

**21.5 GIVING FALSE INFORMATION CONCERNING THE COMMISSION OF A
CRIME**

§ 837.05(1), Fla. Stat.

To prove the crime of Giving False Information Concerning the Commission of a Crime, the State must prove the following five elements beyond a reasonable doubt:

- 1. (Defendant) knowingly gave information about the alleged commission of a crime.**
- 2. (Defendant) knew the information was false.**
- 3. (Defendant) gave the false information to (name of law enforcement officer).**
- 4. (Name of law enforcement officer) was a law enforcement officer.**
- 5. (Defendant) knew that (name of law enforcement officer) was a law enforcement officer.**

The court now instructs you that (crime alleged) is a crime and that a (do not name the officer, instead insert his or her official position, such as deputy sheriff or police officer) is a law enforcement officer.

Unless the false information concerns a capital offense (see Instruction 21.6), this crime is a misdemeanor of the first degree. However, if the defendant was previously convicted of this crime and if certain conditions were met, the crime becomes a third degree felony. See § 837.05(1)(b), Fla. Stat.

If the State has alleged the third degree felony, do not read the allegation of a prior conviction and do not send the charging document into the jury room. If the defendant is found guilty of Giving False Information Concerning the Commission of a Crime, the historical fact of a prior conviction shall be determined in a bifurcated proceeding. State v. Harbaugh, 754 So. 2d 691 (Fla. 2000).

Give if applicable.

You have found (defendant) guilty of Giving False Information Concerning the Commission of a Crime. You must now determine whether the State has proven beyond a reasonable doubt the following two elements:

- 1. (Defendant) was previously convicted of Giving False Information Concerning the Commission of a Crime in violation of Florida Statute 837.05(1).**

Give 2a and/or 2b as applicable.

- 2. a. The information (defendant) gave to (name of law enforcement officer) was communicated orally and (name of law enforcement officer's) account of that information was corroborated by [an audio recording or audio recording in a video of that information] [a written or recorded statement made by (defendant)] [another person who was present and who heard (defendant) give the information to (name of law enforcement officer)].**

b. The information (defendant) gave to (name of law enforcement officer) was communicated in writing.

Lesser Included Offenses

No lesser included offenses have been identified for this offense. *See Silvestri v. State*, 332 So.2d 351, 354 (Fla. 4th DCA 1976).

Comment

“Law enforcement officer” is not defined in chapter 837, Florida Statutes, or in case law interpreting and applying section 837.05. Trial judges may consult sections 790.001, 934.02, and 943.10 in deciding whether and how to define “law enforcement officer” for the jury.

For the enhancement section, there is no case law about whether an adjudication of guilt is necessary for there to be a prior conviction.

This instruction was adopted in 2007 [965 So. 2d 811] and amended in 2014.