

29.10 HUMAN SMUGGLING

§ 787.07, Fla. Stat.

To prove the crime of Human Smuggling, the State must prove the following two elements beyond a reasonable doubt:

- 1. (Defendant) knowingly and willfully transported (alien) into Florida.**
- 2. At the time, (defendant) knew or reasonably should have known:**
 - a. (alien) entered the United States in violation of law;**
 - and**
 - b. (alien) had not been inspected by the Federal Government since [his] [her] unlawful entry from another country.**

“Willfully” means intentionally and purposely.

Inference. Give if applicable. § 787.07(6), Fla. Stat.

If the defendant knowingly and willfully presented false identification or gave false information to a law enforcement officer who was conducting an investigation of this Human Smuggling statute, you may infer the defendant was aware that (alien) entered the United States in violation of law and had not been inspected by the Federal Government since [his] [her] unlawful entry.

Give only if applicable. Higher degree of Human Smuggling.

§ 787.07(3), Fla. Stat.

If you find the defendant guilty of Human Smuggling, you must also determine whether the State proved beyond a reasonable doubt that (alien) was less than 18 years of age at the time of the Human Smuggling.

§ 787.04(4), Fla. Stat.

A person commits a separate offense of Human Smuggling for each individual transported in violation of elements 1. and 2. above. If you find the defendant guilty of Human Smuggling, you must also determine whether the State proved beyond a reasonable doubt that [he] [she] committed five or more separate offenses of Human Smuggling during a single episode.

*§ 787.07(5), Fla. Stat.**

Now that you have found the defendant guilty of Human Smuggling, you must also determine whether the State proved beyond a reasonable doubt that the defendant was previously convicted of Human Smuggling.

“Convicted” means a determination of guilt that was the result of a plea or a trial, regardless of whether adjudication was withheld or a plea of nolo contendere was entered.

Lesser Included Offense

HUMAN SMUGGLING — 787.07

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempt	777.04	5.1

Comments

There are multiple federal laws an alien could violate by entering the United States. The Committee on Standard Jury Instructions in Criminal Cases chose not to list all of those federal laws because it believes the State will likely need to call an immigration officer or other federal agent as a witness to prove Human Smuggling.

*As of November 2023, it was unclear whether the existence of a prior conviction is an element of Human Smuggling (as a second-degree felony) or a recidivist factor to be proven to the trial judge under a preponderance of the evidence standard at sentencing. Generally, it would be improper to allow the jury to hear about a prior conviction. Therefore, if the information or indictment contains an allegation of one or more prior convictions and if a prior conviction is treated an element, 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 conviction should be determined by the jury beyond a reasonable doubt in a bifurcated proceeding. *State v. Harbaugh*, 754 So. 2d 691 (Fla. 2000).

The instruction was adopted on December 15, 2023.