] any [vehicle] [equipment] upon any highway in Florida.**

2. **The [vehicle] [equipment] had a lamp or device on it [showing] [displaying] a [red] [red and white] [blue] light that was visible from directly in front of the [vehicle] [equipment].**

3. **By doing so,** (defendant) **[effected] [attempted to effect] the stop of another vehicle.**

§ 316.003, Fla. Stat. Some of these terms have their own statutory definitions, which should be given if necessary.

A "vehicle" is every device, in, upon, or by which any person or property is or may be transported or drawn upon a highway[, except personal delivery devices, mobile carriers, and devices used exclusively upon stationary rails or tracks].

§ 316.003, Fla. Stat. contains other definitions of "highway" that should be given if applicable.

A "highway" means the entire width between the boundary lines of every way or place of whatever nature when any part thereof is open to the use of the public for purposes of vehicular traffic.

Lesser Included Offenses

The Committee on Standard Jury Instructions in Criminal Cases identified no lesser included offenses.

Comments

See Chapter 316 for vehicles that are exempted from this crime.

This instruction was adopted on March 20, 2026.

28.22 USING A LICENSE PLATE OBSCURING DEVICE

§ 320.262(4), Fla. Stat.

To prove the crime of Using a License Plate Obscuring Device, the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) **used a license plate obscuring device.**

2. **[He] [She] did so to assist in committing a crime or in escaping from or avoiding detection or arrest in connection with committing a crime.**

A "license plate obscuring device" means a manual, electronic, or mechanical device designed or adapted to be installed on a motor vehicle for the purpose of:

a. **Switching between two or more license plates to permit a motor vehicle operator to change the license plate displayed on the motor vehicle;**

b. **Hiding a license plate from view by flipping the license plate so that the license plate number is not visible;**

c. **Covering, obscuring, or otherwise interfering with the legibility, angular visibility, or detectability of the primary features or details, including the license plate number or validation sticker, on the license plate;**

   or

d. **Interfering with the ability to record the primary features or details, including the license plate number or validation sticker, on the license plate.**

§ 320.01, Fla. Stat. contains additional definitions of 'motor vehicle" and exclusions which should be given if applicable.

"Motor vehicle" means an automobile, motorcycle, truck, trailer, semitrailer, truck tractor and semitrailer combination, or any other vehicle operated on the roads of this state, used to transport persons or property, and propelled by power other than muscular power.

Lesser Included Offense

USING A LICENSE PLATE OBSCURING DEVICE— 320.262(4)			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
Possession of a License Plate Obscuring Device		320.262	--
	Attempt	777.04(1)	5.1

Comment

This instruction was adopted on March 20, 2026.

28.23 LEAVING THE SCENE OF AN ACCIDENT INVOLVING [DEATH] [SERIOUS BODILY INJURY] [INJURY] [PROPERTY DAMAGE] WHILE OPERATING A VESSEL

§ 327.30(5), Fla. Stat.

To prove the crime of Leaving the Scene of an Accident Involving [Death] [Serious Bodily Injury] [Injury] [Property Damage] While Operating a Vessel, the State must prove the following four elements beyond a reasonable doubt:

1. (Defendant) **was the operator of a vessel involved in an accident.**

2. (Defendant) **knew that [he] [she] was involved in an accident.**

3. **The accident resulted in [property damage only] [injury to (victim)] [serious bodily injury to** (victim)] **[the death of** (victim)] **[death to an unborn child].**

4. (Defendant) **left the scene of the accident**

   a. **without giving all possible aid to persons involved;**

      or

   b. **without making a reasonable effort to locate the owner or persons affected;**

      or

   c. **without subsequently giving notice of the accident to the appropriate law enforcement official as required by Florida law.**

Give only if applicable. § 327.30(5)(b), Fla. Stat.

If you find the defendant guilty of Leaving the Scene of an Accident Involving [Death] [the death of an unborn child], you must further determine whether the State proved beyond a reasonable doubt that the defendant knew of the death and intentionally and purposely left the scene of the accident.

§ 327.02, Fla. Stat.

To be the "operator of a vessel" means to be in charge of or in command of or in actual physical control of a vessel upon the waters of this state, or to exercise control over or to have responsibility for a

vessel's navigation or safety while the vessel is underway upon the waters of this state, or to control or steer a vessel being towed by another vessel upon the waters of Florida.

§ 327.02, Fla. Stat.; State v. Davis, 110 So. 3d 27 (Fla. 2d DCA 2013).

"Vessel" means a boat and includes every description of watercraft, barge, and airboat, other than a seaplane, on the water used or capable of being used as a means of transportation on water.

Gaulden v. State, 195 So. 3d 1123 (Fla. 2016); State v. Elder, 975 So.2d 481 (Fla. 2d DCA 2007).

An "accident" requires that a vessel, though not necessarily the defendant's vessel, must collide with another vessel, person, or object.

If the defendant's vessel did not collide with another vessel, person, or object, you may find the defendant was involved in an accident if [he] [she] operated the vessel that caused or contributed to causing an accident.

§ 327.30, Fla. Stat.

Florida law requires the operator of a vessel involved in an accident, by the quickest means available, and without delay, to give notice of the accident to one of the following agencies: the Division of Law Enforcement of the Fish and Wildlife Conservation Commission; the sheriff of the county within which the accident occurred; or the police chief of the municipality within which the accident occurred.

Give if serious bodily injury is charged. § 327.30(5)(a)(3), Fla. Stat.

"Serious bodily injury" means an injury to a person, including the operator, which consists of a physical condition that creates a substantial risk of death, serious disfigurement, or protracted loss or impairment of the function of a bodily member or organ.

Give if death of an unborn child is charged.

An "unborn child" means a member of the species *Homo sapiens*, at any stage of development, who is carried in the womb.

Lesser Included Offense

LEAVING THE SCENE OF AN ACCIDENT INVOLVING DEATH — 327.30(5)(a)4.

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Leaving the Scene of an Accident Involving Serious Bodily Injury*		327.30(5)(a)3.	28.23
Leaving the Scene of an Accident Involving Injury*		327.30(5)(a)2.	28.23
	Attempt	777.04(1)	5.1

LEAVING THE SCENE OF AN ACCIDENT INVOLVING SERIOUS BODILY INJURY — 327.30(5)(a)3.

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Leaving the Scene of a Crash Involving Injury		327.30(5)(a)2.	28.23
	Attempt	777.04(1)	5.1

Comments

Unlike § 316.027, Fla. Stat., § 327.30, Fla. Stat., does not criminalize a willful violation of the statute, except where a death occurred and where the State is seeking a 4-year minimum mandatory sentence. For that reason, the Committee on Standard Jury Instructions in Criminal Cases has not added an element for the State to prove that the defendant knew (or should have known) of an outcome (property damage, injury, serious bodily injury, or death). As of May 2026, the courts had not decided whether the statute needs a *mens rea* pertaining to a result of the accident.

*In *Williams v. State*, 732 So. 2d 431 (Fla. 2d DCA 1999), the court stated in dictum that Leaving the Scene of a Crash Involving Injury (for vehicle cases) is a necessarily lesser-included offense of Leaving the Scene of a Crash Involving Death. In other areas, however, where there is no dispute that a person was killed as a result of an incident giving rise to criminal charges, non-death lesser included crimes are not appropriate. *See, e.g., State v. Barritt,* 531 So. 2d 338 (Fla. 1988); *Humphrey v. State*, 690 So. 2d 1351 (Fla. 3d DCA 1997).

This instruction was adopted on June 12, 2026.

28.24 GIVING REQUIRED INFORMATION CONCERNING A VESSEL INVOLVED IN AN ACCIDENT THAT WAS FALSE OR BELIEVED TO BE FALSE

§ 327.3015, Fla. Stat.

To prove the crime of Giving Required Information Concerning a Vessel Involved in an Accident that was False or Believed to be False, the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **was [the operator of a vessel] [a witness to a vessel] [the owner of a vessel] [the person who leased, rented, or chartered a vessel] that was involved in an accident.**

2. (Defendant) **gave information [orally] [electronically] [in a written report] to [The Division of Law Enforcement of the Fish and Wildlife Conservation Commission] [the office of the sheriff] [an investigating police officer] about the boating accident that was required to be provided under Florida law.**

3. **At the time** (defendant) **gave the information, [he] [she] either knew the information was false or [he] [she] had reason to believe the information was false.**

§ 327.301, Fla. Stat.

Florida law requires the operator of a vessel that is in any manner involved in an accident resulting in bodily injury, death, or disappearance of any person or damage to any vessel or other property in an apparent aggregate amount of at least $2,000 to report to The Division of Law Enforcement of the Fish and Wildlife Conservation Commission or the office of the sheriff or an investigating police officer the cause and conditions existing at the time of the boating accident and the persons and vessels involved. The operator of the vessel may also be required to provide the policy numbers of liability insurance and the names of carriers covering any vessel involved in an accident.

Give if applicable.

The Division of Law Enforcement of the Fish and Wildlife Conservation Commission may require any witness to the accident to provide such a report.

Give if applicable.

Whenever the operator of the vessel is incapable of making a written report, the owner of the vessel must make the report not made by the operator.

*Give if applicable***.**

If the vessel was leased, rented, or chartered at the time of the accident, the person who offered the vessel for lease, rental, or charter is responsible for making the report.

§ 327.02, Fla. Stat.

To be the "operator of a vessel" means to be in charge of or in command of or in actual physical control of a vessel upon the waters of this state, or to exercise control over or to have responsibility for a vessel's navigation or safety while the vessel is underway upon the waters of this state, or to control or steer a vessel being towed by another vessel upon the waters of Florida.

§ 327.02, Fla. Stat.; State v. Davis, 110 So. 3d 27 (Fla. 2d DCA 2013).

"Vessel" means a boat and includes every description of watercraft, barge, and airboat, other than a seaplane, on the water used or capable of being used as a means of transportation on water.

Gaulden v. State, 195 So. 3d 1123 (Fla. 2016); State v. Elder, 975 So.2d 481 (Fla. 2d DCA 2007).

To be "involved in an accident," a vessel, though not necessarily the defendant's vessel, must collide with another vessel, person, or object.

Give if applicable. State v. Elder, 975 So.2d 481 (Fla. 2d DCA 2007).

"Involved" means to draw in as a participant, to implicate, to relate closely, to connect, to have an effect on, to concern directly, or to affect.

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comments

A special instruction will be necessary if the defendant is alleged to have given false information on a report other than the report required by § 327.301, Fla. Stat.

This instruction was adopted on March 20, 2026.

28.25 FALSE REPORT OF REQUIRED MOTOR VEHICLE INFORMATION

§ 316.067, Fla. Stat.

To prove the crime of False Report of Required Motor Vehicle Information, the State must prove the following four elements beyond a reasonable doubt:

1. (Defendant) **gave information [orally] [electronically] [in a written report] that was required under Chapter 316, Florida Statutes.**

2. **The information was given to** (insert receiver of information)**.**

3. **The information was false.**

4. **At the time that [he] [she] gave the information,** (defendant) **knew or had reason to believe that such information was false.**

Chapter 316, Florida Statutes, requires (insert the information required under Chapter 316)**.**

Lesser Included Offenses

The Committee on Standard Instructions in Criminal Cases identified no lesser included offenses.

Comments

This instruction was adopted on March 20, 2026.

CHAPTER 29 — MISCELLANEOUS CRIMES

29.8 PRACTICING LAW WITHOUT A LICENSE

§ 454.23, Fla. Stat.

To prove the crime of Practicing Law Without a License, the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) **[practiced law] [or] [held [himself] [herself] out to the public as qualified to practice law in Florida] [or] [willfully pretended to be qualified to practice law in Florida] [or] [willfully took or used any name, title, addition, or description implying that [he] [she] was qualified, or recognized by law as qualified, to practice law in Florida].**

2. **At the time, [he] [she] was not licensed or otherwise authorized to practice law in Florida.**

The Florida Supreme Court has not formulated a singular, all-encompassing definition of the "practice of law." In drafting a definition, trial judges should consider Florida Bar v. TIKD Services LLC, 326 So. 3d 1073 (Fla. 2021).

The "practice of law" includes (insert appropriate definition).

Give if applicable.

"Willfully" means intentionally, knowingly, and purposely.

Lesser Included Offense

PRACTICING LAW WITHOUT A LICENSE — 454.23			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
None			
	Attempt	777.04(1)	5.1

Comments

This instruction was adopted on April 25, 2023.

29.18 FAILURE TO APPEAR

§ 843.15, Fla. Stat.

To prove the crime of Failure to Appear, the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **was released from custody pursuant to Chapter 903, Florida's bail statute.**

2. (Defendant) **was released**

Give as applicable.

   a. **in connection with a felony charge.**

   b. **in connection with a misdemeanor charge.**

   c. **while awaiting sentencing.**

   d. **pending review by certiorari after conviction of an offense.**

3. **After [his] [her] release,** (defendant) **willfully failed to appear as required for** (insert name of proceeding, e.g. docket sounding, trial, sentencing) **before a [court] [judicial officer].**

Definitions.

Patterson v. State, 512 So. 2d 1109 (Fla. 1st DCA 1987), Corrales v. State, 84 So. 3d 406 (Fla.1st DCA 2012).

"Willfully" means intentionally, knowingly, and purposely.

Give if applicable.

"Review by Certiorari" means that an appellate court has chosen to examine the proceedings that have taken place in a lower court.

Lesser Included Offenses

FAILURE TO APPEAR — 843.15			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
None			
	Attempt	777.04(1)	5.1

Comment

An attorney's communications to a client about court dates is outside the protection of the attorney-client privilege. *Watkins v. State*, 516 So. 2d 1043 (Fla. 1st DCA 1987). A defendant may be convicted of Failure to Appear if he or she was released on his or her own recognizance. *King v. State*, 401 So. 2d 931 (Fla. 1st DCA 1981). A defendant who leaves during his or her trial may be convicted of Failure to Appear. *Howard v. State*, 457 So. 2d 1153 (Fla. 2d DCA 1984).

This instruction was adopted in 2013.

29.19 ABUSE OF A DEAD HUMAN BODY

§ 872.06(2), Fla. Stat.*

To prove the crime of Abuse of a Dead Human Body, the State must prove the following element beyond a reasonable doubt:

(Defendant) **[mutilated] [committed sexual abuse] [grossly abused] a dead human body.**

Give if applicable. § 872.06(1), Fla. Stat.

"Sexual abuse" means anal or female genital* penetration of a dead human body by the sexual organ of a person or by any other object; or contact or union of the penis, female genitals, or anus of a person with the mouth, penis, female genitals or anus of a dead human body; or contact or union of a person's mouth with the penis, female genitals, or anus of a dead human body.

"Female genitals*" includes the labia minora, labia majora, clitoris, vulva, hymen, and vagina.

Phillips v. State, 238 So. 3d 308 (Fla. 4th DCA 2018).

"Union" means contact.

Give if applicable.

Lakey v. State, 113 So. 3d 90 (Fla. 5th DCA 2013).

The definition of "an object" includes a finger.

Give if applicable. § 872.06(2), Fla. Stat.

An act done for a bona fide medical purpose or for any other lawful purpose does not constitute a violation of this statute. "Bona fide" means genuine.

Lesser Included Offense

ABUSE OF A DEAD HUMAN BODY — 872.06(2)			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
None			
	Attempt	777.04(1)	5.1

Comments

*Effective October 1, 2022, the Legislature changed "vagina" to "female genitals" in sex crimes-related statutes. Judges should ensure the jury instructions contain correct statutory terms, which will depend on the date alleged in the charging document. *Flores v. State,* 391 So. 3d 481 (Fla. 4th DCA 2024) is an example of an appellate court finding fundamental error when the trial judge expanded the definition of "vaginal penetration" by instructing on "female genital penetration."

As of November 2022, it was unclear whether an act done for a bona fide medical purpose or other lawful purpose should be treated as an affirmative defense or as an element that the State must disprove. If treated as an affirmative defense, the judge must then determine who has the burden of persuasion and what that burden is (preponderance, clear and convincing, or beyond a reasonable doubt).

"Mutilation" has not been defined as that term is used in this statute. In *English v. State,* 191 So. 3d 448 (Fla. 2016), the court considered § 316.605(1) Fla. Stat., a provision that included the term mutilation in relation to the obstruction of a license plate. While the majority opinion did not reach the issue, the dissenting opinion included a definition for mutilation as "encompass[ing] any severe injury that results in the cutting off or removal of an essential part of a person or thing and impairs its completeness, beauty or function." *Id. at* 454 n.2 (Fla. 2016) (Perry. J., dissenting), citing *State v. Stout,* 958 S.W.2d 32, 34 (Mo. App. E.D. 1997) (defining mutilation as used in an animal abuse statute). *See also* § 794.08(1), Fla. Stat., defining "female genital mutilation" as the "circumcising, excising or infibulating, in whole or in part, the labia majora, labia minora, or clitoris of a female person.

The term "grossly abused" has not been defined for purposes of this statute either. However, *see* § 825.102(2), Fla. Stat., defining aggravated abuse of an elderly person as occurring when a person commits an act on a victim that would constitute aggravated battery; willfully torturing, maliciously punishing, or willfully caging a victim; or knowingly abusing a victim and in so doing causing great bodily harm, permanent disability, or permanent disfigurement to the victim.

This instruction was adopted on December 21, 2022.

29.26 UNLAWFUL USE OF A TWO-WAY COMMUNICATIONS DEVICE

§ 934.215, Fla. Stat.

To prove the crime of Unlawful Use of a Two-Way Communications Device, the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) **used a two-way communications device.**

2. [He] [She] did so for the purpose of facilitating or furthering the commission of a felony.

Give if applicable.

The Court instructs you that (name of felony) **is a felony.**

Give if requested.

The term "two-way communications device" includes, but is not limited to a portable two-way wireless device.

