

11.7 UNLAWFUL SEXUAL ACTIVITY WITH CERTAIN MINORS

§ 794.05, Fla. Stat.**

To prove the crime of Unlawful Sexual Activity with a 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.

Lahey 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*, -- 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.”

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.