

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.