Lesser Included Offenses

UNLAWFUL USE OF A TWO-WAY COMMUNICATION DEVICE — 934.215			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
None			
	Attempt	777.04(1)	5.1

Comments

As of November 2016, there was no definition in the statutes or case law for "two-way communications device."

If there is a dispute about whether the defendant was facilitating or furthering the commission of a felony as opposed to a misdemeanor, the court might consider instructing jurors on the elements of the felony.

This instruction was adopted in 2017.

29.27 UNLAWFUL DISCLOSURE OF THE LOCATION OF A CERTIFIED DOMESTIC VIOLENCE CENTER

§ 39.9057, Fla. Stat.

To prove the crime of Unlawful Disclosure of the Location of a Certified Domestic Violence Center, the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **[disclosed] [or] [published, disseminated, or disclosed any descriptive information or image that may identify] the location of a domestic violence center.**

2. (Defendant) **did so maliciously.**

3. **At the time, the domestic violence center was certified by the Department of Children and Families pursuant to § 39.905, Florida Statutes.**

As of November 2021, neither the legislature nor the appellate courts had determined whether the statute requires the state to prove legal malice or actual malice. In the absence of legislative or judicial clarification, trial judges should choose one of the following:

Legal malice.

"Maliciously" means intentionally, wrongfully and without any lawful justification or excuse.

Actual malice.

"Maliciously" means with ill will, hatred, spite, or an evil intent.

Reclassification.

The first degree misdemeanor in § 39.9057, Fla. Stat., becomes a third degree felony upon a second or subsequent conviction. As of November 2021, it was unclear whether a conviction required an adjudication of guilt. It was also unclear whether the reclassification requires the state to prove the prior to the factfinder under the beyond a reasonable doubt standard or whether the prior can be considered a recidivist factor that can be proven to the sentencing judge under the preponderance of the evidence standard. If viewed as an element, give the following:

Now that you have found the defendant guilty of Unlawful Disclosure of the Location of a Certified Domestic Violence Center, you must further determine whether the State has proven beyond a reasonable doubt

whether the defendant was previously convicted of Unlawful Disclosure of the Location of a Certified Domestic Violence Center.

Lesser Included Offense

UNLAWFUL DISCLOSURE OF THE LOCATION OF A CERTIFIED DOMESTIC VIOLENCE CENTER — 39.9057

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempt	777.04(1)	5.1

Comment

This instruction was approved on December 15, 2021.

CHAPTER 30 — LOITERING OR PROWLING, PUBLIC NUISANCE (INCLUDING ALCOHOL-RELATED) CRIMES

30.1 DISORDERLY INTOXICATION

§ 856.011, Fla. Stat.

To prove the crime of Disorderly Intoxication, the State must prove the following two elements beyond a reasonable doubt:

Give a or b as applicable.

a. 1. (Defendant) **was intoxicated, and**

2. [He] [She] endangered the safety of another [person] [property].

b. 1. (Defendant) **was intoxicated or drank any alcoholic beverage in a [public place] [in or upon a public conveyance] and**

2. [He] [She] caused a public disturbance.

"Intoxication" means more than merely being under the influence of an alcoholic beverage. Intoxication means that the defendant must have been so affected from the drinking of an alcoholic beverage as to have lost or been deprived of the normal control of either [his] [her] body or [his] [her] mental faculties, or both. Intoxication is synonymous with "drunk."

Optional Definition.

A "public place" is any place intended or designed to be frequented or resorted to by the public.

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comments

Prior to April 2026, this instruction was numbered 29.1.

As of February 2026, the term "in a public place" has not been defined for purposes of this statute by the Florida Supreme Court or a District Court of Appeal. Similarly, neither the Florida Supreme Court nor any District Court of Appeal have determined whether cells or common areas inside of a jail or a prison are "in a public place." The term "public place" has been interpreted to include the inside of a vehicle that is located in a public parking lot and the inside of a stall in a public restroom if freely visible from a public area. *See State v. Folks,* 723 So. 2d 369 (Fla. 4th DCA 1998) and *Ward v. State,* 636 So. 2d 68 (Fla. 5th DCA 1994). When crafting a special instruction for unique

circumstances, trial judges may also want to consider § 876.11, Fla. Stat., which provides a definition of "public place" that includes all walks, alleys, streets, boulevards, avenues, lanes, roads, highways or other ways or thoroughfares dedicated to public use or owned or maintained by public authority, and all grounds and buildings owned, leased by, operated, or maintained by public authority.

This instruction was adopted in 1981 and amended on November 20, 2020.

30.2 [SELLING] [GIVING] [SERVING] [PERMITTING SERVICE OF] [PERMITTING CONSUMPTION OF] AN ALCOHOLIC BEVERAGE [TO] [BY] A PERSON LESS THAN 21 YEARS OF AGE ON LICENSED PREMISES

§ 562.11(1)(a)1, Fla. Stat.

To prove the crime of (crime charged)**, the State must prove the following two elements beyond a reasonable doubt:**

Give 1a or 1b as applicable.

1. **a.** (Defendant) **[sold] [gave] [served] [permitted service of] an alcoholic beverage to** (name of person) **on licensed premises.**

   b. (Defendant) **permitted** (name of person) **to consume an alcoholic beverage on licensed premises.**

2. **At the time,** (name of person) **was less than 21 years of age.**

An "alcoholic beverage" means distilled spirits and all beverages containing one-half of 1 percent or more alcohol by volume. The percentage of alcohol by volume shall be determined by measuring the volume of the standard ethyl alcohol in the beverage and comparing it with the volume of the remainder of the ingredients as though the remainder ingredients were distilled water.

"Sold" means any transfer of an alcoholic beverage for a consideration, any gift of an alcoholic beverage in connection with, or as a part of, a transfer of property other than an alcoholic beverage for a consideration, or the serving of an alcoholic beverage by a club licensed under the Beverage Law.

"Licensed premises" means not only rooms where alcoholic beverages are stored or sold by the licensee, but also all other rooms in the building which are so closely connected therewith as to admit of free passage from drink parlor to other rooms over which the licensee has some dominion or control and shall also include all of the area embraced within the sketch, appearing on or attached to the application for the license involved and designated as such on said sketch, in addition to that included or designated by general law. The area embraced within the sketch may include a sidewalk or other outside area which is contiguous to the licensed premises.

Lesser Included Offenses

[SELLING] [GIVING] [SERVING] [PERMITTING SERVICE OF] [PERMITTING CONSUMPTION OF] AN ALCOHOLIC BEVERAGE [TO] [BY] A PERSON LESS THAN 21 YEARS OF AGE ON LICENSED PREMISES — § 562.11(1)(a)1

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempt	777.04(1)	5.1

Comments

Prior to April 2026, this instruction was numbered 29.3.

Florida courts have interpreted this statute as applying only to business establishments. *United Servs. Auto. Ass'n v. Butler*, 359 So. 2d 498 (Fla. 4th DCA 1978). It is yet to be determined whether the statute applies only to licensees of the business establishment.

This instruction was adopted in 2014 [146 So. 3d 1110].

30.3 [UNLAWFULLY SELLING ALCOHOLIC BEVERAGES AT A COMMERCIAL ESTABLISHMENT] [KEEPING AND MAINTAINING A PLACE WHERE ALCOHOLIC BEVERAGES ARE SOLD OR INTENDED TO BE SOLD UNLAWFULLY]

§ 562.12(1)(b), Fla. Stat.

To prove the crime of (crime charged)**, the State must prove the following element beyond a reasonable doubt:**

Give 1a or 1b as applicable.

1. **a.** (Defendant) **unlawfully sold an alcoholic beverage at a commercial establishment.**

   b. (Defendant) **kept and maintained a place where alcoholic beverages were sold or intended to be sold unlawfully.**

The Court instructs you that it is unlawful to sell an alcoholic beverage [without a license to do so issued by the Department of Business and Professional Regulation] [in a way not permitted by an alcoholic beverage license issued by the Department of Business and Professional Regulation] [(insert applicable unlawful way to sell alcohol)**].**

§ 561.01, Fla. Stat.

An "alcoholic beverage" means distilled spirits and all beverages containing one-half of 1 percent or more alcohol by volume. The percentage of alcohol by volume shall be determined by measuring the volume of the standard ethyl alcohol in the beverage and comparing it with the volume of the remainder of the ingredients as though the remainder ingredients were distilled water.

"Sold" means any transfer of an alcoholic beverage for a consideration, any gift of an alcoholic beverage in connection with, or as a part of, a transfer of property other than an alcoholic beverage for a consideration, or the serving of an alcoholic beverage by a club licensed under the Beverage Law.

Lesser Included Offenses

[UNLAWFULLY SELLING ALCOHOLIC BEVERAGES AT A COMMERCIAL ESTABLISHMENT] [KEEPING AND MAINTAINING A PLACE WHERE ALCOHOLIC BEVERAGES ARE SOLD OR INTENDED TO BE SOLD UNLAWFULLY] —§ 562.12(1)(b)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Unlawful Sale of Alcohol (only if element 1a is charged)		562.12(1)(a)	--
	Attempt	777.04(1)	5.1

Comments

Prior to April 2026, this instruction was numbered 29.4.

A second violation of § 562.12(1), Fla. Stat., bumps a third degree felony up to a second degree felony. *See* § 562.12(2), Fla. Stat. As of February 2026, it is unclear whether the existence of a prior violation should be treated as an element of the crime that must be found by the jury or whether a prior violation can be proven to the judge at sentencing. If treated as an element, it would be error to inform the jury of a prior violation before a verdict. Therefore, if the information or indictment contains an allegation of a prior violation, do not read the allegation and do not send the information or indictment into the jury room. If the defendant is found guilty, the historical fact of a previous violation would be determined beyond a reasonable doubt in a bifurcated proceeding. *See State v. Harbaugh*, 754 So. 2d 691 (Fla. 2000).

This instruction was adopted on February 21, 2025.

30.4 [DISORDERLY CONDUCT] [BREACH OF THE PEACE]

§ 877.03, Fla. Stat.

To prove the crime of [Disorderly Conduct] [Breach of the Peace], the State must prove the following element beyond a reasonable doubt:

(Defendant)

Give a–d as applicable.

a. committed an act or acts that [was] [were] of a nature that corrupted the public morals; [or]

b. outraged the sense of public decency; [or].

c. affected the peace and quiet of persons who witnessed the act or acts; [or]

d. engaged in [brawling or fighting].

Lesser Included Offense

[DISORDERLY CONDUCT] [BREACH OF THE PEACE] — § 877.03			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
None			
	Attempt	777.04(1)	5.1

Comments

Prior to April 2026, this instruction was numbered 29.5.

The statute often raises constitutional concerns. When a defendant claims that his or her conduct constituted protected speech, a special instruction will likely be necessary to ensure the jury does not convict a person for exercising a constitutional right. *See Chandler v. State*, 744 So. 2d 1058 (Fla. 4th DCA 1999).

A defendant who does not initiate a fight and acts to protect himself from the attacker may assert self-defense to the charge of Disorderly Conduct. *S.D.G. v. State*, 919 So. 2d 704, 705 (Fla. 5th DCA 2006).

This instruction was adopted in 2018 {256 So. 3d 1316].

30.5 LOITERING OR PROWLING

§ 856.021, Fla. Stat.

To prove the crime of Loitering or Prowling, the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) **loitered or prowled in a place, at a time, or in a manner not usual for law-abiding individuals.**

2. **Such loitering and prowling was under circumstances that warranted justifiable and reasonable alarm or immediate concern for safety of persons or property in the vicinity.**

Among the circumstances which may be considered in determining whether such alarm or immediate concern is warranted is the fact that the person:

1. **Takes flight upon appearance of a law enforcement officer.**

2. **Refuses to identify [himself] [herself].**

3. **Manifestly endeavors to conceal [himself] [herself] or any object.**

Unless flight by the person or other circumstances makes it impracticable, a law enforcement officer must afford the person an opportunity to dispel any alarm or immediate concern which would otherwise be warranted by requesting [him] [her] to identify [himself] [herself] and explain [his] [her] presence and conduct.

No person shall be convicted of this crime if the law enforcement officer did not comply with this procedure or if it appears that the explanation given by the person is true and, if believed by the officer at the time, would have dispelled the alarm or immediate concern.

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comment

Prior to April 2026, this instruction was numbered 29.7.

This instruction was adopted in 1981.

30.6 INTERRUPTING OR DISTURBING A [SCHOOL] [RELIGIOUS ASSEMBLY] [ASSEMBLY ACKNOWLEDGING THE DEATH OF AN INDIVIDUAL] [LAWFUL ASSEMBLY] [WITH A CREDIBLE THREAT]

§ 871.01(1), Fla. Stat.

To prove the crime of Interrupting or Disturbing a [School] [Religious Assembly] [Assembly Acknowledging the Death of an Individual] [Lawful Assembly] [With a Credible Threat], the State must prove the following element beyond a reasonable doubt:

(Defendant) **willfully and maliciously interrupted or disturbed**

Give as applicable.

a. a school.

b. an assembly of people meeting for the worship of God.

c. an assembly of people meeting for the purpose of acknowledging the death of an individual.

d. an assembly of people meeting for any lawful purpose.

"Willfully" means knowingly, intentionally, and purposely.

As of February 2026, it was unclear whether the statute requires actual malice or legal malice. In the absence of clarification from the legislature or an appellate court, trial judges must choose one of the following:

"Maliciously" means intentionally and without any lawful justification or excuse.

"Maliciously" means with ill will, hatred, spite, or an evil intent.

Give if § 871.01(1)(b), Fla. Stat. is charged.

If you find (defendant) **guilty of Interrupting or Disturbing a [School] [Religious Assembly] [Assembly Acknowledging the Death of an Individual] [Lawful Assembly], you must further determine if the State proved beyond a reasonable doubt that in doing the interrupting or disturbing, the defendant made a credible threat.**

§ 784.048(1), Fla. Stat.

"Credible threat" means a verbal or nonverbal threat, or a combination of the two, including threats delivered by electronic communication or implied by a pattern of conduct, which places the

person who is the target of the threat in reasonable fear for his or her safety or the safety of his or her family members or individuals closely associated with the person, and which is made with the apparent ability to carry out the threat to cause such harm. It is not necessary to prove that the person making the threat had the intent to actually carry out the threat, however, the State is required to prove the defendant was aware that a reasonable person could consider the threat as a serious expression of an intent to commit an act of violence.

Lesser Included Offenses*

INTERRUPTING OR DISTURBING A [SCHOOL] [RELIGIOUS ASSEMBLY] [ASSEMBLY ACKNOWLEDGING THE DEATH OF AN INDIVIDUAL] [LAWFUL ASSEMBLY] WITH A CREDIBLE THREAT – 871.01(1)(b)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Interrupting or Disturbing a School, Assembly (no credible threat)		871.01(1)(a)	29.15
	Attempt	777.04(1)	5.1

Comments

Prior to April 2026, this instruction was numbered 29.15.

*When the third-degree felony in § 871.01(1)(b), Fla. Stat., is charged, most judges will likely require the jurors to answer an interrogatory on the verdict form about whether the defendant made a credible threat. If so, there would be no lesser included crime of the first-degree misdemeanor in § 871.01(1)(a), Fla. Stat.

To commit an offense under § 871.01, Fla. Stat., a person must have deliberately acted to create a disturbance. That is, he must act with the intention that his behavior impedes the successful functioning of the assembly in which he has intervened, or with reckless disregard of the effect of his behavior. The acts complained of must be such that a reasonable person would expect them to be disruptive. Finally, the acts must, in fact, significantly disturb the assembly. These elements are inherent in the statute as drafted. *See S.H.B. v State*, 355 So.2d 1176, 1178 (Fla. 1978).

This instruction was adopted in 2008 [976 So. 2d 1081] and amended on September 8, 2023.

30.7 DISTURBING A MILITARY FUNERAL

871.01(2), Fla. Stat.

To prove the crime of Disturbing a Military Funeral, the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **willfully [interrupted] [disturbed] an assembly of people meeting for the purpose of acknowledging the death of an individual.**

2. The deceased individual was a member of the armed forces of the United States.

3. The assembly was attended by a military funeral honors detail.

"Willfully" means knowingly, intentionally and purposely.

A "military funeral honors detail" consists of at least two persons from the armed forces in proper uniform, at least one of whom was from the deceased=s branch of the military, and the funeral ceremony includes the playing of "Taps," followed by the folding and presentation of the United States flag to the family of the deceased.

Lesser Included Offenses

DISTURBING A MILITARY FUNERAL – 871.01(2)			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
Disturbing a school, religious or lawful assembly	None	871.01(1)	29.15

Comment

Prior to April 2026, this instruction was numbered 29.16.

See Title 10 U.S.C. § 1491 for further details.

To commit an offense under § 871.02 a person must have deliberately acted to create a disturbance. That is, he must act with the intention that his behavior impedes the successful functioning of the assembly in which he has intervened, or with reckless disregard of the effect of his behavior. The acts complained of must be such that a reasonable person would expect them to be disruptive. Finally, the acts must, in fact, significantly disturb the assembly. These elements are inherent in the statute as drafted. See *S.H.B. v State*, 355 So.2d 1176, 1178 (Fla. 1977).

This instruction was adopted in 2008 [976 So. 2d 1081].

30.8 UNLAWFUL PROTESTS

§ 871.015, Fla. Stat.

To prove the crime of Unlawful Protests, the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) [knowingly engaged in protest activities] [or] [knowingly caused protest activities to occur] within 500 feet of the property line of a [residence] [cemetery] [funeral home] [house of worship] [or] [other location].

Give 2a if the defendant personally did the protest activities.

2. a. (Defendant) knew that [his] [her] protest activities occurred [during] [or] [within one hour before or one hour after] the conducting of a funeral or burial at that location.

