

## **9.7 [ATTEMPTED] LURING OR ENTICING A CHILD**

§ 787.025, Fla. Stat.

**To prove the crime of [Attempted] Luring or Enticing a Child, the State must prove the following four elements beyond a reasonable doubt:**

- 1. (Defendant) intentionally lured or enticed [attempted to lure or entice] (victim) into or out of a [structure] [dwelling] [conveyance].**
- 2. [He] [She] did so for an unlawful purpose.**
- 3. At the time, (victim) was under the age of 14.**
- 4. At the time, (defendant) was 18 years of age or older,**

**The unlawful purpose in element #2 must be for a purpose other than committing this crime.**

*Give as applicable.*

**“Structure” means a building of any kind, either temporary or permanent, that has a roof over it, and the enclosed space of ground and outbuildings immediately surrounding that structure. [The enclosure need not be continuous as it may have an ungated opening for entering and exiting.]**

**“Dwelling” means a building [or conveyance] of any kind, either temporary or permanent, mobile or immobile, that has a roof over it and is designed to be occupied by people lodging therein at night, together with the enclosed space of ground and outbuildings immediately surrounding it. [The enclosure need not be continuous as it may have an ungated opening for entering and exiting.]**

**“Conveyance” means any motor vehicle, ship, vessel, railroad car, trailer, aircraft, or sleeping car.**

*§ 787.001, Fla. Stat. Give only if applicable.*

**The defendant’s ignorance of (victim’s) age is not a defense. Additionally, the misrepresentation of (victim’s) age by any person or the defendant’s genuine belief that (victim) was over a specified age is not a defense.**

*Give as applicable if the defendant met his or her burden of production on the affirmative defense. Neither § 787.025, Fla. Stat., nor case law, as of February 2026, explain (1) which party bears the burden of persuasion of the affirmative defense and (2) the standard for the burden of persuasion. Under the common law, defendants had the burden of persuasion on affirmative defenses by a preponderance of the evidence. In the absence of case law, trial judges must resolve the issue via a special instruction.*

**It is a defense to the crime of [Attempted] Luring or Enticing a Child if:**

- a. The defendant reasonably believed that [his] [her] action was necessary to prevent (victim) from being seriously injured.**

- b. The defendant's actions were reasonable under the circumstances and the defendant did not have any intent to harm the health, safety, or welfare of (victim).**

### **Lesser Included Offenses**

The Committee on Standard Instructions in Criminal Cases identified no lesser included offenses.

### **Comments**

Before October 1, 2025, § 787.025, Fla. Stat., required the state to prove the child was under the age of 12. The Legislature changed the victim's age requirement to under 14 years of age in Chapter 2025-132, Laws of Florida.

§ 787.025(2), Fla. Stat., is written in a way that makes it an element of the crime that the defendant's act was done for a purpose other than a lawful purpose. However, § 787.025(3)(b), Fla. Stat., states that it is an affirmative defense if the defendant's act was done for a lawful purpose. As of February 2026, there was no case law that explained whether the defendant's mental state is an element or an affirmative defense. In an abundance of caution, the Committee on Standard Jury Instructions in Criminal Cases made the defendant's mental state an element.

A person who violates § 787.025, Fla. Stat., and who was previously convicted of § 787.025, Fla. Stat., or of a violation of chapter 794, § 800.04, Fla. Stat., § 847.0135(5), Fla. Stat., or a similar law of another jurisdiction, commits a second degree felony. For purpose of § 787.025, Fla. Stat., a conviction does not require an adjudication of guilt. As of February 2026, it was undetermined whether the fact of the prior conviction is a recidivism factor that can be proven to the judge at sentencing or whether it is an element of the crime that must be proven to the jury under the beyond a reasonable doubt standard. Generally, a jury should not be informed of a prior conviction before the verdict. If treated as an element, the existence of the prior conviction should be determined in a bifurcated proceeding.

This instruction was adopted on March 20, 2026.