

9.2 FALSE IMPRISONMENT

§ 787.02, Fla. Stat.

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

1. (Defendant) [forcibly] [secretly] [by threat]

[confined]
[abducted]
[imprisoned]
[restrained]

(victim) against [his] [her] will.

2. (Defendant) had no lawful authority to do so.

Definition. Give if applicable. Bishop v. State, 46 So. 3d 75 (Fla. 5th DCA 2010).

“Secretly” means the defendant intended to isolate or insulate (victim) from meaningful contact or meaningful communication with the public.

Read only if confinement is alleged and victim is under 13 years of age.

Confinement of a child under the age of 13 is against the child’s will if such confinement is without the consent of the child’s parent or legal guardian.

If a violation of § 787.02(3), Fla. Stat., is charged, instruct as follows:

If you find the defendant guilty of False Imprisonment, you must also determine whether the State has proved the following aggravating circumstances beyond a reasonable doubt:

1. At the time of the False Imprisonment, (victim) was under 13 years of age;

and
2. In the course of committing the False Imprisonment, (defendant) committed [an Aggravated Child Abuse] [a Sexual Battery against (victim)] [a Lewd or Lascivious Battery] [a Lewd or Lascivious Molestation] [a Lewd or Lascivious Conduct] [a Lewd or Lascivious Exhibition] [a Procuring a Child for Prostitution upon (victim)] [a Forcing, Compelling, or Coercing Another to Become a Prostitute upon (victim)] [an Exploitation of a Child upon (victim)] [Human Trafficking for Commercial Sexual Activity in which [a Child under the Age of 18] [a Mentally Defective Person] [or] [a Mentally Incapacitated Person] was Involved]. *Define applicable felony unless included in other instructions.*

If the State has charged and is seeking the adult-on-minor sex offense multiplier in § 921.0024(1)(b), Fla. Stat., instruct as follows. Alleyne v. United States, 133 S. Ct. 2151 (2013).

If you find the defendant guilty of False Imprisonment, you must also determine whether the State has proved the following four elements beyond a reasonable doubt:

1. At the time of the False Imprisonment, (defendant) was 18 years of age or older.

2. **At the time of the False Imprisonment, (victim) was younger than 18 years of age.**
3. **The False Imprisonment was committed on or after October 1, 2014.**
4. **In the course of committing the False Imprisonment, (defendant) committed [Sexual Battery] [Lewd or Lascivious Battery] [Lewd or Lascivious Molestation] [Lewd or Lascivious Conduct] [Lewd or Lascivious Exhibition] [Lewd or Lascivious Exhibition Over a Computer Service] against (same victim as in element #2).**

Define applicable felony unless included in other instructions.

Lesser Included Offenses

FALSE IMPRISONMENT* — 787.02			
CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempt	777.04(1)	5.1
	Battery	784.03	8.3
	Assault	784.011	8.1

Comments

The *Faison* test for determining whether a particular confinement or movement during the commission of another crime constitutes kidnapping, does not apply to false imprisonment. *Sanders v. State*, 905 So. 2d 271 (Fla. 2d DCA 2005).

*If the State alleged the first-degree felony punishable by life of False Imprisonment with aggravating circumstances in § 787.02(3), Fla. Stat., then those aggravating circumstances would be lesser-included crimes.

*If the State charged the defendant in a way to score the adult-on-minor sex offense multiplier in § 921.0024(1)(b), Fla. Stat., then those sex crimes would be lesser-included crimes.

This instruction was adopted in 1981 and was amended in 1985 [477 So. 2d 985], 1998 [723 So. 2d 123], 2014 [152 So. 3d 475], 2015 [167 So. 3d 443], and 2017.