

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.