

11.30 HARMFUL COMMUNICATION TO A MINOR

§ 847.01385, Fla. Stat.

To prove the crime of Harmful Communication to a Minor, the State must prove the following five elements beyond a reasonable doubt:

- 1. (Defendant) engaged in a pattern of communication to (victim)**
- 2. The communication included explicit and detailed verbal descriptions or narrative accounts of sexual activity, sexual conduct, or sexual excitement.**
- 3. The communication was harmful to minors.**
- 4. At the time, (defendant) was 18 years of age or older.**
- 5. At the time, (victim) was less than 18 years of age.**

A communication “harmful to minors” is defined as any reproduction, imitation, characterization, description, exhibition, presentation, or representation, of whatever kind or form, depicting nudity, sexual conduct, or sexual excitement that:

- a. predominantly appealed to a prurient, shameful, or morbid interest; and**
- b. was patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material or conduct for minors; and**
- c. taken as a whole, was without serious literary, artistic, political, or scientific value for minors.**

“Communication” means any verbal or written communication.

“Sexual activity” means the oral, anal, or female genital penetration by, or union with, the sexual organ of another or the anal or female genital penetration of another by any other object.

“Sexual conduct” means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual or simulated lewd exhibition of the genitals; actual physical contact with a person’s clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed.

“Sexual excitement” means the condition of the human male or female genitals when in a state of sexual stimulation or arousal.

“Sadomasochistic abuse” means flagellation or torture by or upon a person or animal, or the condition of being fettered, bound, or otherwise physically restrained, for the purpose of deriving sexual satisfaction, or satisfaction brought about as a result of sadistic violence, from inflicting harm on another or receiving such harm oneself.

“Deviate sexual intercourse” means sexual conduct between persons not married to each other consisting of contact between the penis and the anus, the mouth and the penis, or the mouth and the vulva.

“Sexual battery” means oral, anal, or female genital* penetration by, or union with, the sexual organ of another or the anal or female genital penetration of another by any other object.

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

“Union” means contact.

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

The definition of “an object” includes a finger.

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

“Sexual bestiality” means any sexual act, actual or simulated, between a person and an animal involving the sex organ of the one and the mouth, anus, or female genitals of the other.

“Simulated” means the explicit depiction of sexual conduct which creates the appearance of such conduct and which exhibits any uncovered portion of the breasts, genitals, or buttocks.

The defendant’s ignorance of (victim’s) age, (victim’s) misrepresentation of [his] [her] age, or the defendant’s bona fide belief of (victim’s) age is not a defense to the crime charged. “Bona fide” means genuine.

Lesser Included Offenses

There are a host of crimes in Chapter 847 related to distributing obscene materials to a minor. The parties should carefully review all Chapter 847 crimes to determine the appropriate lesser included offense.

Comments

As of June 2025, it was unclear whether acts done for *bona fide* medical purposes or a mother’s breastfeeding of her baby should be treated as affirmative defenses or as elements 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 of the evidence, clear and convincing, or beyond a reasonable doubt).

This instruction was adopted on June 27, 2025.