

29.27 UNLAWFUL DISCLOSURE OF THE LOCATION OF A CERTIFIED DOMESTIC VIOLENCE CENTER

§ 39.9057, Fla. Stat.

To prove the crime of Unlawful Disclosure of the Location of a Certified Domestic Violence Center, the State must prove the following three elements beyond a reasonable doubt:

1. (Defendant) **[disclosed] [or] [published, disseminated, or disclosed any descriptive information or image that may identify] the location of a domestic violence center.**
2. (Defendant) **did so maliciously.**
3. **At the time, the domestic violence center was certified by the Department of Children and Families pursuant to § 39.905, Florida Statutes.**

As of November 2021, neither the legislature nor the appellate courts had determined whether the statute requires the state to prove legal malice or actual malice. In the absence of legislative or judicial clarification, trial judges should choose one of the following:

Legal malice.

“Maliciously” means intentionally, wrongfully and without any lawful justification or excuse.

Actual malice.

“Maliciously” means with ill will, hatred, spite, or an evil intent.

Reclassification.

The first degree misdemeanor in § 39.9057, Fla. Stat., becomes a third degree felony upon a second or subsequent conviction. As of November 2021, it was unclear whether a conviction required an adjudication of guilt. It was also unclear whether the reclassification requires the state to prove the prior to the factfinder under the beyond a reasonable doubt standard or whether the prior can be considered a recidivist factor that can be proven to the sentencing judge under the preponderance of the evidence standard. If viewed as an element, give the following:

Now that you have found the defendant guilty of Unlawful Disclosure of the Location of a Certified Domestic Violence Center, you must further determine whether the State has proven beyond a reasonable doubt whether the defendant was previously convicted of Unlawful Disclosure of the Location of a Certified Domestic Violence Center.

Lesser Included Offense

**UNLAWFUL DISCLOSURE OF THE LOCATION OF A CERTIFIED DOMESTIC VIOLENCE
CENTER — 39.9057**

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

Comment

This instruction was approved on December 15, 2021.