

11.9 UNLAWFUL EXPOSURE OF SEXUAL ORGANS

§ 800.03, Fla. Stat.

To prove the crime of Unlawful Exposure of Sexual Organs, the State must prove the following [four] [five] elements beyond a reasonable doubt:

Give if defendant is charged under § 800.03(1)(a), Fla. Stat.

1. (Defendant) **exposed or exhibited [his] [her] sexual organs.**
2. (Defendant) **did so [in public] [on the private premises of another] [so near the private premises of another as to be seen from those private premises].**
3. (Defendant) **intended the exposure or exhibition of [his] [her] sexual organs to be in a vulgar, indecent, lewd, or lascivious manner.**
4. **The exposure or exhibition of the sexual organs was in a vulgar, indecent, lewd, or lascivious manner.**

If defendant is charged only with exposure of sexual organs in public, the State need not prove that someone was offended. However, for cases involving exposure of sexual organs on private premises or so near to be seen from the premises, the jury must be instructed on element #5. State v. Kees, 919 So. 2d 504 (Fla. 5th DCA 2005). If the trial involves exposure of sexual organs in public and exposure of sexual organs on or near private premises, trial judges will need to draft a special instruction.

5. **The exposure or exhibition of sexual organs caused offense to one or more persons viewing it.**

Give if defendant is charged under § 800.03(1)(b), Fla. Stat.

1. (Defendant) **was naked.**
2. **When (defendant) was naked, [he] [she] was in public.**
3. (Defendant) **intended [his] [her] nakedness to be in a vulgar, indecent, lewd, or lascivious manner.**
4. **The nakedness was in a vulgar, indecent, lewd, or lascivious manner.**

Give in all cases.

Proof of mere nudity or exposure of a sexual organ is not sufficient for you to find the defendant guilty.

As used in regard to this offense, the words “vulgar,” “indecent,” “lewd,” and “lascivious” mean the same thing: a wicked, lustful, unchaste, licentious, or sensual intent on the part of the person doing an act.

Optional Definition.

“In public” means in any place intended or designed to be frequented or resorted to by the public.

Lesser Included Offense

EXPOSURE OF SEXUAL ORGANS — 800.03

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Unnatural and lascivious act	800.02	11.8

Comments

A first violation of this statute is a first-degree misdemeanor. A second or subsequent violation becomes a third-degree felony. As of November 2021, it is unclear whether the fact of a prior violation will be viewed as an element of the felony or as a recidivist factor for the judge to determine at sentencing.

If treated as an element, it is error to inform the jury of a prior violation. Therefore, if the information or indictment contains an allegation of one or more prior Unlawful Exposure of Sexual Organs violations, do not read that allegation and do not send the information or indictment into the jury room. If the defendant is found guilty, the historical fact of a prior Unlawful Exposure of Sexual Organs violation shall be determined beyond a reasonable doubt in a bifurcated proceeding. *See State v. Harbaugh*, 754 So. 2d 691 (Fla. 2000).

A mother's breast feeding of her baby or an individual being naked at any place provided or set apart for that purpose is not a violation of this statute. *See* § 800.03(3), Fla. Stat.

As of November 2021, the term "in public" has not been defined for purposes of this statute by the Florida Supreme Court or a District Court of Appeal. Similarly, neither the Florida Supreme Court nor any District Court of Appeal have determined whether cells or common areas inside of a jail or a prison are "in public." The term "public place" has been interpreted to include the inside of a vehicle that is located in a public parking lot and the inside of a stall in a public restroom if freely visible from a public area. *See State v. Folks*, 723 So. 2d 369 (Fla. 4th DCA 1998) and *Ward v. State*, 636 So. 2d 68 (Fla. 5th DCA 1994). When crafting a special instruction for unique circumstances, trial judges may also want to consider § 876.11, Fla. Stat., which provides a definition of "public place" that includes common areas of grounds and buildings owned, leased by, operated, or maintained by public authority.

This instruction was adopted in 1981 and amended in 1997 [697 So. 2d 84], 2010 [48 So. 3d 41], on November 20, 2020, and on December 15, 2021.