

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 Offenses

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.