

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 elements beyond a reasonable doubt:

- 1. (Defendant) was convicted of**

Give a or b as applicable.

- a. [Florida Statute 794.011] [Florida Statute 800.04] [Florida Statute 827.071
[Florida Statute 847.0135(5)] [Florida Statute 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 a or b 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)] [847.071] was on or after
October 1, 2004.**

- 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)] [847.071] was on or after May 26, 2010.**

- 4. After the conviction, (defendant) resided within 1,000 feet of a [school] [child care
facility] [park] [playground].**

**It is not a crime for (defendant) to have lived within 1,000 feet of a [school] [child care
facility] [park] [playground], if you find that (defendant) resided there before the [school] [child care
facility] [park] [playground] was established. (Insert appropriate burden of persuasion allocated to
appropriate party).**

*It is undetermined whether residence before establishment is an affirmative defense or whether
residence after establishment is an element of the offense. If an affirmative defense, the defendant must
produce evidence that he or she was living in that location prior to establishment of the school, facility,
park or playground. 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). See the opinions in Dixon v. United States, 548 U.S. 1 (2006) for guidance.*

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].

Definitions.

§402.302 Fla. Stat.

“Child care facility” means any child care center or arrangement which provides child care for more than five children unrelated to the operator and which receives a payment, fee or grant for any child receiving care, regardless of whether the center or arrangement is operated for a profit, not including public or private schools, summer day camps, summer camps having children in full-time residence, Bible schools normally conducted during vacation periods, and operators of transient establishments.

§775.082; §775.083 Fla. Stat.

“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.

§943.0435 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 was withheld.

“Park” means all public and private property specifically designated as being used for recreational purposes and where children regularly congregate.

“Playground” means a designated independent area in the community or neighborhood that is designated solely for children and has one or more play structures.

§1003.01 Fla. Stat.

“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 §. 403.3025(1)] [the Florida School for the Deaf and Blind] [the Florida Virtual School as established under §. 1002.37] [K-8 Virtual School as established under §. 1002.415].] [“School” does not include facilities used exclusively for the education of adults.]

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comment

§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.