

11.32 POSSESSION OF A LEWD OR LASCIVIOUS IMAGE WITH INTENT TO PROMOTE

§ 800.045(2), Fla. Stat.

To prove the crime of Possession of a Lewd or Lascivious Image with Intent to Promote, the State must prove the following four elements beyond a reasonable doubt:

1. (Defendant) possessed a[n] [photograph] [motion picture] [exhibition] [show] [representation] [presentation].
2. The [photograph] [motion picture] [exhibition] [show] [representation] [presentation] contained, in whole or in part, a lewd or lascivious image.
3. At the time of possession, (defendant) knew the [photograph] [motion picture] [exhibition] [show] [representation] [presentation] contained a lewd or lascivious image.
4. At the time of possession, (defendant) intended to promote the [photograph] [motion picture] [exhibition] [show] [representation] [presentation].

To prove (defendant) “possessed a[n] [photograph] [motion picture] [exhibition] [show] [representation] [presentation],” the State must prove beyond a reasonable doubt that [he] [she] a) knew of the existence of the item; and b) intentionally exercised control over it.

Control can be exercised over an item whether it is carried on a person, near a person, or in a completely separate location. Mere proximity to an item does not establish that the person intentionally exercised control over it in the absence of additional evidence. Control can be established by proof that (defendant) had direct personal power to control the item or the present ability to direct its control by another.

Possession of an item may be sole or joint, that is, two or more persons may possess it.

The words “lewd” and “lascivious” mean the same thing: a wicked, lustful, unchaste, licentious, or sensual intent on the part of the person doing an act.

“Lewd or lascivious image” means any image depicting a lewd or lascivious exhibition or that has been created, altered, adapted, or modified by electronic, mechanical, or other means to portray a lewd or lascivious exhibition committed in the presence of an identifiable minor.

“Lewd or lascivious exhibition” means a person intentionally masturbated, intentionally exposed the genitals in a lewd or lascivious manner; or intentionally committed any other sexual act that did not involve actual

physical or sexual contact with the victim, including, but not limited to, sadomasochistic abuse, sexual bestiality, or the simulation of any act involving sexual activity in the presence of a victim who was less than 16 years of age. [A lewd or lascivious exhibition does not include a mother’s breastfeeding of her baby.]

“Identifiable minor” means a person, less than 16 years of age at the time the image was created, altered, adapted, or modified, or whose image as a person less than 16 years of age was used in the creating, altering, adapting, or modifying of an image, who is recognizable as an actual person by the person’s face, likeness, or other distinguishing characteristic, such as a unique birthmark, or other recognizable feature. However, no proof of the actual identity of the minor is required.

“Promote” means to procure, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmit, transmute, publish, distribute, circulate, disseminate, present, exhibit, send, post, share, or advertise or to offer or agree to do the same.

You may, but are not required to, infer that (defendant) had the intent to promote the [photograph] [motion picture] [exhibition] [show] [representation] [presentation] if you find [he] [she] possessed three more copies of the [photographs] [motion pictures] [representations] [or] [presentations].

“Sadomasochistic abuse” means (insert definition from § 847.001, Fla. Stat. or § 827.071, Fla. Stat., which are similar but not identical).

“Sexual bestiality” means (insert definition from § 847.001, Fla. Stat. or § 827.071, Fla. Stat., which are similar but not identical).

Lesser Included Offense

POSSESSION OF A LEWD OR LASCIVIOUS IMAGE WITH INTENT TO PROMOTE — 800.045(2)

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

Comment

This instruction was adopted on March 20, 2026.