Give 2b if the defendant caused the protest activities to occur.

b. (Defendant) knew that the protest activities would occur [during] [or] [within one hour before or one hour after] the conducting of a funeral or burial at that location and the protest activities did take place [during] [or] [within one hour before or one hour after] the conducting of a funeral or burial at that location.

Give if applicable. § 871.015, Fla. Stat., is unclear whether the provision below is an element of the crime or an affirmative defense. In the absence of case law, judges must determine this issue. If an affirmative defense, judges must also determine who has the burden of persuasion and the standard of proof for that burden of persuasion. See Dixon v. United States, 548 U.S. 1 (2006), for further guidance.

It is not a crime for a person to [knowingly engage in] [or] [knowingly cause] protest activities that occur adjacent to that portion of a funeral procession which extends beyond 500 feet of the property line of the location of a funeral or burial.

§§ 871.015 (1), 316.1974 (1), Fla. Stat.

"Funeral or burial" means a service or ceremony offered or provided in connection with the final disposition, memorialization, interment, entombment, or inurnment of human remains or cremated human remains.

"Protest activities" means any actions, including picketing, which are undertaken with the intent to interrupt or disturb a funeral or burial.

Give if applicable.

"Funeral procession" means two or more vehicles accompanying the body of a deceased person, or traveling to the church, chapel, or other location at which the funeral service is to be held, in the daylight hours, including a funeral lead vehicle or a funeral escort vehicle.

Lesser Included Offenses

UNLAWFUL PROTESTS — 871.015			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
None			
	Attempt	777.04(1)	5.1

Comments

Prior to April 2026, this instruction was numbered as 29.16(a).

This instruction was adopted in 2015 [157 So. 3d 1027].

30.9 INTERFERENCE WITH A [SPORTING] [OR] [ENTERTAINMENT] EVENT

§ 871.05, Fla. Stat.

To prove the crime of Interference with a [Sporting] [or] [Entertainment] Event, the State must prove the following [two] [three][four] elements beyond a reasonable doubt:

Give if § 871.05(2)(a), Fla. Stat. is charged.

1. (Defendant) [**intentionally touched or struck** (victim) **against [his] [her] will] [or] [intentionally caused bodily harm to** (victim)**].**

2. (Defendant) **did so during a covered event.**

3. At the time, (victim) **was a covered participant.**

Give if § 871.05(2)(b), Fla. Stat. is charged.

1. (Defendant) **willfully [entered] [remained] in a restricted area.**

2. (Defendant) **did so without being authorized, licensed, or invited to [enter] [remain] in that restricted area.**

3. (Defendant) **did so during a covered event.**

Give if § 871.05(2)(c), Fla. Stat. is charged.

1. (Defendant) **willfully [entered] [remained] in a venue.**

2. (Defendant) **did so without being authorized, licensed, or invited to [enter] [remain] in that venue.**

3. (Defendant) **did so during a ticketed covered event wherein attendance exceeded 5,000 persons.**

Give if § 871.05(3)(c), Fla. Stat. is charged.

1. (Defendant) **solicited [another person] [**(name of person solicited)**], by offering money or any other thing of value to:**

2. – 4. *Insert the relevant appropriately worded three elements above.*

Give as applicable.

"Covered event" means an athletic competition or practice, including one conducted in a public venue, or a live artistic, theatrical, or other entertainment performance event. The duration of such event

includes the period from the time when a venue is held open to the public for such an event until the end of the athletic competition or performance event.

"Covered participant" means an umpire, officiating crew member, player, coach, manager, groundskeeper, or any artistic, theatrical, or other performer or sanctioned participant in a covered event. The term includes event operations and security employees working at a covered event.

"Restricted area" means any area designated for use by players, coaches, officials, performers, or other personnel administering a covered event that is on, or adjacent to, the area of play or performance.

§ 777.04(2), Fla. Stat.

To "solicit" means to command, encourage, or request another person to engage in specific conduct.

Lesser Included Offense

INTERFERENCE WITH A [SPORTING] [OR] [ENTERTAINMENT] EVENT — 871.05(2)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempt	777.04(1)	5.1

Comment

Prior to April 2026, this instruction was numbered 29.16(b).

This instruction was adopted on March 8, 2024, and amended on September 5, 2025.

30.10 ALLOWING AN OPEN HOUSE PARTY THAT CAUSED [DEATH] [SERIOUS BODILY INJURY]

§ 856.015(5), Fla. Stat.

To prove the crime of Allowing an Open House Party that Caused [Death] [Serious Bodily Injury], the State must prove the following seven elements beyond a reasonable doubt:

1. (Defendant) **was 18 years of age or older.**

2. (Defendant) **controlled a residence.**

3. (Defendant) **allowed an open house party at that residence.**

4. A minor [possessed] [consumed] a[n] [alcoholic beverage] [drug] at the residence during the open house party.

5. (Defendant) **knew that the minor [possessed] [consumed] a[n] [alcoholic beverage] [drug] at the residence during the open house party.**

6. (Defendant) **failed to take reasonable steps to prevent the [possession] [consumption] of a[n] [alcoholic beverage] [drug] by the minor at the residence during the open house party.**

7. *Give 7a or 7b as applicable.*

a. By doing so, (defendant) caused or contributed to causing [the death of] [serious bodily injury to] the minor.

b. By doing so and as a result of the minor's consumption of a[n] [alcoholic beverage] [drug] at the open house party, the minor caused or contributed to causing [the death of] [serious bodily injury to] (name of victim).

§ 856.015, Fla. Stat.

"Alcoholic beverage" means distilled spirits and any beverage containing 0.5 percent or more alcohol by volume.

"Control" means the authority or ability to regulate, direct, or dominate.

"Drug" means a controlled substance. The court instructs you that (name of controlled substance) **is a drug under Florida law.**

"Minor" means an individual not legally permitted by reason of age to possess alcoholic beverages pursuant to Florida law. The court instructs you that the legal drinking age in Florida is 21.

"Open house party" means a social gathering at a residence. The term does not include the use of alcoholic beverages at legally protected religious observances or activities.

"Residence" means a home, apartment, condominium, or other dwelling unit.

"Serious bodily injury" means an injury to any person which consists of a physical condition that creates a substantial risk of death, serious personal disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

Lesser Included Offense

ALLOWING AN OPEN HOUSE PARTY THAT CAUSED [DEATH] [SERIOUS BODILY INJURY]—856.015(5)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Allowing an Open House Party		856.015(4)	

Comments

Prior to April 2026, this instruction was numbered 29.17.

This instruction was adopted in 2013 [131 So. 3d 720].

CHAPTER 31 — ELECTION-RELATED CRIMES

31.1 FALSE INFORMATION IN CONNECTION WITH VOTING OR ELECTIONS

§ 104.011(1) and (2), Fla. Stat.

To prove the crime of False Information in Connection with Voting or Elections, the State must prove the following element beyond a reasonable doubt:

Give if § 104.011(1), Fla. Stat. is charged. Give 1a or 1b or both as applicable.

a. (Defendant) **willfully [swore] [affirmed] falsely to any [oath] [affirmation] in connection with [or arising out of] voting or elections.**

b. (Defendant) **willfully procured another person to [swear] [affirm] falsely to any [oath] [affirmation] in connection with [or arising out of] voting or elections.**

*Give if § 104.011(2), Fla. Stat. is charged**

1. (Defendant) **willfully submitted any false voter registration information.**

"Willfully" means knowingly, intentionally, and purposely.

Some of these terms have their own definition in § 97.021, Fla. Stat. which should be given if requested.

"Election" means any primary election, special primary election, special election, general election, or presidential preference primary election.

Lesser Included Offense

FALSE INFORMATION IN CONNECTION WITH VOTING OR ELECTIONS — 104.011

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempt	777.04(1)	5.1

Comments

Prior to April 2026, this instruction was numbered 29.28.

§ 104.011(1), Fla. Stat., does not expressly limit the crime to information relating to a material issue, such as a voter's qualifications to vote. Such a limitation may be necessary in a special jury instruction. *Leavine v. State,* 133 So. 870 (Fla. 1931).

*§ 104.011(2), Fla. Stat., does not provide any description of the person or entity to whom the false voter registration must be provided for the act to be a crime.

According to § 104.011, Fla. Stat., the crime does not apply to a person affirming that he or she has not been convicted of a felony or that, if convicted, he or she has had voting rights restored, if such violation is alleged to have occurred on or after January 8, 2019, but before July 1, 2019.

Although the statute does not so state, this offense should only apply to false information provided in connection with voting and elections in elections supervised by Florida's supervisors of election.

This instruction was adopted on February 21, 2025.

31.2 UNQUALIFIED VOTING

§ 104.15, Fla. Stat.

To prove the crime of Unqualified Voting, the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **willfully voted in an election] [**(*the specific election alleged)***].**

2. (Defendant) **was not qualified to vote in the election because** *(describe the applicable reason for the disqualification)***.**

3. **At the time** (defendant) **voted in the election, [he] [she] knew that [he] [she] was not qualified to vote.**

"Willfully" means knowingly, intentionally, and purposely.

Some of these terms have their own definition in § 97.021, Fla. Stat. which should be given if requested.

"Election" means any primary election, special primary election, special election, general election, or presidential preference primary election.

The Court instructs you that under Florida law, a person is not qualified to vote if *(insert reason defendant is unqualified)***.**

Lesser Included Offense

UNQUALIFIED VOTING — 104.15

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Noncitizen Voting	104.155	29.30
	Attempt	777.04(1)	5.1

Comments

Prior to April 2026, this instruction was numbered 29.29.

This instruction was adopted on February 21, 2025 and was amended on September 5, 2025.

31.3 NONCITIZEN VOTING

§ 104.155, Fla. Stat.

To prove the crime of Noncitizen Voting, the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) **willfully voted in an election] [**(*the specific election alleged)***].**

2. (Defendant) **was not qualified to vote in the election because [he] [she] was not a citizen of the United States.**

"Willfully" means knowingly, intentionally, and purposely.

Some of these terms have their own definition in § 97.021, Fla. Stat. which should be given if requested.

"Election" means any primary election, special primary election, special election, general election, or presidential preference primary election.

A person's ignorance of his or her citizenship status or a person's good faith belief of his or her citizenship status is not a defense to this crime.

Lesser Included Offense

NONCITIZEN VOTING — 104.155			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
None			
	Attempt	777.04(1)	5.1

Comments

Prior to April 2026, this instruction was numbered 29.30.

A person who solicits another person to commit Noncitizen Voting, knowing that such person is not a citizen of the United States, commits a third degree felony. *See* § 104.155(2), Fla. Stat. A special instruction will be needed in that circumstance.

This instruction was adopted on September 5, 2025.

31.4 [MAKING] [ACCEPTING] EXCESSIVE CAMPAIGN CONTRIBUTIONS

§ 106.08(7)(b), Fla. Stat.

To prove the crime of [Making] [Accepting] Excessive Campaign Contributions, the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) **knowingly and willfully [made] [accepted] two or more contributions in excess of $3,000 in total.**

2. **The contributions were to a candidate for an election to a statewide office.**

"Willfully" means intentionally and purposely.

"Candidate" means a person to whom any of the following applies:

(a) A person who seeks to qualify for nomination or election by means of the petitioning process.

(b) A person who seeks to qualify for election as a write-in candidate.

(c) A person who receives contributions or makes expenditures, or consents for any other person to receive or make expenditures, with a view to bring about his or her nomination or election to, or retention in, public office.

(d) A person who appoints a treasurer and designates a primary depository.

(e) A person who files qualification papers and subscribes to a candidate's oath as required by law.

"Contribution" means:

(a) A gift, subscription, conveyance, deposit, loan, payment, or distribution of money or anything of value, including contributions in kind having an attributable monetary value in any form, made for the purpose of influencing the results of an election or making an electioneering communication.

(b) A transfer of funds between political committees, between electioneering communications organizations, or between any combination of these groups.

(c) The payment, by a person other than a candidate or political committee, of compensation for the personal services of another person which are rendered to a candidate or political committee without charge to the candidate or committee for such services.

(d) The transfer of funds by a campaign treasurer or deputy campaign treasurer between a primary depository and a separate interest-bearing account or certificate of deposit, and the term includes interest earned on such account or certificate.

Notwithstanding this meaning of "contribution," the term may not be construed to include services, including, but not limited to, legal and accounting services, provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate or political committee or editorial endorsements.

"Election" means a primary election, special primary election, general election, or special election held in this state for the purpose of nominating or electing candidates to public office.

A primary election, special primary election, general election, and a special election are considered under Florida law to be separate elections.

Lesser Included Offense

[MAKING] [ACCEPTING] EXCESSIVE CAMPAIGN CONTRIBUTIONS — 106.08(7)(b)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
[Making] [Accepting] Excessive Campaign Contribution		106.08(7)(a)	
	Attempt	777.04	5.1

Comments

§ 106.08, Fla. Stat., contains many exceptions that the courts may treat as affirmative defenses. A special instruction will be necessary if an exception is applicable and the trial judge will have to decide which party has the burden

of persuasion and what that burden is (preponderance of the evidence, clear and convincing evidence, or beyond a reasonable doubt).

Making or accepting one excessive campaign contribution is a misdemeanor under § 106.08(7)(a), Fla. Stat. This instruction can be used as a template for the misdemeanor but element #1 would need to be changed.

This instruction was adopted on October 9, 2026.

CHAPTER 32 — CRIMES INVOLVING ANIMALS

32.1 AGGRAVATED ANIMAL CRUELTY

§ 828.12(2), Fla. Stat.

To prove the crime of Aggravated Animal Cruelty, **the State must prove the following two elements beyond a reasonable doubt:**

1. (Defendant) **[intentionally committed an act to an animal] [or] [owned or had custody or control of an animal and failed to act].**

2. (Defendant's) **[act] [or] [failure to act] resulted in [excessive or repeated infliction of unnecessary pain or suffering to the animal] [or] [the animal's cruel death].**

Florida law defines an "animal" as every living dumb creature.

Give if applicable. Enhancement. § 828.12(2)(a), Fla. Stat.

If you find (defendant) **guilty of Aggravated Animal Cruelty, you must then determine whether the State proved beyond a reasonable doubt that [he] [she] knowingly and intentionally tortured or tormented an animal, and in so doing, [injured] [mutilated] [killed] the animal.**

Give if applicable. Scoresheet multiplier in § 921.0024, Fla. Stat., if Aggravated Animal Cruelty is the primary offense.

If you find (defendant) **guilty of Aggravated Animal Cruelty, you must then determine whether the State proved beyond a reasonable doubt that [he] [she] knowingly and intentionally tortured or tormented an animal, and in so doing, [injured] [mutilated] [killed] the animal. For purposes of this finding only, the animal cannot be either an animal used for agricultural purposes or captive wildlife for which someone was allowed to possess pursuant to a permit issued by the Florida Fish and Wildlife Conservation Commission.**

Definition of "cruelty", if cruel death charged. § 828.02, Fla. Stat. Read definition for "Torture" or "Torment" only when State seeks sentencing enhancements pursuant to § 828.12(2)(a), Fla. Stat. or the scoresheet multiplier.

"Cruelty" ["Torture"] ["Torment"] includes any act, omission, or neglect whereby unnecessary or unjustifiable pain or suffering is caused, permitted, or allowed to continue when there is reasonable remedy or relief, except when done in the interest of medical science.

Lesser Included Offense

AGGRAVATED ANIMAL CRUELTY — 828.12(2)			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
None			
	Animal Cruelty	828.12(1)	29.13(a)
	Attempt	777.04(1)	5.1

Comments

Prior to April 2026, this instruction was numbered 29.13.

§ 828.12(2)(b), Fla. Stat., contains increased penalties, including a mandatory minimum 6 month sentence, for a second or subsequent violation of Aggravated Animal Cruelty. As of February 2026, the courts had not determined whether this provision requires a jury finding regarding the existence of a prior violation or whether the state may prove the existence of a prior violation to the judge under the preponderance of the evidence standard because it is based on recidivism.

§ 828.12(3) Fla. Stat. A person who commits multiple acts of Aggravated Animal Cruelty against an animal may be convicted of multiple counts of Aggravated Animal Cruelty. Also, a person who commits Aggravated Animal Cruelty against more than one animal may be convicted of multiple counts of Aggravated Animal Cruelty.

This instruction was adopted in 2008 [976 So. 2d 1081] and amended in 2014 [143 So. 3d 893], and on September 12, 2025.

32.2 ANIMAL CRUELTY

§ 828.12(1), Fla. Stat.

To prove the crime of Animal Cruelty, the State must prove beyond a reasonable doubt that:

Give a, b, or c as applicable.

(Defendant)

a. unnecessarily [overloaded] [overdrove] [tormented] [mutilated] [killed] an animal.

b. deprived an animal of necessary [sustenance] [shelter].

c. carried an animal in or upon a vehicle [or otherwise] in a cruel or inhumane manner.

Give if applicable.

["Torment"] [A "cruel" manner] includes every act, omission, or neglect whereby unnecessary or unjustifiable pain or suffering is caused, permitted, or allowed to continue when there is reasonable remedy or relief, except when in the interest of medical science.

Lesser Included Offenses

ANIMAL CRUELTY — 828.12(1)			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
None			
	Attempt	777.04(1)	5.1

Comments

Prior to April 2026, this instruction was numbered 29.13(a).

This instruction was adopted in 2008 [994 So. 2d 1038] and amended in 2014 [143 So. 3d 893].

32.3 ANIMAL FIGHTING OR BAITING

§ 828.122, Fla. Stat.

To prove the crime of Animal [Fighting] [Baiting], the State must prove the following [one] [three] element(s) beyond a reasonable doubt:

Give as applicable, if (3)(a), (b), (c), (d), (e), (g) or (h) is charged:

(Defendant) **knowingly**

[[baited] [bred] [trained] [transported] [sold] [owned] [possessed] [used] a [wild] [domestic] animal for the purpose of animal [fighting] [baiting].]

