

29.19 ABUSE OF A DEAD HUMAN BODY

§ 872.06(2), Fla. Stat.

To prove the crime of Abuse of a Dead Human Body, the State must prove the following element beyond a reasonable doubt:

(Defendant) [mutilated] [committed sexual abuse] [grossly abused] a dead human body.

Give if applicable. § 872.06(1), Fla. Stat.

“Sexual abuse” means anal or female genital penetration of a dead human body by the sexual organ of a person or by any other object; or contact or union of the penis, female genitals, or anus of a person with the mouth, penis, female genitals or anus of a dead human body; or contact or union of a person’s mouth with the penis, female genitals, or anus of a dead human body.

“Female genitals*” includes the labia minora, labia majora, clitoris, vulva, hymen, and vagina.

Phillips v. State, 238 So. 3d 308 (Fla. 4th DCA 2018).

“Union” means contact.

Give if applicable.

Lakey v. State, 113 So. 3d 90 (Fla. 5th DCA 2013).

The definition of “an object” includes a finger.

Give if applicable. § 872.06(2), Fla. Stat.

An act done for a bona fide medical purpose or for any other lawful purpose does not constitute a violation of this statute. “Bona fide” means genuine.

Lesser Included Offense

ABUSE OF A DEAD HUMAN BODY — 872.06(2)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempt	777.04(1)	5.1

Comments

*Effective October 1, 2022, the Legislature changed “vagina” to “female genitals” in sex crimes-related statutes. Judges should ensure the jury instructions contain correct statutory terms, which will depend on the date alleged in the charging document. *Flores v. State*, -- So. 3d -- (Fla. 4th DCA 2024) is an example of an appellate court finding fundamental error when the trial judge expanded the definition of “vaginal penetration” by instructing on “female genital penetration.”

As of November 2022, it was unclear whether an act done for a bona fide medical purpose or other lawful purpose should be treated as an affirmative defense or as an element that the State must disprove. If treated as an affirmative defense, the judge must then determine who has the burden of persuasion and what that burden is (preponderance, clear and convincing, or beyond a reasonable doubt).

“Mutilation” has not been defined as that term is used in this statute. In *English v. State*, 191 So. 3d 448 (Fla. 2016), the court considered § 316.605(1) Fla. Stat., a provision that included the term mutilation in relation to the obstruction of a license plate. While the majority opinion did not reach the issue, the dissenting opinion included a definition for mutilation as “encompass[ing] any severe injury that results in the cutting off or removal of an essential part of a person or thing and impairs its completeness, beauty or function.” *Id.* at 454 n.2 (Fla. 2016) (Perry, J., dissenting), citing *State v. Stout*, 958 S.W.2d 32, 34 (Mo. App. E.D. 1997) (defining mutilation as used in an animal abuse statute). *See also* § 794.08(1), Fla. Stat., defining “female genital mutilation” as the “circumcising, excising or infibulating, in whole or in part, the labia majora, labia minora, or clitoris of a female person.

The term “grossly abused” has not been defined for purposes of this statute either. However, *see* § 825.102(2), Fla. Stat., defining aggravated abuse of an elderly person as occurring when a person commits an act on a victim that would constitute aggravated battery; willfully torturing, maliciously punishing, or willfully caging a victim; or knowingly abusing a victim and in so doing causing great bodily harm, permanent disability, or permanent disfigurement to the victim.

This instruction was adopted on December 21, 2022.