

11.13(h) COMMERCIAL DIGITAL VOYEURISM
Image or Recording Created in Violation of Section 810.145(2)(a)3.
§ 810.145(4)(b), Fla. Stat.

To prove the crime of Commercial Digital Voyeurism, the State must prove the following four elements beyond a reasonable doubt:

- 1. (Defendant) [or some other person] intentionally used an imaging device to secretly [view] [broadcast] [or] [record] [under] [or] [through] the clothing worn by (victim) for the [amusement] [entertainment] [sexual arousal] [gratification] [or] [profit] of [himself] [herself] [or] [another].**
- 2. (Defendant's) [or some other person's] use of the imaging device was for the purpose of viewing [the body of] [or] [the undergarments worn by] (victim).**
- 3. (Defendant's) [or some other person's] use of the imaging device was without the knowledge and consent of (victim).**
- 4. (Defendant) [disseminated] [distributed] [or] [transferred] an image or recording of (victim) created in this manner to another person for that person to sell to others.**

“Broadcast” means electronically transmitting a visual image or visual recording with the intent that it be viewed by another person.

“Imaging device” means any mechanical, digital, or electronic viewing device; still camera; camcorder; motion picture camera; or any other instrument, equipment, or format capable of recording, storing, or transmitting visual images of another person.

Give if applicable § 810.145(2)(c), Fla. Stat. The finding regarding the defendant's age is also a part of § 810.145(7)(b), Fla. Stat.

If you find that (defendant) committed the crime of Commercial Digital Voyeurism, you must also determine whether the State proved beyond a reasonable doubt that (defendant) was 19 years of age or older at the time the Digital Voyeurism occurred.

Give if applicable. § 810.145(7)(b), Fla. Stat. See defendant's age finding above.

If you find that (defendant) committed the crime of Commercial Digital Voyeurism, you must also determine whether the State proved beyond a reasonable doubt that (defendant) was a family or household member of (victim) or held a position of authority or trust with (victim) at the time of the Commercial Digital Voyeurism.

Give if applicable. § 810.145(8)(a)1., Fla. Stat.

If you find that (defendant) **committed the crime of Commercial Digital Voyeurism, you must also determine whether the State proved beyond a reasonable doubt that at the time of the Commercial Digital Voyeurism:**

1. (Defendant) **was 18 years of age or older; and**
2. (Victim) **less than 16 years of age; and**
3. (Defendant) **was responsible for the welfare of (victim).**

It is not necessary for the State to prove the defendant knew or had reason to know the age of (victim).

Give if applicable. § 810.145(8)(a)2., Fla. Stat.

If you find that (defendant) **committed the crime of Commercial Digital Voyeurism, you must also determine whether the State proved beyond a reasonable doubt that at the time of the Commercial Digital Voyeurism:**

1. (Defendant) **was 18 years of age or older; and**
2. (Defendant) **was employed at a [private school] [school] [voluntary prekindergarten education program]; and**
3. (Victim) **was a student at that [private school] [school] [voluntary prekindergarten education program].**

Give as applicable.

“Private school” is defined as (insert definition from § 1002.01, Fla. Stat.).

“School” is defined as (insert definition from § 1003.01, Fla. Stat.).

“Voluntary prekindergarten education program” is defined as (insert definition from § 1002.53(3)(a), (b), or (c), Fla. Stat.).

Give if applicable. § 810.145(8)(a)3., Fla. Stat.

If you find that (defendant) **committed the crime of Commercial Digital Voyeurism, you must also determine whether the State proved beyond a reasonable doubt that at the time of the Commercial Digital Voyeurism:**

1. (Defendant) **was 24 years of age or older; and**
2. (Victim) **less than 16 years of age.**

It is not necessary for the State to prove the defendant knew or had reason to know the age of (victim).

Lesser Included Offense

COMMERCIAL DIGITAL VOYEURISM — 810.145(4)(b)

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

Comments

§ 810.145, Fla. Stat. creates a second degree felony if the defendant had been convicted of or adjudicated delinquent for a violation of § 810.145, Fla. Stat., that was sentenced or entered separately before the current offense. As of June 2025, it was unclear whether the fact of a prior will be treated as a recidivism factor that the State may prove by a preponderance of the evidence to the sentencing judge or as an element of the crime that must be proven by the State beyond a reasonable doubt to the jury in a bifurcated proceeding. If treated as an element, it is error to inform the jury of a prior conviction before a determination of guilt of the charged offense. Therefore, do not read the allegation of prior conviction or send the information or indictment into the jury room.

This instruction was adopted in 2008 [982 So. 2d 1160] and amended in 2013 [122 So. 3d 263], and on June 27, 2025.