

29.13(c) SEXUAL ACTIVITY WITH AN ANIMAL*

§ 828.126, Fla. Stat.

To prove the crime of Sexual Activity with an Animal,* the State must prove the following element beyond a reasonable doubt:

Give as applicable.

(Defendant) **knowingly**

- a. engaged in sexual contact with an animal.**
- b. caused or aided or abetted another person to engage in sexual contact with an animal.**
- c. permitted sexual contact with an animal to be conducted on any premises under [his] [her] charge or control.**
- d. [organized] [promoted] [conducted] [aided] [abetted] [participated in as an observer of] sexual contact with an animal.**
- e. [advertised] [offered] [solicited for] [accepted an offer of] an animal for the purpose of sexual contact with such animal.**
- f. performed any service in the furtherance of an act involving sexual contact with an animal.**
- g. [filmed] [distributed] [possessed] any pornographic image or video of a person and an animal engaged in sexual contact.**

“Sexual contact” means any act committed between a person and an animal for the purpose of sexual gratification, abuse, or financial gain which involves:

- (a) Contact between the sex organ or anus of one and the mouth, sex organ, or anus of the other;**
- (b) The fondling of the sex organ or anus of an animal; or**
- (c) The insertion, however slight, of any part of the body of a person or any object into the vaginal or anal opening of an animal, or the insertion of any part of the body of an animal into the vaginal or anal opening of a person.**

Give if applicable. § 777.04(2), Fla. Stat.

To “solicit” means to command, encourage, hire, or request another person to engage in specific conduct.

Possession.

To prove (defendant) **“possessed a pornographic image or video,”** the State **must prove beyond a reasonable doubt** that [he] [she] **a) knew of the existence of the pornographic image or video; b) knew of the nature, character, or content of the material; and c) intentionally exercised control over the image or video.**

Control can be exercised over a pornographic image or video whether the image or video is carried on a person, near a person, or in a completely separate location. Mere proximity to an image or video does not establish that the person intentionally exercised control over it in the absence of additional evidence. Control can be established by proof that (defendant) **had direct personal power to control the image or video or the present ability to direct its control by another.**

Joint possession.

Possession of a pornographic image or video may be sole or joint, that is, two or more persons may possess it.

Lesser Included Offense

SEXUAL ACTIVITY WITH AN ANIMAL* — 828.126			
CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempt	777.04(1)	5.1

Comments

*In certain cases, such as those where the State charged that the defendant possessed a video containing a person’s sexual contact with an animal, the judge and the parties may want to rename the crime.

This crime does not apply to accepted animal husbandry practices, including, but not limited to, bona fide agricultural purposes, assistance with the birthing process or artificial insemination of an animal for reproductive purposes, accepted conformation judging practices, or accepted veterinary medical practices. See § 828.126(5), Fla. Stat.

This instruction was adopted in 2013 [131 So. 3d 720] and amended in 2018 [257 So. 3d 370] and on December 21, 2022.