[[owned] [possessed] [sold] equipment for use in the [baiting] [breeding] [training] [transporting] [selling] [owning] [possessing] [using] of a [wild] [domestic] animal for the purpose of animal [fighting] [baiting].]

[[owned] [leased] [managed] [operated] [had control of] property used for the [baiting] [breeding] [training] [transporting] [selling] [owning] [possessing] [using] of a [wild] [domestic] animal for the purpose of animal [fighting] [baiting].]

[[promoted] [staged] [advertised] [charged an admission fee to] a [fight] [baiting] between two or more animals.]

[performed [a service] [an act] to facilitate animal [fighting] [baiting], including, but not limited to, [providing security] [refereeing] [handling or transporting animals] [being a stakeholder of any money wagered on animal fighting or baiting].]

[bet or wagered [money] [valuable consideration] on the [fighting] [baiting] of animals.]

[attended the [fighting] [baiting] of animals.]

Give only if (3)(f) is charged:

An animal was impounded under the "Animal Fighting Act."

(Defendant) **knowingly [removed] [facilitated the removal of] the animal from [an agency where the animal was impounded] [a location designated by the court].**

1. **[He][She] did so without prior authorization of the court.**

2. **Possession of an animal alone does not constitute a violation.**

3. **"Animal fighting" means fighting between roosters or other birds or between dogs, bears, or other animals.**

"Baiting" means to attack with violence, to provoke, or to harass an

animal with one or more animals for the purpose of training an animal for, or to cause an animal to engage in, fights with or among other animals, including the use of live animals in the training of racing greyhounds.

Give if applicable. See section (9).

It is a defense to this crime if [any person is simulating a fight for the purpose of using the simulated fight as part of a motion picture which will be used on television or in a motion picture as long as the crime of cruelty to animals is not committed. *(Define animal cruelty. See § 828.12, Fla. Stat.)***] [any person is using animals to pursue or take wildlife or to participate in hunting regulated or subject to being regulated by the rules and regulations of the Fish and Wildlife Conservation Commission.] [any person is using animals to work livestock for agricultural purposes.] [any person is conducting or engaging in a simulated or bloodless bullfighting exhibition.] [any person is using dogs to hunt wild hogs or to retrieve domestic hogs pursuant to customary hunting or agricultural practices.]**

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comments

Prior to April 2026, this instruction was numbered 29.13(b).

This instruction was adopted in 2009 [3 So. 3d 1172].

32.4 SEXUAL ACTIVITY WITH AN ANIMAL*

§ 828.126, Fla. Stat.

To prove the crime of Sexual Activity with an Animal,* the State must prove the following element beyond a reasonable doubt:

(Defendant) **knowingly**

a. engaged in sexual contact with an animal.

b. caused or aided or abetted another person to engage in sexual contact with an animal.

c. permitted sexual contact with an animal to be conducted on any premises under [his] [her] charge or control.

d. [organized] [promoted] [conducted] [aided] [abetted] [participated in as an observer of] sexual contact with an animal.

e. [advertised] [offered] [solicited for] [accepted an offer of] an animal for the purpose of sexual contact with such animal.

f. performed any service in the furtherance of an act involving sexual contact with an animal.

g. [filmed] [distributed] [possessed] any pornographic image or video of a person and an animal engaged in sexual contact.

"Sexual contact" means any act committed between a person and an animal for the purpose of sexual gratification, abuse, or financial gain which involves:

(a) Contact between the sex organ or anus of one and the mouth, sex organ, or anus of the other;

(b) The fondling of the sex organ or anus of an animal; or

(c) The insertion, however slight, of any part of the body of a person or any object into the vaginal or anal opening of an animal, or the insertion of any part of the body of an animal into the vaginal or anal opening of a person.

Give if applicable. § 777.04(2), Fla. Stat.

To "solicit" means to command, encourage, hire, or request another person to engage in specific conduct.

Possession.

To prove (defendant) **"possessed a pornographic image or video," the State must prove beyond a reasonable doubt that [he] [she] a) knew of the existence of the pornographic image or video; b) knew of the nature, character, or content of the material; and c) intentionally exercised control over the image or video.**

Control can be exercised over a pornographic image or video whether the image or video is carried on a person, near a person, or in a completely separate location. Mere proximity to an image or video 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 the image or video or the present ability to direct its control by another.**

Joint possession.

Possession of a pornographic image or video may be sole or joint, that is, two or more persons may possess it.

Lesser Included Offense

SEXUAL ACTIVITY WITH AN ANIMAL* — 828.126			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
None			
	Attempt	777.04(1)	5.1

Comments

Prior to April 2026, this instruction was numbered 29.13(c).

*In certain cases, such as those where the State charged that the defendant possessed a video containing a person's sexual contact with an animal, the judge and the parties may want to rename the crime.

This crime does not apply to accepted animal husbandry practices, including, but not limited to, bona fide agricultural purposes, assistance with the birthing process or artificial insemination of an animal for reproductive purposes, accepted conformation judging practices, or accepted veterinary medical practices. *See* § 828.126(5), Fla. Stat.

This instruction was adopted in 2013 [131 So. 3d 720] and amended in 2018 [257 So. 3d 370] and on December 21, 2022.

32.5 OWNING A DANGEROUS DOG THAT ATTACKED OR BIT A [PERSON] [DOMESTIC ANIMAL]

§ 767.13(1), Fla. Stat.

To prove the crime of Owning a Dangerous Dog that Attacked or Bit a [Person] [Domestic Animal], the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **owned a dog.**

2. **An animal control authority had declared that dog to be a "dangerous dog."**

3. **That dog, without provocation, attacked or bit [a person, to wit:** (name of victim)**] [a domestic animal].**

The "owner" of a dog is any person, firm, corporation, or organization possessing, harboring, keeping, or having control or custody of the dog or, if the dog is owned by a person under the age of 18, that person's parent or guardian.

"Animal control authority" means an entity acting alone or in concert with other local governmental units and authorized by them to enforce the animal control laws of the city, county, or state. [In areas not served by an animal control authority, the sheriff of the county in which the dog resides is the animal control authority.]

Give if applicable. An explanation of the elements of the crime or attempted crime may be necessary.

It is a defense to this crime if (name of victim in element #3) **was engaged in or was attempting to engage in criminal activity, at the time the dog attacked.**

Lesser Included Offenses

OWNING A DANGEROUS DOG THAT ATTACKED OR BIT A [PERSON] [DOMESTIC ANIMAL] — 767.13(1)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Culpable negligence inflicting actual injury	784.05(2)	8.9
	Culpable negligence exposing another to injury	784.05(1)	8.9

Comments

Prior to April 2026, this instruction was numbered 29.13(d).

The courts may determine the defense in § 767.13, Fla. Stat., (victim was committing a crime at the time of the dog attack) is an affirmative defense. As of August 2025, there was no case law that determined which party had the burden of persuasion for the affirmative defense and what that burden is (preponderance of the evidence, clear and convincing, or beyond a reasonable doubt).

This instruction was adopted on September 12, 2025.

32.6 OWNING A DANGEROUS DOG THAT CAUSED [SEVERE INJURY] [DEATH] TO A HUMAN

§ 767.13(2), Fla. Stat.

To prove the crime of Owning a Dangerous Dog that Caused [Severe Injury] {Death] to a Human, the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **owned a dog.**

2. **An animal control authority had declared that dog to be a "dangerous dog."**

3. **That dog attacked a human being, to wit:** (victim), **causing [severe injury to** (victim)**] [**(victim's) **death].**

The "owner" of a dog is any person, firm, corporation, or organization possessing, harboring, keeping, or having control or custody of the dog or, if the dog is owned by a person under the age of 18, that person's parent or guardian.

"Animal control authority" means an entity acting alone or in concert with other local governmental units and authorized by them to enforce the animal control laws of the city, county, or state. [In areas not served by an animal control authority, the sheriff of the county in which the dog resides is the animal control authority.]

Give if applicable.

"Severe injury" means any physical injury that resulted in broken bones, multiple bites, or disfiguring lacerations requiring sutures or reconstructive surgery.

Give if applicable. An explanation of the elements of the crime or attempted crime may be necessary.

It is a defense to this crime if (name of victim in element #3) **was engaged in or was attempting to engage in criminal activity, at the time the dog attacked.**

Lesser Included Offenses

OWNING A DANGEROUS DOG THAT CAUSED [SEVERE INJURY] [DEATH] TO A HUMAN — 767.13(2)			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
None			
	Manslaughter	782.07	7.7
	Culpable negligence inflicting actual injury	784.05(2)	8.9
	Culpable negligence exposing another to injury	784.05(1)	8.9

Comments

Prior to April 2026, this instruction was numbered 29.13(e).

The courts may determine the defense in § 767.13, Fla. Stat., (victim was committing a crime at the time of the dog attack) is an affirmative defense. As of February 2026, there was no case law that determined which party had the burden of persuasion for the affirmative defense and what that burden is (preponderance of the evidence, clear and convincing, or beyond a reasonable doubt).

This instruction was adopted on September 12, 2025.

32.7 OWNING AN UNCLASSIFIED DOG THAT CAUSED [SEVERE INJURY] [DEATH] WITH OWNER'S KNOWLEDGE AND RECKLESS DISREGARD OF DANGER

§ 767.136, Fla. Stat.

To prove the crime of Owning an Unclassified Dog That Caused [Severe Injury] [Death] with Owner's Knowledge and Reckless Disregard of Danger, the State must prove the following six elements beyond a reasonable doubt:

1. (Defendant) **owned a dog.**

2. **The dog had not been previously declared to be a "dangerous dog" by an animal control authority.**

3. (Defendant) **knew that the dog had dangerous propensities.**

4. **The dog attacked a human being, to wit:** (victim).

5. **The attack caused [severe injury to] [the death of]** (victim in element #4)**.**

6. (Defendant) **had recklessly disregarded the dog's dangerous propensities under the circumstances.**

The "owner" of a dog is any person, firm, corporation, or organization possessing, harboring, keeping, or having control or custody of the dog or, if the dog is owned by a person under the age of 18, that person's parent or guardian.

"Animal control authority" means an entity acting alone or in concert with other local governmental units and authorized by them to enforce the animal control laws of the city, county, or state. [In areas not served by an animal control authority, the sheriff of the county in which the dog resides is the animal control authority.]

Give if applicable.

"Severe injury" means any physical injury that results in broken bones, multiple bites, or disfiguring lacerations requiring sutures or reconstructive surgery.

Give if applicable. An explanation of the elements of the crime or attempted crime may be necessary.

It is a defense to this crime if (victim in element #4) **was engaged in or was attempting to engage in criminal activity, at the time the dog attacked.**

Lesser Included Offenses

OWNING AN UNCLASSIFIED DOG THAT CAUSED [SEVERE INJURY] [DEATH] WITH OWNER'S KNOWLEDGE AND RECKLESS DISREGARD OF DANGER — 767.136

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Culpable negligence inflicting actual injury	784.05(2)	8.9
	Culpable negligence exposing another to injury	784.05(1)	8.9

Comments

Prior to April 2026, this instruction was numbered 29.13(f).

The courts may determine the defense in § 767.13, Fla. Stat., (victim was committing a crime at the time of the dog attack) is an affirmative defense. As of February 2026, there was no case law that determined which party had the burden of persuasion for the affirmative defense and what that burden is (preponderance of the evidence, clear and convincing, or beyond a reasonable doubt).

This instruction was adopted on September 12, 2025.

32.8 TAKING DEER/WILD TURKEY WITH GUN AND LIGHT

§ 379.404(1), Fla. Stat.

To prove the crime of Taking [Deer] [Wild Turkey] with Gun and Light, the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) **did take any [deer] [wild turkey].**

2. (Defendant) **used a gun and light in such taking.**

§ 379.101(38), Fla. Stat.

"Take" shall include taking, attempting to take, pursuing, hunting, molesting, capturing, or killing any [deer] [wild turkey, or their nests or eggs], by any means, whether or not such actions result in obtaining possession of such [deer] [wild turkey or their nests or eggs].

Fla. Admin. Code 68A-1.004(39)

"Gun" means a shotgun, rifle, pistol, revolver, air gun, gas gun, blow gun, bow, crossbow, or any other device mechanically propelling an arrow, spear, or other projectile.

Fla. Admin. Code 68A-1.004(41)

"Light" means any artificial light.

"Possession" means any one of the following:

1. Manual possession

2. Physical possession

3. Control or custody

4. Possession in one's clothing, attire, or equipment

5. Possession in or about a vessel, vehicle, or beast of burden under one's custody or control, including but not limited to compartments, drawers, pockets, trunks, and similar places in and about such vessel, vehicle, or beast of burden.

§ 379.404(2), Fla. Stat.

If you find from the evidence that the defendant displayed or used a light in a place where deer might be found and in a manner capable of

disclosing the presence of deer, and that the defendant possessed a firearm or other weapon customarily used for the taking of deer, between one hour after sunset and one hour before sunrise, then this would be sufficient by itself to establish that the defendant was taking or attempting to take deer by use of a gun and light. However, such evidence may be contradicted or rebutted by other evidence.

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comments

Prior to April 2026, this instruction was numbered 29.14.

This instruction was adopted in 2000 [765 So. 2d 692] and amended in 2012 [87 So. 3d 679].

32.9 RESTRAIN AND ABANDON A DOG DURING A NATURAL DISASTER

§ 828.13(4), Fla. Stat.

To prove the crime of Restrain and Abandon a Dog During a Natural Disaster, the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) **restrained a dog outside during a natural disaster.**

2. Thereafter, (defendant) **abandoned that dog.**

"Restrain" means to attach a dog to a stationary object or trolley system by way of a chain, rope, tether, leash, cable, or other device.

"Natural disaster" means a situation in which a hurricane, tropical storm, or tornado warning has been issued for a municipality or a county by the National Weather Service, or the municipality or county is under a mandatory or voluntary evacuation order.

"Abandon" means to forsake an animal entirely or to neglect or refuse to provide or perform the legal obligations for care and support of an animal by its owner.

Lesser Included Offenses

RESTRAIN AND ABANDON A DOG DURING A NATURAL DISASTER — 828.13(4)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Aggravated Animal Cruelty	828.12(2)	30.1
	Animal Cruelty	828.12(1)	30.2
	Confinement or Abandonment of an Animal	828.13(2)	30.6
	Abandonment of an Animal	828.13(3)	30.7
	Attempt	777.04(1)	5.1

Comment

This instruction was adopted on March 20, 2026.

32.10 CONFINEMENT OR ABANDONMENT OF AN ANIMAL

§ 828.13(2), Fla. Stat.

To prove the crime of Confinement or Abandonment of an Animal, the State must prove the following element beyond a reasonable doubt:

Give a., b., or c., or some combination as applicable.

(Defendant)

a. impounded or confined an animal in a place and failed to supply that animal during the confinement with a sufficient quantity of good and wholesome food and water

b. kept an animal in any enclosure without wholesome exercise and change of air.

c. abandoned to die an animal that was maimed, sick, infirm, or diseased.

"Abandon" means to forsake an animal entirely or to neglect or refuse to provide or perform the legal obligations for care and support of an animal by its owner.

Lesser Included Offenses

CONFINEMENT OR ABANDONMENT OF AN ANIMAL — 828.13(2)			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
None			
	Animal Cruelty	828.12(1)	30.2
	Abandonment of an Animal	828.13(3)	30.7
	Attempt	777.04(1)	5.1

Comment

This instruction was adopted on March 20, 2026.

32.11 ABANDONMENT OF AN ANIMAL

§ 828.13(3), Fla. Stat.

To prove the crime of Abandonment of an Animal, the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) **[was the owner or possessor] [or] [had charge of or custody of] an animal, to wit:** (insert animal in charging document)**.**

Give 2a or 2b or both as applicable.

2. (Defendant) **abandoned that animal**

a. to suffer injury or malnutrition.

b. in a street, road, or public place without providing for the care, sustenance, protection, and shelter of the animal.

"Owner" includes any owner, custodian, or other person in charge of an animal.

Give if applicable. § 828.02, Fla. Stat.

"Person" includes a corporation.

"Abandon" means to forsake an animal entirely or to neglect or refuse to provide or perform the legal obligations for care and support of an animal by its owner.

Lesser Included Offenses

ABANDONMENT OF AN ANIMAL — 828.13(3)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Animal Cruelty	828.12(1)	30.1
	Confinement or Abandonment of an Animal	828.13(2)	30.6
	Attempt	777.04(1)	5.1

Comment

This instruction was adopted on March 20, 2026.

CHAPTER 33 — ELDER ABUSE

33.1 ABUSE OF [AN ELDERLY PERSON] [A DISABLED ADULT]

§ 825.102(1), Fla. Stat.

To prove the crime of Abuse of [An Elderly Person] [A Disabled Adult], the State must prove the following two elements beyond a reasonable doubt:

Give 1a, 1b, and/or 1c as applicable.

1. (Defendant) **knowingly or willfully abused** (victim) **by:**

a. intentionally inflicting physical or psychological injury upon (victim)**.**

b. committing an intentional act that could reasonably be expected to result in physical or psychological injury to (victim)**.**

c. actively encouraging another person to commit an act that resulted in or could reasonably have been expected to result in physical or psychological injury to (victim)**.**

2. At the time, (victim) **was [an elderly person] [a disabled adult].**

"Disabled adult" means a person 18 years of age or older who suffers from a condition of physical or mental incapacitation due to a developmental disability, organic brain damage, or mental illness, or who has one or more physical or mental limitations that restrict the person's ability to perform the normal activities of daily living.

"Elderly person" means a person 60 years of age or older who is suffering from the infirmities of aging as manifested by advanced age or organic brain damage, or other physical, mental, or emotional dysfunctioning, to the extent that the ability of the person to provide adequately for the person's own care or protection is impaired.

