

**11.10(c) LEWD OR LASCIVIOUS MOLESTATION**

§ 800.04(5), Fla. Stat.

**To prove the crime of Lewd or Lascivious Molestation, the State must prove the following three elements beyond a reasonable doubt:**

*Give 1a and/or 1b as applicable.*

1. (Defendant),
  - a. **in a lewd or lascivious manner, intentionally touched the [breasts] [genitals] [genital area] [buttocks] [clothing covering the breasts] [clothing covering the genitals] [clothing covering the genital area] [clothing covering the buttocks] of (victim).**
  - b. **in a lewd or lascivious manner, intentionally [forced] [enticed] (victim) to touch the [breasts] [genitals] [genital area] [buttocks] [clothing covering the breasts] [clothing covering the genitals] [clothing covering the genital area] [clothing covering the buttocks] of (defendant).**

*Give 2a or 2b as applicable.*

2. **At the time of the offense, (victim)**
  - a. **was 12 years of age or older but less than 16 years of age.**
  - b. **was less than 12 years of age.**

*Give 3a or 3b as applicable.*

3. **At the time of the offense, (defendant)**
  - a. **was 18 years of age or older.**
  - b. **was less than 18 years of age.**

*Definition.*

**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.**

*Give if applicable.*

§ 800.04(2), Fla. Stat.

**Neither (victim’s) lack of chastity nor (victim’s) consent is a defense to the crime charged.**

§ 800.04(3), Fla. Stat.

**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.**

*Give if applicable.*

**“Bona fide” means genuine.**

Give if applicable. § 775.0862, Fla. Stat.

Reclassification for sexual offense against student by school authority figure.

**If you find that (defendant) committed the crime of Lewd or Lascivious Molestation, you must also determine whether the State has proved beyond a reasonable doubt that (defendant) was an authority figure at a school and (victim) was a student at the same school.**

**“Authority figure” means a person 18 years of age or older who is employed by, volunteering at, or under contract with a school.**

**“School” means an organization of students for instructional purposes on an elementary, middle or junior high school, secondary or high school, [or other public school level authorized under the rules of the State Board of Education]. The term “school” does not include facilities dedicated exclusively to the education of adults. If needed, insert appropriate definitions from § 775.0862(1)(b), Fla. Stat. for “private school” or “voluntary prekindergarten education program” or “early learning program” or “public school as described in s. 402.3025(1)” or “the Florida School for the Deaf and the Blind” or the “Florida Virtual School” or the “K-8 Virtual School.”**

**“Student” means a person younger than 18 years of age who is enrolled at a school.**

#### Lesser Included Offenses

<b>LEWD OR LASCIVIOUS MOLESTATION; DEFENDANT 18 OR OVER; VICTIM LESS THAN 12 — 800.04(5)(b)</b>			
<b>CATEGORY ONE</b>	<b>CATEGORY TWO</b>	<b>FLA. STAT.</b>	<b>INS. NO.</b>
Lewd or Lascivious Molestation; Defendant 18 or over; Victim 12 or over but less than 16		800.04(5)(c)2	11.10(c)
Lewd or Lascivious Molestation; Defendant less than 18; Victim less than 12		800.04(5)(c)1	11.10(c)
Lewd or Lascivious Molestation; Defendant less than 18; Victim 12 or over but less than 16		800.04(5)(d)	11.10(c)
	Attempt	777.04(1)	5.1
	Aggravated battery	784.045(1)	8.4
	Felony battery	784.041(1)	8.5
	Aggravated assault	784.021(1)(a)	8.2
	Battery	784.03	8.3
	Assault	784.011	8.1
	Unnatural and lascivious act*	800.02*	11.8*

#### Comments

\*The courts do not require the State to allege the defendant’s act was “unnatural” or “against the laws of nature” in order for § 800.02, Fla. Stat., to be given as a lesser-included offense. If the sexual activity involved penile-vaginal sexual intercourse (or contact), § 800.02, Fla. Stat. should *not* be given as a lesser-included offense. However, if the sexual activity involved something other than penile-vaginal sexual intercourse (or contact), § 800.02, Fla. Stat. should be given as a lesser-included offense. *See State v. Knighton*, 235 So. 3d 312 (Fla. 2018).

If the ages of either the defendant or the alleged victim are not in dispute, the parties may agree to pare down the necessary lesser-included offenses.

In 2014, the legislature created a lewd and lascivious molestation classified as a first degree felony depending on the ages of the defendant and victim and whether the defendant had a prior conviction for an enumerated crime. If this enhancement is charged, *Apprendi v. New Jersey*, 530 U.S. 466 (2000) may require the jury to make additional findings regarding the prior qualifying conviction and/or the age of the victim involved. See § 800.04(5)(e), Fla. Stat.

This instruction was adopted in 2008 [998 So. 2d 1138] and amended in 2013 [109 So. 3d 721], 2015 [163 So. 3d 478] and 2018.