

16.3 CHILD ABUSE

§ 827.03(2)(c), Fla. Stat.

To prove the crime of Child Abuse, the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) knowingly or willfully abused (victim) by:

Give as applicable.

- a. intentionally inflicting [physical] [or] [mental] injury upon (victim).**
- b. committing an intentional act that could reasonably be expected to result in [physical] [or] [mental] injury to (victim).**
- c. actively encouraging another person to commit an act that resulted in or could reasonably have been expected to result in [physical] [or] [mental] injury to (victim).**

2. (Victim) was under the age of 18 years.

Parental affirmative defense. Give if applicable. See Raford v. State, 828 So. 2d 1012 (Fla. 2002). See § 39.01(49), Florida Statutes, if the defendant's status as a parent is at issue.

§ 827.03 Fla. Stat., and case law are silent as to (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 both the burden of production and the burden of persuasion on affirmative defenses by a preponderance of the evidence.

The Florida Supreme Court has often decided, however, that once a defendant meets the burden of production on an affirmative defense, the burden of persuasion is on the State to disprove the affirmative defense beyond a reasonable doubt (e.g., self-defense and consent to enter in a burglary prosecution). In the absence of case law, trial judges must resolve the issue via a special instruction. See the opinion in Dixon v. United States, 548 U.S. 1 (2006), for further guidance.

It is not a crime for [a parent] [a person who is acting in place of a parent] of a child to impose reasonable physical discipline on a child for misbehavior under the circumstances even though physical injury resulted from the discipline.

If burden of persuasion is on the defendant:

If you find that defendant proved (insert appropriate burden of persuasion) that [he] [she] was [a parent] [a person acting in place of a parent] of (victim) and that [he] [she] imposed reasonable physical discipline on (victim) for misbehavior under the circumstances, you should find [him] [her] not guilty.

If the defendant did not prove (insert appropriate burden of persuasion) that [he] [she] was [a parent] [a person acting in place of a parent] of (victim) or if you find that the defendant did not prove (insert appropriate burden of persuasion) that [he] [she] imposed reasonable physical discipline on (victim) for misbehavior under the circumstances, you should find [him] [her] guilty, if all the elements of the charge have been proven beyond a reasonable doubt.

If burden of persuasion is on the State:

If you find that the State proved (insert appropriate burden of persuasion) that the defendant was not [a parent] [a person acting in place of a parent] of (victim) or if you find that the State proved (insert appropriate burden of persuasion) that the defendant's physical discipline on (victim)

was not reasonable for misbehavior under the circumstances, you should find [him] [her] guilty, if all of the elements of the charge have been proven beyond a reasonable doubt.

Definitions, give as applicable.

“Willfully” means intentionally and purposely.

§ 827.03(1)(d), *Fla. Stat.*

“Mental injury” means an injury to the intellectual or psychological capacity of a child as evidenced by a discernible and substantial impairment in the ability to function within the normal range of performance and behavior as supported by expert testimony.

Lesser Included Offenses

CHILD ABUSE — 827.03(2)(c)			
CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Contributing to the dependency of a minor	827.04(1)	16.4
	Battery; only under certain circumstances. See <i>Kama v. State</i> , 507 So. 2d 154 (Fla. 1st DCA 1987)	784.03	8.3
	Attempt	777.04(1)	5.1

Comments

See *Raford v. State*, 828 So. 2d 1012 (Fla. 2002) and *Dufresne v. State*, 826 So. 2d 272 (Fla. 2002) for authority to incorporate definitions from Chapter 39, Florida Statutes.

This instruction was adopted in 1981 and amended in 1985, 1989, 2002 [824 So. 2d 881], 2011 [75 So. 3d 207], 2013 [122 So. 3d 263], 2014 [152 So. 3d 475], and 2016.