

## **18.1 PERJURY (NOT IN AN OFFICIAL PROCEEDING) (IN AN OFFICIAL PROCEEDING)**

§§ 837.012, 837.02, Fla. Stat.

**To prove the crime of [Perjury Not in an Official Proceeding] [Perjury in an Official Proceeding], the State must prove the following five elements beyond a reasonable doubt:**

- 1.** (Defendant) **took an oath or otherwise affirmed that [he] [she] was obligated by conscience or by law to speak the truth in** (describe proceedings, official or unofficial, in which the alleged oath was taken).
- 2. The oath or affirmation was made to** (person allegedly administering oath), **who was a** (official capacity).
- 3.** (Defendant), **while under an oath, made the statement** (read from charge).
- 4. The statement was false.**
- 5.** (Defendant) **did not believe the statement was true when [he] [she] made it.**

*Give if applicable.*

§§ 837.012(2), 837.02(2), Fla. Stat.

**Knowledge of the materiality of the statement is not an element of this crime, and the defendant's mistaken belief that [his] [her] statement was not material is not a defense to the charge.**

§ 837.011, Fla. Stat.

*Questions of the authority to administer oaths, whether the form of the oath or attestation is required or authorized by law, the official or unofficial nature of the proceedings and the materiality of a statement are matters of law.*

*Give if applicable. § 837.011(3), Fla. Stat.*

**The law requires the judge to decide if the alleged statement is material, and I have decided that it is material. Therefore, you will not further concern yourself with this issue.**

*An instruction on recantation should be given when raised as a defense. See § 837.07, Fla. Stat.; Carter v. State, 384 So.2d 1255 (Fla. 1980).*

### **Lesser Included Offenses**

No lesser included offenses have been identified for this offense.

### **Comment**

This instruction was adopted in 1981 and amended in 1992.