["Willfully" means intentionally and purposely.]

Lesser Included Offenses

ABUSE OF [AN ELDERLY PERSON] [A DISABLED ADULT] — 825.102(1)			
CATEGORY ONE	**CATEGORY TWO**	**FLA. STAT.**	**INS. NO.**
None			
	Battery	784.03	8.3
	Attempt	777.04(1)	5.1

Comments

Prior to April 2026, this instruction was numbered 29.20.

This instruction was adopted in 2013 [131 So. 3d 692] and amended in 2016 [194 So. 3d 1007].

33.2 AGGRAVATED ABUSE OF [AN ELDERLY PERSON] [A DISABLED ADULT]

§ 825.102(2), Fla. Stat.

To prove the crime of Aggravated Abuse of [An Elderly Person] [Disabled Adult], the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant)

a. committed Aggravated Battery upon (victim)**.**

b. willfully tortured (victim)**.**

c. maliciously punished (victim)**.**

d. willfully and unlawfully caged (victim)**.**

e. knowingly or willfully abused (victim) **and in so doing caused great bodily harm, permanent disability, or permanent disfigurement.**

2. At the time, (victim) **was [an elderly person] [a disabled adult].**

§ 825.101(3), Fla. Stat.

"Disabled adult" means a person 18 years of age or older who suffers from a condition of physical or mental incapacitation due to a developmental disability, organic brain damage, or mental illness, or who has one or more physical or mental limitations that restrict the person's ability to perform the normal activities of daily living.

§ 825.101(4), Fla. Stat.

"Elderly person" means a person 60 years of age or older who is suffering from the infirmities of aging as manifested by advanced age or organic brain damage, or other physical, mental, or emotional dysfunctioning, to the extent that the ability of the person to provide adequately for the person's own care or protection is impaired.

Give if element 1a is charged.

§ 784.045, Fla. Stat.

In order to prove that an Aggravated Battery was committed, the State must prove the following two elements. The first element is a definition of Battery.

1. (Defendant) **actually and intentionally [touched or struck** (victim) **against the will of** (victim)**] [or] [caused bodily harm to** (victim)**].**

2. In so doing, (defendant) [**intentionally or knowingly caused [great bodily harm] [permanent disability] [permanent disfigurement]] [or] [used a deadly weapon].**

Give if applicable.

A "deadly weapon" is any object that will likely cause death or great bodily harm if used or threatened to be used in the ordinary and usual manner contemplated by its design and construction.

Give if applicable.

An object not designed to inflict bodily harm may nonetheless be a "deadly weapon" if it was used or threatened to be used in a manner likely to cause death or great bodily harm.

Give if applicable.

"Great bodily harm" means great as distinguished from slight, trivial, minor, or moderate harm, and as such does not include mere bruises.

Give only if applicable. Fey v. State, 125 So. 3d 828 (Fla. 4th DCA 2013).

An intentional touching or striking includes situations where a defendant knows that a touch or strike is substantially certain to result from his or her act.

Give only if applicable. Clark v. State, 783 So. 2d 967 (Fla. 2001).

A Battery may be found as a result of the intentional touching or intentional striking of something other than the actual body of the person. However, the object that is touched or struck must have such an intimate connection with the person that it is to be regarded as a part or as an extension of the person. [For example, in cases where a person intentionally drove into another occupied vehicle, it is for you to determine whether the vehicle that was struck should be considered as a part or as an extension of the person inside that vehicle. This

determination may include consideration about whether the person was "touched" through the force of impact by being jostled or otherwise impacted through the transfer of energy from the collision.]

Give if element 1b, 1d, or 1e is charged.

"Willfully" means intentionally and purposely.

Give if element 1c is charged.

"Maliciously" means wrongfully, intentionally, and without legal justification or excuse. Maliciousness may be established by circumstances from which one could conclude that a reasonable person would not have engaged in the damaging acts toward (victim) **for any valid reason and that the primary purpose of the acts was to cause** (victim) **unjustifiable pain or injury.**

Give if element 1e is charged.

"Abused" means the [intentional infliction of physical or psychological injury upon [an elderly person] [a disabled adult]] [commission of an intentional act that could reasonably be expected to result in physical or psychological injury to [an elderly person] [a disabled adult]] [active encouragement of any person to commit an act that results or could reasonably be expected to result in physical or psychological injury to [an elderly person] [a disabled adult]].

Lesser Included Offenses

AGGRAVATED ABUSE OF [AN ELDERLY PERSON] [A DISABLED ADULT] — 825.102(2)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Aggravated Battery if 825.102(2)(a), Fla. Stat., is charged		784.045	8.4
Abuse of An Elderly Person or Disabled Adult		825.102(1)	29.20
Felony Battery if 825.102(2)(a), Fla. Stat., is charged		784.041(1)	8.5
Battery if 825.102(2)(a), Fla. Stat., is charged		784.03	8.3
	Attempt	777.04(1)	5.1

Comments

Prior to April 2026, this instruction was numbered 29.21.

Florida law on alternative conduct statutes is unsettled. For example, in a DUI case, it is permissible for some jurors to conclude the State proved only driving while impaired and other jurors to conclude the State proved only driving with an unlawful breath alcohol level. *Euceda v. State*, 711 So. 2d 122 (Fla. 3d DCA 1998). However, according to the Second District, in Aggravated Battery cases, it is improper for some jurors to conclude the State proved only that the defendant intentionally caused great bodily harm and other jurors to conclude the State proved only that the defendant used a deadly weapon. *Miller v. State*, 123 So. 3d 595 (Fla. 2d DCA 2013). Unless the case law changes, in Aggravated Elderly Person/Disabled Adult Abuse cases based on a theory of Aggravated Battery where the State has charged both alternatives, trial judges must give a special instruction that informs jurors they must be unanimous on each alternative theory. For other Elderly Person/Disabled Adult Abuse cases, as of February 2026, it is undetermined whether jurors must be unanimous for each alternative within element #1.

Num-chucks, which were originally designed as a farm tool, can be a deadly weapon. *R.V. v. State*, 497 So. 2d 912 (Fla. 5th DCA 1986). Jurors could find that a 7-inch straight-edged razor might be a dangerous weapon. *R.R. v. State*, 826 So. 2d 465 (Fla. 5th DCA 2002). In trials involving these types of objects, the judge should consider a special instruction informing jurors that an object can be a deadly weapon if its sole modern use is to cause great bodily harm or death. A special instruction may also be necessary in cases where the deadly weapon was an animal or a substance or something that is not commonly referred to as an “object.

This instruction was adopted in 2013 [131 So. 3d 692] and amended in 2016 [194 So. 3d 1007] and on April 3, 2020.

33.3 NEGLECT OF [AN ELDERLY PERSON] [A DISABLED ADULT]

§ 825.102(3), Fla. Stat.

To prove the crime of Neglect of [An Elderly Person] [A Disabled Adult], the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **was a caregiver for** (victim)**.**

2. (Victim) **was [an elderly person] [a disabled adult].**

3. (Defendant)

Give as applicable.

a. [willfully] [or] [by culpable negligence] failed or omitted to provide (victim) **with the care, supervision, and services necessary to maintain** (victim's) **physical or mental health.**

b. failed to make a reasonable effort to protect (victim) **from [abuse] [neglect] [or] [exploitation] by another person.**

Give if the § 825.102(3)(b), Fla. Stat., is charged.

If you find the defendant guilty of Neglect of [An Elderly Person] [A Disabled Adult], you must then determine whether the State proved beyond a reasonable doubt that the defendant's failure or omission caused [great bodily harm] [permanent disability] [or] [permanent disfigurement] to (victim)**.**

§ 825.101(3), Fla. Stat.

"Disabled adult" means a person 18 years of age or older who suffers from a condition of physical or mental incapacitation due to a developmental disability, organic brain damage, or mental illness, or who has one or more physical or mental limitations that restrict the person's ability to perform the normal activities of daily living.

§ 825.101(4), Fla. Stat.

"Elderly person" means a person 60 years of age or older who is suffering from the infirmities of aging as manifested by advanced age or organic brain damage, or other physical, mental, or emotional dysfunctioning, to the extent that the ability of the person to provide adequately for the person's own care or protection is impaired.

Give in all cases. § 825.101(2), Fla. Stat.

"Caregiver" means a person who has been entrusted with or has assumed responsibility for the care or the property of [an elderly person] [a disabled adult]. "Caregiver" includes, but is not limited to, relatives, court-appointed or voluntary guardians, adult household members, neighbors, health care providers, and employees and volunteers of facilities. ["Facility" means any location providing day or residential care or treatment for elderly persons or disabled adults. The term "facility" may include, but is not limited to, any hospital, training center, state institution, nursing home, assisted living facility, adult family-care home, adult day care center, group home, mental health treatment center, or continuing care community.]

Give if "willfully" is charged within element 3a. Patterson v. State, 512 So. 2d 1109 (Fla. 1st DCA 1987).

"Willfully" means knowingly, intentionally, and purposely.

Give if "culpable negligence" is charged within element 3a.

I will now define what is meant by the term "culpable negligence": Each of us has a duty to act reasonably toward others. If there is a violation of that duty, without any conscious intention to harm, that violation is negligence. But culpable negligence is more than a failure to use ordinary care for others. For negligence to be called culpable negligence, it must be gross and flagrant. The negligence must be committed with an utter disregard for the safety of others. Culpable negligence is consciously doing an act or following a course of conduct that the defendant must have known, or reasonably should have known, was likely to cause death or great bodily harm.

Give if element 3a is charged. § 825.102(3)(a), Fla. Stat.

"Care, supervision, and services necessary to maintain the [elderly person's] [disabled adult's] physical and mental health" include, but are not limited to, food, nutrition, clothing, shelter, supervision, medicine, and medical services that a prudent person would consider essential for the well-being of the [elderly person] [disabled adult].

Give if "abuse" is charged within element 3b. § 825.102(1), Fla. Stat.

"Abuse" means the [intentional infliction of physical or psychological injury upon [an elderly person] [a disabled adult]] [commission of an intentional act that could reasonably be expected to result in physical or psychological injury to [an elderly person] [a disabled

adult]] [active encouragement of any person to commit an act that results or could reasonably be expected to result in physical or psychological injury to [an elderly person] [a disabled adult]].

§ 825.102(3), Fla. Stat.

Neglect of [an elderly person] [a disabled adult] may be based on repeated conduct or on a single incident or omission that resulted in, or reasonably could have been expected to result in, serious physical or psychological injury, or a substantial risk of death, to [an elderly person] [a disabled adult].

If "exploitation" is charged within element 3b, insert the elements from Instruction 14.9. See § 825.103, Fla. Stat.

Lesser Included Offenses

NEGLECT OF [AN ELDERLY PERSON] [A DISABLED ADULT] CAUSING [GREAT BODILY HARM] [PERMANENT DISABILITY] [PERMANENT DISFIGUREMENT] — 825.102(3)(b)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Neglect of [An Elderly Person] [A Disabled Adult] Without Causing Great Bodily Harm, Permanent Disability, or Permanent Disfigurement		825.102(3)(c)	29.22
Culpable Negligence Inflicting Actual Personal Injury, if culpable negligence is charged		784.05(2)	8.9
Culpable Negligence Exposing Another Person to Personal Injury, if culpable negligence is charged		784.05(1)	8.9

Comments

Prior to April 2026, this instruction was numbered 29.22.

This instruction was adopted in 2013 [131 So. 3d 692] and amended in 2016 [194 So. 3d 1007].

33.4 EXPLOITATION OF [AN ELDERLY PERSON] [A DISABLED ADULT]

§ 825.103, Fla. Stat.

To prove the crime of Exploitation of [an Elderly Person] [Disabled Adult], the State must prove the following [three] [four] elements beyond a reasonable doubt:

Give as applicable.

§ 825.103(1)(a), Fla. Stat.

1. (Victim) **was [an elderly person] [a disabled adult].**

2. (Defendant) **knowingly [obtained or used] [endeavored to obtain or use]** (victim's) **[funds] [assets] [property].**

3. (Defendant) **did so with the intent to**

Give as applicable.

a. temporarily or permanently deprive (victim) **of the use, benefit, or possession of [his] [her] [funds] [assets] [property];**

b. benefit someone other than (victim)**.**

4. At the time, (defendant) **[stood in a position of trust and confidence] [had a business relationship] with** (victim)**.**

§ 825.103(1)(b), Fla. Stat.

1. (Victim) **was [an elderly person] [a disabled adult].**

2. (Defendant) **[obtained or used] [endeavored to obtain or use] [conspired with another to obtain or use]** (victim's) **[funds] [assets] [property].**

3. (Defendant) **did so with the intent to**

Give as applicable.

a. temporarily or permanently deprive (victim) **of the use, benefit, or possession of [his] [her] [funds] [assets] [property];**

b. benefit someone other than (victim)**.**

4. At the time, (defendant) **knew or reasonably should have known that** (victim) **lacked the capacity to consent.**

§ 825.103(1)(c), Fla. Stat.

1. (Victim) **was [an elderly person] [a disabled adult].**

2. (Defendant) **was** (victim's) **[guardian] [trustee] [agent under a power of attorney].**

3. (Defendant) **breached a fiduciary duty to** (victim)**.**

4. As a result, there was an unauthorized [appropriation] [sale] [transfer] of (victim's) **property.**

If § 825.103(1)(c), Fla. Stat. is charged, give as applicable.

A "trustee" must be an individual.

An "unauthorized appropriation" occurs when

a. the [elderly person] [disabled adult] does not receive the reasonably equivalent financial value in goods or services; or

b. the fiduciary, appointed as an agent under power of attorney to act on behalf of (victim)**,**

i. commits fraud in obtaining [his] [her] appointment; or

ii. abuses [his] [her] powers; or

iii. [wastes] [embezzles] [intentionally mismanages] the assets of the [principal] [beneficiary]; or

iv. acts contrary to the principal's sole [benefit] [best interest].

c. the fiduciary, appointed as a [guardian] [trustee] for (victim),

i. commits fraud in obtaining [his] [her] appointment; or

ii. abuses [his] [her] powers; or

iii. [wastes] [embezzles] [intentionally mismanages] the assets of the [ward] [beneficiary of the trust].

§ 825.103(1)(d), Fla. Stat.

1. (Victim) **was [an elderly person] [a disabled adult].**

2. (Defendant) **[misappropriated] [misused] [transferred without authorization] money belonging to** (victim) **from a [personal account] [joint account created with the intent that only** (victim**) enjoyed all rights, interests, and claims to moneys deposited in such account] [convenience account].**

3. (Victim) **placed the funds, owned the funds, and was the sole [contributor] [payee] of the funds before the [misappropriation] [misuse] [unauthorized transfer].**

§ 825.103(1)(e), Fla. Stat.

1. (Victim) **was [an elderly person] [a disabled adult].**

2. (Defendant) **[intentionally] [negligently] failed to effectively use** (victim's) **income and assets for the necessities required for** (victim's) **support and maintenance.**

3. At the time, (defendant) **was a [caregiver] [person who stood in a position of trust and confidence] with** (victim)**.**

Give if applicable. Note: The statutory inference does not apply to persons in the business of making loans or to bona fide charitable donations to nonprofit organizations that qualify for tax exempt status under the Internal Revenue Code. § 825.103(2)(b), Fla. Stat.

You may, but are not required to, draw an inference of exploitation of (victim)**, if you find the State has proved beyond a reasonable doubt that:**

a. (Victim) **was 65 years or older;**

b. (Defendant) **was a nonrelative of** (victim)**;**

c. (Victim), **while still alive, transferred [money] [property] valued in excess of $10,000 in [a single transaction] [multiple transactions] to** (defendant)**;**

d. (Victim) **knew** (defendant) **for fewer than 2 years before the first transfer; and**

e. (Victim) **did not receive the reasonably equivalent financial value in [goods] [services].**

You may not draw an inference of exploitation of (victim) **if the transfer involved a valid loan, in writing, with definite repayment dates. However, you may draw an inference of exploitation of** (victim)**, even if the transfer involved a valid loan, in writing, with definite repayment dates, if the repayment of the loan was in default, in whole or in part, for more than 65 days.**

If the transfer had no definite repayment dates in writing, you may draw an inference of exploitation of (victim) **regardless of whether the transfer was denoted by the parties as a gift or a loan.**

Give as applicable.

If you find (defendant) **guilty of Exploitation of [an Elderly Person] [a Disabled Adult], you must then determine whether the State has proven beyond a reasonable doubt that:**

a. the [funds] [assets] [property] involved in the exploitation of the [elderly person] [disabled adult] [is] [are] valued at $50,000 or more;

b. the [funds] [assets] [property] involved in the exploitation of the [elderly person] [disabled adult] [is] [are] valued at $10,000 or more, but less than $50,000;

c. the [funds] [assets] [property] involved in the exploitation of the [elderly person] [disabled adult] [is] [are] valued at less than $10,000.

Definitions. Give as applicable.

§ 825.101(1), Fla. Stat.

"Business relationship" means a relationship between two or more individuals or entities where there exists an oral or written contract or agreement for goods or services.

§ 825.101(3), Fla. Stat.

"Disabled adult" means a person 18 years of age or older who suffers from a condition of physical or mental incapacitation due to a developmental disability, organic brain damage, or mental illness, or who has one or more physical or mental limitations that restrict the person's ability to perform the normal activities of daily living.

§ 825.101(4), Fla. Stat.

"Elderly person" means a person 60 years of age or older who is suffering from the infirmities of aging as manifested by advanced age or organic brain damage, or other physical, mental, or emotional dysfunctioning, to the extent that the ability of the person to provide adequately for the person's own care or protection is impaired.

§ 825.101(5), Fla. Stat.

"Endeavor" means to attempt or try.

