

3.3(i) DOMESTIC VIOLENCE

§ 741.281, Fla. Stat.; § 741.283(1), Fla. Stat.

Give only if § 741.281, Fla. Stat., is charged. The statute requires a minimum 1 year of probation with the batterers' intervention program as a condition of probation unless the judge states why the batterers' intervention program is inappropriate.

If you find (defendant) guilty of committing a[n] [Assault] [Aggravated Assault] [Battery] [Aggravated Battery] [Sexual Battery] [Stalking] [Aggravated Stalking] [Kidnapping] [False Imprisonment] [or] [any crime that resulted in physical injury or death] upon (victim), you must further determine if the State proved beyond a reasonable doubt that (defendant) was a family or household member of (victim).

Give only if § 741.283(1)(a), Fla. Stat., is charged. The statute requires a certain number of days in jail depending on priors, however, mandatory jail is not required if the judge sentences the defendant to prison or withholds adjudication.

If you find (defendant) guilty of committing a[n] [Assault] [Aggravated Assault] [Battery] [Aggravated Battery] [Sexual Battery] [Stalking] [Aggravated Stalking] [Kidnapping] [False Imprisonment] [or] [a crime that resulted in physical injury or death] upon (victim), you must further determine if the State proved the following two elements beyond a reasonable doubt:

- 1. (Defendant) was a family or household member of (victim).**
- 2. (Defendant) intentionally caused bodily harm to (victim).**

Give only if § 741.283(1)(b), Fla. Stat., is charged. The statute requires a certain number of days in jail depending on priors, however, mandatory jail is not required if the judge sentences the defendant to prison or withholds adjudication.

If you find (defendant) guilty of committing a[n] [Assault] [Aggravated Assault] [Battery] [Aggravated Battery] [Sexual Battery] [Stalking] [Aggravated Stalking] [Kidnapping] [False Imprisonment] [or] [any crime that resulted in physical injury or death] upon (victim), you must further determine if the State proved the following five elements beyond a reasonable doubt:

- 1. (Defendant) was a family or household member of (victim).**
- 2. (Defendant) intentionally caused bodily harm to (victim).**
- 3. The [Assault] [Aggravated Assault] [Battery] [Aggravated Battery] [Sexual Battery] [Stalking] [Aggravated Stalking] [Kidnapping] [False Imprisonment] [crime that resulted in physical injury or death] took place in the presence of (child).**
- 4. At the time of the crime, (child) was under 16 years of age.**
- 5. (Child) was a family or household member of (victim) or (defendant).**

Give in all cases where minimum domestic violence sentence is at issue. § 741.281, Fla. Stat. or § 741.283), Fla. Stat.

“Family or household member” means spouses, former spouses, persons related by blood or marriage, persons who are presently residing together as if a family or who have resided together in the past as if a family, and persons who are parents of a child in common regardless of whether they have been married. With the exception of persons who have a child in common, the family or household members must be currently residing or have in the past resided together in the same single dwelling unit.

Comments

Alleyne v. United States, 570 U.S. 99 (2013), requires that any fact that increases the required minimum sentence must be found by the jury. Accordingly, it is necessary to have jury findings for mandatory sentencing provisions in cases where domestic violence is alleged. See *Bethea v. State*, 319 So. 3d 666 (Fla. 4th DCA 2021). However, because *Apprendi v. New Jersey*, 530 U.S. 466 (2000) exempts recidivism from jury fact-finding, it is unlikely that the existence of domestic violence priors, which leads to an increase in the mandatory number of days in jail, require a jury finding.

As of March 2022, the phrase “in the presence of a child” has not been interpreted for this statute. In the context of Lewd and Lascivious Act in Presence of a Child, § 800.04(3), Fla. Stat., the same phrase was interpreted to mean that the child must have seen, heard, or otherwise sensed that the act was taking place. *State v. Werner*, 609 So. 2d 585 (Fla. 1992).

This instruction was adopted on April 1, 2022.