§ 825.101(7), Fla. Stat.

"Lacks capacity to consent" means an impairment by reason of mental illness, developmental disability, organic brain disorder, physical illness or disability, chronic use of drugs, chronic intoxication, short-term memory loss, or other cause, that causes [an elderly person] [disabled adult] to lack sufficient understanding or capacity to make or communicate reasonable decisions concerning the [elderly person's] [disabled adult's] person or property.

§ 825.101(8), Fla. Stat.

"Obtains or uses" means any manner of:

a. Taking or exercising control over property; or

b. Making any use, disposition, or transfer of property.

§ 825.101(9), Fla. Stat.

"Position of trust and confidence" with respect to [an elderly person] [a disabled adult] means the position of a person who:

a. Is a parent, spouse, adult child, or other relative by blood or marriage of the [elderly person] [disabled adult];

b. Is a joint tenant or tenant in common with the [elderly person] [disabled adult];

c. Has a legal or fiduciary relationship with the [elderly person] [disabled adult], including, but not limited to, a court-appointed or voluntary guardian, trustee, attorney, or conservator;

d. Is a caregiver of the [elderly person] [disabled adult].

e. Is any other person who has been entrusted with or has assumed responsibility for the use or management of the [elderly person's] [disabled adult's] [funds] [assets] [property].

§ 825.101(2), Fla. Stat.

"Caregiver" means a person who has been entrusted with or has assumed responsibility for the care or the property of [an elderly person] [disabled adult]. "Caregiver" includes, but is not limited to, relatives, court-appointed or voluntary guardians, adult household members, neighbors, health care providers, and employees and volunteers of facilities.

§ 825.101(6), Fla. Stat.

"Facility" means any location providing day or residential care or treatment for elderly persons or disabled adults. The term "facility" may include, but is not limited to, any hospital, training center, state institution, nursing home, assisted living facility, adult family-care home, adult day care center, group home, mental health treatment center, or continuing care community.

§ 825.101(10), Fla. Stat.

"Property" means anything of value and includes:

a. Real property, including things growing on, affixed to, and found in land.

b. Tangible or intangible personal property, including rights, privileges, interests, and claims.

c. Services.

§ 825.101(11), Fla. Stat.

"Services" means anything of value resulting from a person's physical or mental labor or skill, or from the use, possession, or presence of property, and includes:

a. Repairs or improvements to property.

b. Professional services.

c. Private, public, or governmental communication, transportation, power, water, or sanitation services.

d. Lodging accommodations.

e. Admissions to places of exhibition or entertainment.

§ 825.101(12), Fla. Stat.

"Value" means value determined according to any of the following:

1. The market value of the property at the time and place of the offense or, if the market value cannot be satisfactorily ascertained, the cost of replacing the property within a reasonable time after the offense.

2. In the case of a written instrument such as a check, draft, or promissory note, which does not have a readily ascertainable market value, the value is the amount due or collectible. The value of any other instrument that creates, releases, discharges, or otherwise affects any valuable legal right, privilege, or obligation is the greatest amount of economic loss that the owner of the instrument might reasonably suffer by the loss of the instrument.

3. The value of a trade secret that does not have a readily ascertainable market value is any reasonable value representing the damage to the owner suffered by reason of losing advantage over those who do not know of or use the trade secret.

§ 825.101(12)(b), Fla. Stat.

If the value of the property cannot be ascertained, the jury may find the value to be not less than a certain amount; if no such minimum value can be ascertained, the value is an amount less than $100.

§ 825.101(12)(c), Fla. Stat.

Amounts of value of separate properties involved in exploitation committed pursuant to one scheme or course of conduct, whether the exploitation involves the same person or several persons, may be aggregated in determining the total value of the [funds] [assets] [property] involved in the exploitation.

§ 655.80, Fla. Stat.

"Convenience Account" is a deposit account, other than a certificate of deposit, in the name of one individual (principal), in which one or more other individuals have been designated as agents with the

right to make deposits to and to withdraw funds from or draw checks on such account. The designation of agents, the substitution or removal of agents, or any other change in the contractual terms or provisions governing a convenience account may be made only by the principal. All rights, interests, and claims in, to, and in respect of, such deposits and convenience account and the additions thereto shall be those of the principal only.

Lesser Included Offense

EXPLOITATION OF [AN ELDERLY PERSON] [A DISABLED ADULT] — 825.103

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Petit theft – second degree, if § 825.103(1)(a) or (b) is charged		812.014(3)(a)	14.1
	Grand Theft, if § 825.103(1)(a) or (b) is charged	812.014(2)(a)1.	14.1
	Grand Theft, if § 825.103(1)(a) or (b) is charged	812.014(2)(b)1.	14.1
	Grand Theft, if § 825.103(1)(a) or (b) is charged	812.014(2)(c)	14.1
	Petit Theft, if § 825.103(1)(a) or (b) is charged	812.014(2)(e)	14.1

Comments

Prior to April 2026, this instruction was numbered 14.9.

This instruction was adopted in 2013 [131 So. 3d 755], amended in 2015 [176 So. 3d 938], and on March 8, 2024.

33.5 EXPLOITATION OF A PERSON 65 YEARS OF AGE OR OLDER

§ 817.5695, Fla. Stat.

To prove the crime of Exploitation of a Person 65 Years of Age or Older, the State must prove the following three elements beyond a reasonable doubt:

Give if § 817.5695(2)(a), Fla. Stat. is charged.

1. (Defendant) **[obtained or used] [endeavored to obtain or use] [conspired with another to obtain or use] the property of** (victim) **through deception or intimidation.**

Give 2a or 2b or both.

2. (Defendant) **did so with the intent to temporarily or permanently**

a. deprive (victim) **of the use, benefit, or possession of [his] [her] property**

or

b. benefit someone other than (victim).

3. (Defendant) **did so when** (victim) **was 65 years of age or older.**

Give if § 817.5695(2)(b), Fla. Stat. is charged.

1. (Defendant) **[obtained or used] [endeavored to obtain or use] [conspired with another to obtain or use] the property of** (victim) **through deception or intimidation.**

2. (Defendant) **did so through an intentional modification, alteration, or fraudulent creation of a plan of distribution or disbursement expressed in a will, trust instrument, or other testamentary devise.**

3. (Defendant) **did so when** (victim) **was 65 years of age or older.**

Give if § 817.5695(2)(c), Fla. Stat. is charged.

1. (Defendant) **[deprived] [endeavored to deprive] [conspired with another to deprive]** (victim) **of [his] [her] intangible right to honest services provided by someone who had a legal or fiduciary relationship with** (victim)**.**

2. (Defendant) **[and the co-conspirator[s]] did so with the intent to defraud** (victim) **and by means of bribery or kickbacks.**

3. (Defendant) **did so when** (victim) **was 65 years of age or older.**

§ 817.5695, Fla. Stat.

The defendant's ignorance of (victim's) **age is not a defense to the crime charged.**

Give as applicable. § 817.5695(3), Fla. Stat.

If you find (Defendant) **guilty of Exploitation of a Person 65 years of Age or Older, you must then determine whether the State proved beyond a reasonable doubt that at the time of the exploitation:**

a. the [funds] [assets] [property] were valued at $50,000 or more.

b. the [funds] [assets] [property] were valued at $10,000 or more, but less than $50,000.

c. the [funds] [assets] [property] were valued at less than $10,000.

Definitions. § 817.5695, Fla. Stat. Give as applicable.

"Bribe" means any money or anything of value which is provided, directly or indirectly, to a person who has a legal or fiduciary relationship with a person 65 years of age or older, for the purpose of improperly obtaining or rewarding favorable treatment from the person who has the legal or fiduciary relationship in connection with his or her work for the person 65 years of age or older.

"Deception" means:

[misrepresenting or concealing a material fact relating to services rendered, disposition of property, or use of property, when such services or property are intended to benefit a person 65 years of age or older].

[misrepresenting or concealing a material fact relating to terms of a contract, agreement, trust, will, or testament entered into with a person 65 years of age or older]

[misrepresenting or concealing a material fact relating to an existing or preexisting condition of any property involved in a contract,

agreement, trust, will, or testament entered into with a person 65 years of age or older].

[using any misrepresentation, false pretense, or false promise in order to induce, encourage, or solicit a person 65 years of age or older to enter into a contract, agreement, trust, will, or testament.

"Endeavor" means to attempt or to try.

"Fiduciary relationship" includes, but is not limited to, a court-appointed or voluntary guardian, trustee, attorney, or conservator.

"Intimidation" means the communication by word or act to a person 65 years of age or older that the person will be deprived of food, nutrition, clothing, shelter, supervision, medicine, medical services, money, or financial support or will suffer physical violence.

"Kickback" means money, credit, a fee, a commission, a gift, a gratuity or other compensation, or anything of value which is provided to a person in exchange for preferential treatment for the receipt of goods or services.

"Obtains or uses" means any manner of:

1. **Taking or exercising control over property; or**

2. **Making any use, disposition, or transfer of property.**

"Property" means anything of value and includes, but is not limited to:

1. **Real property, including things growing on, affixed to, or found in land.**

2. **Tangible or intangible personal property, including intellectual property, rights, privileges, interests, and claims.**

3. **Services.**

"Services" means anything of value resulting from a person's physical or mental labor or skill, or from the use, possession, or presence of property, and includes, but is not limited to:

1. **Repairs or improvements to property;**

2. **Professional services;**

3. Private, public, or governmental communication, transportation, power, water, or sanitation services;

4. Lodging accommodations; or

5. Admissions to places of exhibition or entertainment.

"Value" means value determined according to any of the following:

1. The market value of the property at the time and place of the offense, or, if the market value cannot be satisfactorily ascertained, the value is the cost of replacing the property within a reasonable time after the commission of the offense;

2. In the case of a written instrument, such as a check, draft, or promissory note, which does not have a readily ascertainable market value, the value is the amount due or collectible. The value of any other instrument that creates, releases, discharges, or otherwise affects any valuable legal right, privilege, or obligation is the greatest amount of economic loss that the owner of the instrument might reasonably suffer by the diminishment or loss of the instrument;

3. The value of a trade secret that does not have a readily ascertainable market value is any reasonable value representing the damage to the owner suffered by reason of losing advantage over those who do not know of or use the trade secret; or

4. If the value of the property cannot be ascertained, the trier of fact may find the value to be not less than a certain amount; if no such minimum value can be ascertained, the value is an amount less than $100.

Amounts of value of separate properties involved in exploitation committed pursuant to one scheme or course of conduct, whether the exploitation involves the same person or several persons, may be aggregated in determining the degree of the offense.

Lesser Included Offenses

EXPLOITATION OF A PERSON 65 YEARS OF AGE OR OLDER — 825.5695

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Theft*		812.014	14.1
	Exploitation of an Elderly Person	825.103	14.9

Comments

Prior to April 2026, this instruction was numbered 14.9(a).

*The courts are likely to determine that Theft is a necessary lesser included offense with the exception of an information that charges only a conspiracy. The degree of the Theft will depend on the value of the property stolen.

This instruction was adopted on May 21, 2024.

CHAPTER 34 — EMPLOYMENT CRIMES

34.1 [FALSE] [FRAUDULENT] DOCUMENTATION FOR ALIEN EMPLOYMENT

§ 448.09(5), Fla. Stat.

To prove the crime of [False] [Fraudulent] Documentation for Alien Employment, the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **[knowingly used a false identification document] [or] [fraudulently used an identification document of another person] for the purpose of obtaining employment.**

2. **At the time,** (defendant) **was an alien.**

3. **At the time,** (defendant) **was not authorized to work by the immigration laws of the United States, the Attorney General of the United States, or the United States Secretary of the Department of Homeland Security.**

8 U.S.C. § 1101

"Alien" means a person who is not a citizen or a national of the United States. A "national of the United States" is a person who, though not a citizen of the United States, owes permanent allegiance to the United States by virtue of having taken an oath of naturalization through United States immigration authorities.

Give if applicable

"Fraudulently" means with the intent or purpose of suppressing the truth or perpetrating a deception.

Lesser Included Offense

[FALSE] [FRAUDULENT] DOCUMENTATION FOR ALIEN EMPLOYMENT — 448.09(5)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempt	777.04(1)	5.1

Comments

Prior to April 2026, this instruction was numbered 29.9.

This instruction was adopted on December 15, 2023.

34.2 FAILURE TO PROVIDE REQUIRED DOCUMENTS WHILE [WORKING IN] [OPERATING] A MASSAGE ESTABLISHMENT

§ 480.0535, Fla. Stat.

To prove the crime of Failure to Provide Required Documents While [Working in] [Operating] a Massage Establishment, the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **[was employed by a massage establishment] [was performing massage in a massage establishment] [operated a massage establishment].**

2. **[A Department of Health investigator] [A law enforcement officer] requested valid government identification from** (defendant)**.**

Give this element #3 if Defendant is charged with either being employed by a massage establishment or performing a massage in the massage establishment.

1. (Defendant**) failed to immediately produce:**

Give as applicable.

   a. **a valid, unexpired driver license issued by a state, territory, or a district of the United States.**

   b. **a valid, unexpired identification card issued by any state, territory, or district of the United States.**

   c. **a valid, unexpired United States passport.**

   d. **a naturalization certificate issued by the United States Department of Homeland Security.**

   e. **a valid, unexpired alien registration receipt card.**

   f. **a valid, unexpired employment authorization card issued by the United States Department of Homeland Security.**

Give this element #3 if Defendant is charged with operating a massage establishment.

1. (Defendant) **failed to immediately produce for each employee and person performing massage in the establishment:**

Give as applicable.

a. a valid, unexpired driver license issued by a state, territory, or a district of the United States.

b. a valid, unexpired identification card issued by any state, territory, or district of the United States.

c. a valid, unexpired United States passport.

d. a naturalization certificate issued by the United States Department of Homeland Security.

e. a valid, unexpired alien registration receipt card.

f. a valid, unexpired employment authorization card issued by the United States Department of Homeland Security.

§ 480.033(3), Fla. Stat.

"Massage" means the manipulation of the soft tissues of the human body with the hand, foot, arm, or elbow, whether or not such manipulation is aided by hydrotherapy, including colonic irrigation, or thermal therapy; any electrical or mechanical device; or the application to the human body of a chemical or herbal preparation.

§ 480.033(7) and § 480.033(4), Fla. Stat.

"Establishment" means a site or premises, or portion thereof, wherein a massage therapist practices massage. A "massage therapist" is a person licensed by the state, who administers massage for compensation.

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comments

Prior to April 2026, this instruction was numbered 29.23.

There is no definition of "law enforcement officer."

A first violation is a misdemeanor of the second degree. A second violation is a misdemeanor of the first degree. A third violation is a third degree felony. There is no case law as to whether the State can prove two prior violations to the judge at sentencing or whether the two prior violations are an element of the felony.

This instruction was adopted in 2013 [131 So. 3d 692].

34.3 EMPLOYING PERSON UNDER THE AGE OF 21 IN ADULT ENTERTAINMENT ESTABLISHMENT TO PERFORM OR WORK NUDE

§ 787.30(2)(b), Fla. Stat.

To prove the crime of Employing a Person Under the Age of 21 in an Adult Entertainment Establishment to Perform or Work Nude, the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **knowingly [employed] [contracted with] [contracted with another person to employ] [permitted]** (name of worker/performer) **to perform or work while nude in an adult entertainment establishment.**

2. **At the time,** (name of worker/performer) **was younger than 21 years of age.**

3. **At the time,** (defendant) **was a[n] [owner] [manager] [employee] [contractor] of the adult entertainment establishment.**

"Adult entertainment establishment" means *(give applicable portion as defined in F.S. 847.001).*

"Nude" means the showing of the human male or female genitals, pubic area, or buttock with less than a fully opaque covering; or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple; or the depiction of covered male genitals in a discernibly turgid state. A mother's breastfeeding of her baby does not under any circumstance constitute nudity, regardless of whether the nipple is covered during or incidental to feeding.

A person's ignorance of another person's age or a person's misrepresentation of his or her age may not be raised as a defense to this crime.

Lesser Included Offenses*

EMPLOYING PERSON UNDER THE AGE OF 21 IN AN ADULT ENTERTAINMENT ESTABLISHMENT WHILE WORKING OR PERFORMING NUDE — 787.30(2)(b)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Employing Person Under the Age of 21 in an Adult Entertainment Establishment		787.30(2)(a)	29.31*
	Attempt	777.04	5.1

Comments

Prior to April 2026, this instruction was numbered 29.31.

*This instruction can be used for the lesser included first degree misdemeanor in § 787.30(2)(a), Fla. Stat., by deleting the words “while nude” in element #1.

This instruction was adopted on September 5, 2025.

PART THREE — GRAND JURY PROCEEDINGS

CHAPTER 35 — FLORIDA GRAND JURY HANDBOOK

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INTRODUCTION

"Jury service is one of the highest duties of citizenship, for by it the citizen participates in the administration of justice."

– *Harlan Fisk Stone, Former Chief Justice, United States Supreme Court*

In time of peace, there is no higher duty a citizen can perform than that of jury service; however, few citizens when called to serve understand the principles that control the actions of the grand juror.

This handbook is intended to give grand jurors a better understanding of the general nature of their functions, together with some suggestions as how best to carry them out. The judge will be the final authority in his or her instructions to the grand jury. This handbook is not intended to act as a substitute for the instructions given by the presiding judge.

WHAT IS A GRAND JURY?

A grand jury is an investigating, reporting, and accusing agency of the circuit court. It consists of citizens who have been summoned and empaneled by a judge of the circuit court. The grand jury is an agency and an arm of the circuit court and is uniquely independent.

The grand jury is answerable to no person or agency of government except the court that empanels it and, even then, only to the extent that it may exceed its authority and privileges.

TERM OF THE GRAND JURY

The chief judge of each circuit court orders the convening of the grand jury for a term of 6 months. Upon petition of the state attorney or the foreperson of the grand jury acting on behalf of a majority of the grand jurors, the circuit court may extend the term of a grand jury beyond the term in which it was originally impaneled. A grand jury whose term has been extended has the same composition and the same powers and duties it had during its original term. If the term of the grand jury is extended, it shall be extended for a time certain, not to exceed a total of 90 days, and only for the purpose of concluding one or more specified investigative matters initiated during its original term. The grand jury will not be in continuous session but will be called in from time to time as necessary.

WHO ARE GRAND JURORS?

Grand jurors are United States citizens and legal residents of this state and their respective counties who are at least 18 years of age and who possess a driver's license or identification card issued by the Department of Highway Safety and Motor Vehicles, or who execute an affidavit indicating a desire to serve as a juror.

All jurors are selected at random. Their names are taken from lists prepared by the clerk of the circuit court.

The process of selecting jurors is done in most counties by the county commissioners and in some counties by a specially constituted jury commission.

When making up the jury list, the officers compiling it are required to select only citizens they believe to be law-abiding, and of proven integrity, good character, sound judgment and intelligence, and who are not mentally infirm.

DISQUALIFICATION TO SERVE AS A GRAND OR PETIT JUROR

Any person who has been convicted of a felony or bribery, forgery, perjury, or theft is disqualified to sit as a juror, unless his or her civil rights have been restored.

A person under prosecution for any crime is disqualified.

Most government officials are disqualified to serve on a jury. An elected public official is not eligible to be a grand juror.

FREQUENTLY USED WORDS AND PHRASES

Throughout this handbook and during your term as a grand juror, certain terms will occur frequently. Some of these are:

Capital Crime. A capital crime is any crime for which the maximum punishment is death.

Circuit Court. The State of Florida is divided into 20 judicial “circuits.” Each circuit covers one or more counties. The circuit court is the highest trial court in the circuit.

Defendant. A “defendant” is a person who has been accused of a crime. The words “defendant” and “accused” are used interchangeably.

Felony. A “felony” is any crime punishable by imprisonment in a state prison for a term in excess of one year. A “misdemeanor” is any crime punishable by imprisonment in a county correctional facility (jail) for a term of not more than one year.

Indictment; True Bill. A “true bill” is a charge brought by the grand jury accusing a person of a crime. A true bill, when it is filed in court, then becomes an “indictment.”

Judge. The judge presiding over the trial is often called or referred to as “the court.”

No True Bill. A “no true bill” is a finding by the grand jury that on a given charge no indictment should be filed.

Presentment. A “presentment” is a presentation to the court of a grand jury's report of its actions and recommendations.

State Attorney. Each circuit in the State of Florida has a “state attorney” who, together with assistants, prosecutes all crimes and offenses in the circuit and county courts in the circuit. Some other states refer to this officer as a “district attorney” or “prosecuting attorney.” There is also an Office of the Statewide Prosecutor, which is a division of the Office of the Attorney General (discussed below).

GRAND JURY AND PETIT JURY DISTINGUISHED

There are two kinds of juries: grand juries and petit juries.

The grand jury consists of not fewer than 15 nor more than 21 members. A petit jury, depending upon the type of trial, consists of either 6 or 12 members.

The grand jury and the petit jury have entirely different purposes and functions. A petit jury actually tries a case and renders a verdict of guilty or not guilty after hearing both sides. A grand jury does not try a case on the issue of guilt. The grand jury rarely hears both sides. Its function is simply to hear witnesses and to determine whether the person, or persons, should be brought to trial. The grand jury has been called both a sword and shield of justice — a sword because it is a terror to criminals, a shield because it is protection of the innocent against unjust prosecution.

The tremendous power of the grand jury obviously creates grave and solemn responsibilities to see that these powers are not perverted or abused. A grand jury, being possessed with these tremendous powers and unless

motivated by the highest sense of justice, might find indictments not warranted by the evidence and thus become a source of oppression to the citizenry.

Conversely, a misguided grand jury might dismiss charges against those who should be prosecuted. The importance of the grand jury's power is emphasized by the fact that it is one of the most independent bodies known to the law.

THE STATEWIDE GRAND JURY

In 1973, the Florida Legislature created the concept of a statewide grand jury to strengthen the grand jury system and enhance the ability of the State to detect and eliminate organized criminal activity by improving the evidence gathering process in matters that transpire or have significance in more than one county. The laws covering a statewide grand jury can be found in sections 905.31 to 905.40 of Florida Statutes. A statewide grand jury differs from other grand juries in several respects. For example, a statewide grand jury is an investigating, reporting, and accusing agency of the Florida Supreme Court. It consists of citizens who have been summoned and empaneled by a judge appointed by the Chief Justice of the Florida Supreme Court. The statewide grand jury is an agency and an arm of the Florida Supreme Court and is uniquely independent. A statewide grand jury consists of 18 members. The statewide grand jury is advised by the statewide prosecutor, who is appointed by the Attorney General of the State of Florida to investigate and prosecute certain multi-circuit criminal activity. A statewide grand jury meets for 12 months and its term may be extended for another 6 months upon petition of the statewide prosecutor or a majority of the statewide grand jurors to the Florida Supreme Court. The statewide prosecutor has the responsibility to present witnesses and bring testimony before the statewide grand jury.

HISTORY OF THE GRAND JURY

The grand jury originated hundreds of years ago. It was recognized in the Magna Carta granted by King John of England upon the demand of rebellious barons in 1215 A.D. Its origins can be traced back even further. As early as 997 A.D., an Anglo-Saxon king, “Ethelred the Unready,” charged an investigative body of his reign that it should go about its duty by accusing no innocent person and sheltering no guilty one.

This high principle is echoed in the oath that you took as a grand juror:

"You, as grand jurors for _____ County (or the statewide grand jury) do solemnly swear (or affirm) that you will diligently inquire into all matters put in your charge and you will make true presentments of your findings; unless ordered by a court, you will not disclose the nature or substance of the

deliberations of the grand jury, the nature or substance of any testimony or other evidence, the vote of the grand jury, or the statements of the state attorney (or the statewide prosecutor); you shall not make a presentment against a person because of envy, hatred, or malice, and you shall not fail to make a presentment against a person because of love, fear, or reward. So help you God."

The early colonists brought the grand jury system to this country from England. It has been with us ever since. It is recognized in the Constitution of the United States and in the Constitution of Florida.

THE GRAND JURY AS AN ACCUSING AND INVESTIGATING BODY

Our constitution provides that no person shall be brought to trial for a capital crime (explained in the Frequently Used Words and Phrase section above) except upon indictment of a grand jury. This means that no one may be prosecuted for a capital crime except by a vote of the grand jury. Except for capital crimes, the state attorney (or the statewide prosecutor) may initiate all other criminal charges. The grand jury, of course, may indict for any crime that the evidence justifies.

Charges of crime may be brought to your attention in several ways: by the court; by the state attorney (or the statewide prosecutor); from personal knowledge brought to your body by any member of the grand jury; and, lastly, by private citizens who have a right to be heard by a grand jury in formal session and with the grand jury's consent. The bulk of the grand jury's work probably will be concerned with cases brought to its attention by the state attorney (or the statewide prosecutor). In some instances, a person being considered for indictment by the grand jury has already been arrested and is awaiting action by the grand jury. The accused will be either in custody or on bail. Your action, therefore, should be reasonably prompt in either voting for an indictment or returning a “no true bill.”

The grand jury should consult with the state attorney (or the statewide prosecutor) or an assistant state attorney (or the assistant statewide prosecutor) in advance of undertaking a formal investigation on the grand jury's own initiative.

A grand juror may not be subject to partisan secret influences. Consequently, no one has the right to approach a grand juror to persuade that juror that an indictment should or should not be found. Any individual who wishes to be heard by the grand jury should be referred to the state attorney (or the statewide prosecutor) or to the foreperson of the grand jury, and thereafter be heard only in formal session of the grand jury.

It is imperative that you always keep in mind that as a grand juror, you are a public official, with the duty of protecting the public by enforcing the law of the land. Therefore, even though you may think a certain law to be unduly harsh or illogical, that should not influence your judgment in carrying out your duties as a grand juror. A citizen has the right to endeavor to change the law. A grand juror, being a public official, has a duty to enforce the law as it exists despite any personal inclinations to the contrary.

The grand jury in addition to the duty of formally indicting those charged with crime has the further important duty of making investigations on its own initiative, which it will report as a "presentment." This duty permits investigation of how public officials are conducting their offices and discharging their public trusts. The grand jury may investigate as to whether public institutions are being properly administered and conducted. It has the power to inspect those institutions and, if necessary, may call before the grand jury those in charge of the operations of public institutions as well as any other person who has information and can testify concerning them. If the grand jury finds that an unlawful, improper, or corrupt condition exists, it may recommend a remedy.

The grand jury may not act arbitrarily. Investigations shall not be based upon street rumor, gossip, or whim, and the investigations cannot be the subject of a grand jury presentment. The grand jury can only investigate those matters that are within its jurisdiction, geographic and otherwise. The limitations of the grand jury's jurisdiction have been set forth for you by the court in its instructions.

It is important to keep in mind that no individual should be unjustly criticized or held up to scorn or public resentment, particularly when it is remembered that the individuals who may be criticized had no opportunity to defend themselves or give reply to the charges. A grand juror must keep in mind that the grand jury is an instrument of justice and should never be subverted to become the vehicle for harassment or oppression.

OFFICERS OF THE GRAND JURY

The judge who presided over the impaneling of the grand jury in the "charge to the grand jury" advised you formally and in detail as to how the grand jury is organized and functions. Its officers are the foreperson, who will preside over the grand jury deliberations to make sure they are carried on in an orderly fashion including overseeing the examination of the witnesses; a vice-foreperson, who will preside in the absence of the foreperson or if for any reason the foreperson is not able to carry out his or her duty; and the clerk, who will keep a record of the proceedings and formally make return of these records to the clerk of the circuit court (or clerk of the Supreme Court in the

case of the statewide grand jury) for safekeeping. The foreperson and vice-foreperson are appointed by the judge (or in the case of the statewide grand jury, are selected by the statewide grand jury by majority vote). The state attorney (or the statewide prosecutor) or assistant state attorneys (or assistant statewide prosecutors) act as the legal advisers to the (statewide) grand jury. The grand jury also will be provided an official court reporter or recorder to record the testimony before the grand jury.

If the grand jury has its own budget, a treasurer of the grand jury may also be appointed to keep account of all receipts and disbursements made to or from the grand jury budget.

If any question should arise concerning how the grand jury shall operate or function, you may apply to the judge, who will advise you.

PROCEDURES

Not less than 15 members of a grand jury must always be present to constitute a quorum. If less than a quorum exists, the proceedings of the grand jury must be halted until a quorum is present. Grand jurors, who, because of an emergency, find that they will be unable to attend a grand jury session should advise the grand jury clerk or foreperson or state attorney (or statewide prosecutor) immediately.

An affirmative vote of at least 12 members of the grand jury is necessary to the return of a true bill or indictment. Therefore, even though a quorum is present, it still requires at least 12 votes of individual members, rather than a mere majority of those present, in order to return a true bill.

PROCEEDINGS OF THE GRAND JURY

Most of the work of the grand jury involves hearing witnesses and determining the sufficiency of evidence on the issue of whether that evidence, without regard to possible defenses, justifies indictment. Generally, the state attorney (or statewide prosecutor) or assistant state attorneys (or assistant statewide prosecutors) will present and explain the charge to the grand jury and advise as to the witnesses who will be presented, either voluntarily or upon being summoned on the request of the state attorney (or statewide prosecutor) or the grand jury itself. The grand jury may call any witness it deems appropriate and necessary.

The witnesses will be called one by one and placed under oath to tell the truth. Generally, the state attorney (or statewide prosecutor) will administer the oath. This oath should be administered in a solemn, dignified, and deliberate manner to impress upon the witness the seriousness of the situation and the

duty to be truthful. The state attorney (or the statewide prosecutor) or assistant state attorneys (or assistant statewide prosecutors) ordinarily will question the witnesses first. If the foreperson, or any member of the grand jury desires to do so, the grand juror may ask questions. It is suggested, however, that any question first be submitted to the state attorney (or statewide prosecutor), who will determine whether the question is appropriate.

Grand jurors should keep in mind that they are acting in a judicial capacity and sitting in judgment of evidence before them. For this reason, all questioning should be done in a calm, impartial, and objective manner, without indicating the personal feelings of the person asking the questions.

Occasionally, a witness when brought before the grand jury refuses to testify or answer questions. If this occurs, both the question the witness has refused to answer and the fact of refusal should be carefully recorded. The matter then should be brought before the court, with a complete copy of the record, to obtain a ruling from the court on whether the witness may be compelled to answer the question. In most instances, a refusal to answer is based upon the claim of the witness that the answer will violate the constitutional right against self-incrimination. If the answer tends to incriminate the witness, the witness generally cannot be made to answer. If it does not, however, the witness will be ordered to answer under penalty of contempt.

An accused person cannot be compelled to testify before a grand jury although one under investigation by the grand jury may appear voluntarily to testify. In that event, however, the grand jury should proceed with great caution and should not permit one under investigation to testify until after first conferring with the state attorney (or the statewide prosecutor). If an accused, or any person under investigation, is permitted to testify before the grand jury without waiving the constitutional right against self-incrimination, any indictment or presentment would be null and void.

The matter of forcing a witness to testify or of giving the accused an opportunity to testify raises complicated legal questions. The advice of the state attorney (or the statewide prosecutor) and, when necessary, a ruling from the court, therefore, always should be sought when these questions arise.

A witness is permitted to be represented before the grand jury by one attorney. The attorney may be present for the purpose of advising and consulting with the witness, but may not address the grand jurors, raise objections, or make arguments. (This provision does not apply to proceedings of the Statewide Grand Jury.)

DETERMINATION WHETHER TO RETURN AN INDICTMENT OR A NO TRUE BILL

When the grand jury has heard all necessary or available witnesses and is prepared to deliberate on the issue whether to indict or return a no true bill, the foreperson must compel all persons to leave the grand jury room except the members of the grand jury themselves. No other person is permitted in the grand jury room during its deliberations, even including the state attorney (or the statewide prosecutor), court reporter, and interpreter.

When the question of whether to indict or return a no true bill is presented, all grand jurors have the right to comment on the evidence and to express their views of the matter. Only when all members of the grand jury have expressed themselves and each has been given the opportunity to be heard should a vote be taken. A vote to return an indictment can be found only upon the affirmative vote of at least 12 members of the grand jury.

Similar proceedings should be taken when the matter to be discussed is not a criminal charge or indictment but a presentment, as noted above.

If all persons, except the grand jurors, are not removed from the grand jury room during its deliberations, any indictment or presentment would be nullified.

THE STATE ATTORNEY (OR THE STATEWIDE PROSECUTOR) AS LEGAL ADVISOR TO THE GRAND JURY

The court in its charge to the grand jury outlined the part that the state attorney (or the statewide prosecutor) will play in assisting the grand jury. The state attorney (or the statewide prosecutor) will assume responsibility for presenting witnesses and bringing testimony before the grand jury. The state attorney (or the statewide prosecutor) is a public official and is entitled to the confidence and cooperation of the grand jury.

It occurs sometimes, however, that even the best of advisors may be in error. If a difference of opinion arises between the state attorney (or the statewide prosecutor) and the grand jury and it cannot be resolved amicably, the matter should be brought before the presiding judge for a ruling.

SECRECY OF GRAND JURY PROCEEDINGS

Secrecy as to all grand jury proceedings is of the utmost importance. This includes not only the actions upon an indictment or a presentment but even the fact that any such matter was considered, or any witness was called. It is only in this manner that the grand jurors themselves can be protected

from pressure by persons who may be involved by the action of the grand jury. Secrecy also is the only protection that a witness may have before a grand jury, which will protect the witness from being tampered with or intimidated before testifying at the trial. Further, secrecy may prevent one under indictment, or subject to indictment, from escaping while the issue of indictment is under consideration. It also should be remembered that secrecy may encourage witnesses to give the grand jury frankly and candidly any knowledge they may have about crime or corruption. Lastly, and of equal importance to all other consideration of secrecy, is the fact that an innocent person who has been subjected to a charge but not indicted should be protected from the embarrassment and disgrace attendant upon the making of a charge before a grand jury.

The pledge of secrecy is paramount. It also is permanent.

A grand juror will not communicate to family, friends, associates, or anyone concerning any matter that takes place in the grand jury room. The only time this veil of secrecy may be lifted is by order of the court after a full hearing, and then only in exceptional cases.

PROTECTION AND IMMUNITY OF GRAND JURORS

Grand jurors are fully protected from actions against them by being an independent body answerable to no one except the court that empanels it. No inquiry may be made to learn what grand jurors said or how they voted. The law gives the grand juror complete immunity for official acts. There is only one exception: if a grand juror testifies as a witness for the grand jury as to a commission of a crime and that testimony is perjured, the juror could be prosecuted for that perjury. This complete protection for the official acts obviously is vital to the operation of the grand jury and highlights grand jurors should be citizens of unquestionable integrity and high character.

ON BEING A GRAND JUROR — SOME PRACTICAL SUGGESTIONS

Attend all sessions of the grand jury. Your attendance should be regular and on time. If you are unable to attend a session and wish to be excused, obtain permission from the state attorney (or the statewide prosecutor). The unexpected lack of a quorum could cause a great loss of money, as well as the time of the grand jurors, the authorities, and the witnesses. The public is depending on you.

Pay close attention to testimony given and the evidence presented.

Be courteous to the witnesses and your fellow grand jurors.

Fix the time and place of your meetings, keeping in mind the convenience of the public and the witnesses as well as yourselves and the state attorney (and the statewide prosecutor).

Do not interrupt until the state attorney (or the statewide prosecutor) has finished questioning the witness. In all probability, the evidence you are interested in will be brought out by those questions.

Listen to the opinions of your fellow grand jurors but maintain your own independent viewpoint.

Be independent, but not obstinate.

Be absolutely fair. You are acting as a judge. You therefore must be guided by your own good conscience and sense of justice.

All grand jurors have an equal voice in determining whether an indictment shall be returned. Each of you has a right to state your reasons.

Do not remain silent when the case is under discussion and then, after a decision has been made, criticize the acts of the grand jury.

A reckless grand jury is as bad as a weak grand jury.

Do not attempt to investigate matters beyond the province of the grand jury, or merely because someone suggested an investigation.

Above all, refrain from discussing grand jury matters with fellow jurors outside of the grand jury room.

Each grand juror has a duty and responsibility equal to yours. Each grand juror is entitled to be satisfied with the evidence. If others wish to pursue a matter further, no effort should be made to dismiss the witness or shut off proper discussion.

CONCLUSION

Your membership on the grand jury is an honor. You are one of the few citizens who have been called upon to perform this service. Your service as a grand juror will be a source of pride and satisfaction to you if you devote to it the responsible participation and dedicated service that the grand jury is entitled to expect from its members.

Comment

The grand jury handbook was initially approved in 1981. It was amended in 1991, in June 2002, September 2005, 2014, in October 2022, and in March 2024.

CHAPTER 36 — FLORIDA GRAND JURY INSTRUCTIONS

1 PRELIMINARY STATEMENTS

1.1 LADIES AND GENTLEMEN, the oath you have just taken now constitutes you the grand jury for _____ (county) (or the statewide grand jury)**. Your term begins today and will continue through** (date)**. You will not be expected to remain in continuous session, but you will be called from time to time when circumstances require your consideration. Your immediate duty will be to consider those matters to be presented to you at this time.**

1.2 It is my duty to instruct you concerning your duties and it is your duty to follow these instructions as you understand them.

1.3 Your duties are those of an investigative body. You are authorized to inquire into and investigate both criminal and civil matters. You should be fully aware at all times of the enormous power vested in the grand jury. This power carries with it the profound responsibility to see that it is not abused. You are responsible only to the court.

1.4 No duty of citizenship is more important than service as a grand juror, for no other group of citizens has the opportunity to make a more valuable contribution to the administration of justice.

1.5 The grand jury system is of ancient vintage. History has proved its effectiveness in regulating the affairs of free people. The seven hundred years of its existence in its present form justifies it as a guardian of all that is comprehended in the police power of the state.

1.6 You always should keep in mind that the grand jury is both a sword and a shield... a sword because the power of the grand jury has a chilling and deterrent effect on those who violate the law... it is a shield because of its power and duty to protect the innocent against persecution.

1.7 Your service as a grand juror will be a satisfying and rewarding experience for by it you will participate directly in the administration of justice. You will have the opportunity, if circumstances justify it, to inquire into, examine, and investigate not only violations of the criminal law but all phases of the civil administration of government. You should bring to your task your most wholehearted and conscientious efforts. The grand jury is one of the keystones of democracy. Grand jurors upon being called into service are expected to exercise their honest convictions and best

judgment in the administration of justice. The grand jury operates freely, unhampered, and subject only to the restraint fixed by the limitations and requirements of the law itself.

1.8 The importance of your work as a grand juror of this county (or the statewide grand jury) **and your grave responsibility must be realized by each of you and be kept in mind during all of your investigations and deliberations.**

2 INSTRUCTIONS ON CRIMINAL MATTERS

2.1 The function of the grand jury in criminal matters is to investigate and determine whether there is sufficient evidence to justify an indictment against an accused.

2.2 It is not your responsibility to try the case and determine whether the accused is guilty or not guilty, and you are not expected to do this.

2.3 The question of whether a person indicted by the grand jury is guilty or not guilty is determined by a trial jury that will be specially empaneled to try the case. The trial jury hears all the evidence, on both sides, in an adversary proceeding under the supervision of a trial judge. During the trial, the accused is entitled to be present and have the assistance of counsel. A verdict is rendered only after the accused has had an opportunity to see and hear the witnesses, examine the evidence, and have the case argued by counsel. The trial jury will be charged by the trial judge on the law applicable to the case. These safeguards are designed to protect and preserve the constitutional rights of an accused.

2.4 Your duty is only to ascertain whether there is "probable cause" to believe that a crime has been committed by the accused. If the evidence is sufficient to constitute "probable cause," then it is your duty to find what is known as a "true bill." If the grand jury does find a "true bill" and it is properly returned in open court, it then becomes the "indictment" on which the accused will be put to trial.

2.5 "Probable cause," which must be shown to your satisfaction before you will be justified in returning a "true bill," is defined as a reasonable ground of suspicion, supported by circumstances sufficiently strong in themselves to warrant a cautious person in the belief that a particular person is guilty of a particular crime.

2.6 You should vote to return a "true bill" if you find "probable cause" that a crime has been committed and that the accused probably did commit that crime There may be instances when it seems probable that a crime has been committed and yet you feel that the accused is not guilty or you have a strong doubt in your mind as to guilt. In those cases you should vote not to return a "true bill," for in those cases you should keep in mind that you have heard only one side of the case and have no knowledge of the defendant's side of the case. Certainly, if there is considerable doubt in your minds of the accused, then it cannot be expected that the State could convince a

trial jury of a defendant's guilt beyond every reasonable doubt, when the State's case will be vigorously attacked and the trial jury also will hear the defendant's story.

A state attorney (or a statewide prosecutor) **will advise and counsel the grand jury as its legal advisor and while you do not have to follow that advice you should give it strong consideration. The state attorney** (or the statewide prosecutor) **also will be in a position to advise whether other evidence may be available at the time of trial if the accused is indicted.**

2.7 When so justified it is your solemn duty to cause the accused person to be indicted; likewise, when an indictment is not justified, it is equally your solemn duty to clear the accused person by returning a "no true bill."

2.8 Our state constitution provides that no person may be tried for a capital crime except on presentment and indictment by a grand jury. A capital crime is one that is punishable by death. Although you have the authority to do so, the court recommends that a grand jury not investigate criminal matters other than capital cases unless they are of such public importance that they justify the additional time and expense of investigation by the grand jury. Again, you should give weight to the recommendations and advice of the state attorney (or the statewide prosecutor) **in the matters you are investigating; however, the final decision rests with you. You should keep in mind, however, that the state attorney** (or the statewide prosecutor) **in most cases has thoroughly investigated the case and will have the responsibility to prosecute the indictments resulting from your investigation. The state attorney** (or the statewide prosecutor) **has the duty to provide you not only the evidence unfavorable to the person under investigation but also any matters favorable to that person that are known; consequently, the state attorney's** (or the statewide prosecutor's) **recommendations usually are both practical and well-founded.**

2.9 The grand jury should not cause any subpoena to be issued for a witness nor permit any witness to appear before it without first consulting the state attorney (or the statewide prosecutor) **or an assistant. This is in order to avoid inadvertently giving immunity to a person who may be subject to indictment.**

2.10 The court recommends that the grand jury call witnesses and consider evidence only in those matters that are under consideration for presentment or indictment, and refrain from

calling witnesses or gathering evidence to be used in cases in which an indictment or information has already been filed. You of course may continue with any incomplete investigations, or call witnesses and consider evidence as to any new charges against a person already indicted.

3 CIVIL INSTRUCTIONS

3.1 The grand jury is not limited to investigation of criminal matters. It has broad powers to make inquiries into civil administration, regardless of whether criminal or irregular conduct is charged. It has power to investigate public offices to determine if they are being conducted according to law and good morals. It also has power to investigate the conduct of public affairs by public officials and employees, including the power to inquire whether those officials are incompetent or lax in the performance of their duties.

3.2 The grand jury should investigate every offense affecting the morals, health, sanitation, and general welfare of the county. It should inquire into matters of governmental administration, including county institutions, buildings, offices, and officers, and, when appropriate, make presentment concerning the physical, sanitary, and general conditions.

3.3 You are cautioned, however, that a grand jury investigation shall not be made the tool of any group in order to harass or oppress any individual or institution or to pry into private affairs without good cause. Indictments based on street rumors or common gossip will not be permitted. No person should be singled out by the grand jury for the purpose of censure or to hold them up to scorn or criticism by imputation or innuendo. It is improper to make a presentment using words of censure or reprobation so that a public official or any other person is impugned or embarrassed, unless you return a "true bill."

3.4 This is not to say, however, that the grand jury may not make a fair report on its findings even though the report incidentally may reflect negligence or incompetence on the part of a public official. There are no limitations on the grand jury telling the truth when circumstances justify it. Grand jury investigations of civil matters and local government are not uncommon. They are necessary and commendable if they produce good results. The searching eye and inquiring mind of the grand jury is an effective deterrent to evil and corruption; no officer or agency of government is above or beyond the reach of the grand jury. A public official or employee who conducts public work in a proper manner has no reason to fear the grand jury, and if there are reasons to do so, you should not hesitate to call any public official or employee before you.

4 PROCEDURE

4.1 The officers of the grand jury are the foreperson and vice-foreperson, both to be appointed by the court (or elected by the statewide grand jury body)**, and the clerk, to be appointed by the foreperson.**

DUTIES OF THE FOREPERSON: To preside over your sessions and see that they are carried on in an orderly fashion; appoint your clerk at your first session; be responsible for seeing that no person participating in or advising the grand jury has any conflict of interest with the duties of a grand juror; consult with the state attorney (or the statewide prosecutor) **concerning the scope, means, and method of the grand jury's investigation; report to the court any grand juror who the foreperson has reason to believe has violated the oath, duties, or responsibilities, or who is subject to disqualification; sign all interim and final reports approved by the grand jurors; return to the court a list of all witnesses who shall have been sworn by the grand jury; and sign presentments and indictments approved by the grand jurors.**

DUTIES OF THE VICE-FOREPERSON: The vice-foreperson shall act in the absence of the foreperson and perform all the duties incumbent on the foreperson.

4.2 DUTIES OF THE CLERK. The clerk shall keep an attendance record of the grand jurors present and absent at each session; keep minutes of the proceedings at each session. The minutes shall reflect the subject matter of the proceeding and the names of the witnesses testifying in relation. The clerk shall record the aye and nay vote on each vote taken by the grand jury, but by number only and not by the names of the grand jurors. The clerk also shall sign all interim and final reports approved by the grand jury.

(Give only if applicable.) **This grand jury has had a special fund budgeted for its use. The court will therefore appoint one of your number treasurer of this grand jury. The treasurer shall keep accounts of all receipts and disbursements of any funds received or disbursed by the grand jury.**

4.3 The state attorney (or the statewide prosecutor) **and assistants are your legal advisers on all matters that come before the grand jury. It is your duty to give weight and careful consideration to this advice. The state attorney** (or the statewide prosecutor) **or an assistant shall**

be present at all times when you are making investigations, and will interrogate the witnesses and administer the necessary oaths.

The state attorney (or the statewide prosecutor) **will draft "true bills" for the grand jury and will provide the means for the drafting of its presentments.**

4.4 Every grand jury shall consist of not less than 15 nor more than 21 persons. At least 15 of the jury must be present at all times when the jury is functioning. A favorable vote of not less than 12 of those present is necessary to the finding of any "true bill," presentment, or report. (The Statewide Grand Jury shall be composed of 18 members of which 15 members shall constitute a quorum.)

4.5 It is within your discretion to recess from day to day and week to week subject to the requirements of your duties. You are reminded, however, that your term is limited and the time within which you may act likewise is limited. You therefore should attend to your duties diligently and in as short a time as is compatible with the necessary attention to the work to be done.

4.6 The testimony and statements of those appearing before the grand jury will be recorded by stenographic or mechanical means. The court reporters are officers of the court and are bound to secrecy when serving the grand jury. The law requires that the notes, records, and any transcriptions prepared by the court reporter be impounded and sealed when your work is completed. The court reporter's notes may not be transcribed unless ordered by the court or the grand jury itself, and even after transcription they may not be inspected by any person other than the state attorney (or the statewide prosecutor) **and the grand jury, except upon order of the court.**

The decision to have a court reporter present during your sessions is to be made by the grand jury after due consideration to the nature of the work to be done, and it is recommended that the grand jury follow the advice of the state attorney (or the statewide prosecutor) **on this question.**

4.7 If necessary, the grand jury is authorized to obtain the services of a qualified interpreter of a foreign language. An interpreter will be provided you upon request.

4.8 Bailiffs provided by the sheriff will be available to the grand jury as needed.

4.9 It is the duty of the judges of this court not only to initially charge a grand jury concerning its duties but also to be available at all reasonable times to advise the grand jury in the event it becomes necessary. If at any time during your term you feel it necessary, you may call upon the court for any assistance it can render you.

4.10 This grand jury has a duty to cooperate with any other grand jury investigations being conducted in this county or elsewhere in the state if the administration of justice requires it, including making reports of your investigation available to any subsequent grand jury of the county (or the statewide grand jury)**.**

5 DISQUALIFICATION OF A GRAND JUROR

5.1 A grand juror is disqualified from participating in an investigation of any person to whom the grand juror is related by blood or marriage or when a grand juror has a conflicting interest in any matter under investigation by the grand jury. Grand jurors found to be disqualified may excuse themselves or may be excused by the court, or a majority of the grand jurors may vote to prohibit a juror's participation in the investigation, deliberation, or voting.

The court should be promptly advised of the disqualification of any juror.

6 DISQUALIFICATION OF STATE ATTORNEY (OR STATEWIDE PROSECUTOR)

6.1 If the state attorney (or the statewide prosecutor) **is disqualified from advising and participating in the duties of the grand jury, the court will appoint a special state attorney** (or a special statewide prosecutor)**.**

The state attorney (or the statewide prosecutor) **will counsel, assist, and advise the grand jury; however, should any irreconcilable conflict arise between the state attorney** (or the statewide prosecutor) **and the grand jury, the court is available to assist in resolving the problems.**

7 JURY FUNCTIONS ONLY AS A BODY

7.1 The grand jury functions and operates only as a whole body. No individual or group of grand jurors may make, or attempt to make, any independent investigation whatsoever.

7.2 The law provides that, if a grand juror knows or has reason to believe that an indictable offense triable in this county has been committed, the juror shall declare that fact to the other jurors for investigation. Individually, a juror may receive information but that information shall be reported immediately to the foreperson or the state attorney (or the statewide prosecutor) **for investigation if it is of interest to the grand jury or relevant to its investigations.**

8 CHILD LABOR, ELECTION, SUBVERSIVE ACTIVITIES LAWS

8.1 CHILD LABOR LAW: The law requires that the court specifically charge the grand jury, and you are now charged, to investigate any alleged violation of the child labor laws of the state.

8.2 ELECTIONS: If requested by any candidate or qualified voter, the grand jury, if it convenes during a campaign period preceding an election day, shall investigate to determine if there are any violations of the election code. A "true bill" shall be returned if grounds exist for same.

8.3 SUBVERSIVE ACTIVITIES LAW: The subversive activities laws of this state make it unlawful for any subversive organization or foreign subversive organization to exist or function in the State of Florida. The court charges you that, if you have any information or belief concerning violation of the subversive activities laws, you will report the information to the court immediately. You are further charged that, if circumstances make it appropriate, you will inquire into the violation of the subversive activities laws and may inquire generally into the purposes, processes, and activities or other matter affecting communists or any related or other subversive organization.

9 OATH

9.1 The court would now like to emphasize the importance of the oath that each of you has just taken. The oath is prescribed by law and contains in simple terms the solemn obligation by which you are bound, and which you must observe in every respect. It contains no unnecessary words. It means exactly what it says.

9.2 The oath, in part, is that "You, as grand jurors for _____ County (or statewide prosecutor) **do solemnly swear** (or affirm) **that you will diligently inquire into all matters put in your charge and you will make true presentments of your findings; unless ordered by a court, you will not disclose the nature or substance of the deliberations of the grand jury, the nature or substance of any testimony or other evidence, the vote of the grand jury, or the statements of the state attorney** (or the statewide prosecutor)**."**

9.3 The importance of this part of the oath binding you to secrecy cannot be over-emphasized. I now charge you that you shall not under any circumstances discuss the matters to be kept secret unless you are released by court order. Your vote shall never be known; the opinion expressed by any of you on any matter before the grand jury shall never be made known; and the testimony given before you shall not be made known except by order of court. This secrecy is binding upon you for all time.

9.4 The oath concludes as follows:

"You shall not make a presentment against a person because of envy, hatred, or malice, and you shall not fail to make a presentment against a person because of love, fear, or reward. So help you God."

9.5 The oath, like the grand jury system itself, is of ancient vintage. It is in substance the same oath as was administered to grand juries under the common law. It is near perfect. It contains the rules and high standards of fearless and impartial justice that will govern you in your service as the grand jury of this county (or statewide grand jury)**. Its solemn dictates are as appropriate today as they have been in the long past.**

10 CONCLUSION

10.1 The instructions you have just been given constitute the general charges that are given to the grand jury as to its duties, responsibilities, and procedures. You are admonished to give careful and serious consideration to all phases of all parts of the charge. You are to follow these charges, and having done so you should act according to the dictates of your own conscience and only in the best interest of the citizens of this county (or the state)**.**

11 APPOINTMENT

11.1 The court appoints _____ as foreperson, and _____ as vice-foreperson, or in the case of the statewide grand jury, authorizes you as a group to select your foreperson and vice-foreperson. The foreperson will appoint the clerk and advise the clerk of the circuit court (or Supreme Court) **of the clerk's name so that it may be entered in the minutes of the court. You may now retire to the grand jury room to begin your work.**

Comment

The grand jury instructions were initially approved in 1981. They were revised in 1991 and amended in June 2002, September 2005, and 2014.