

## 11.10(d) LEWD OR LASCIVIOUS CONDUCT

§ 800.04(6), Fla. Stat.

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

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

1. (Defendant)
  - a. intentionally touched (victim) in a lewd or lascivious manner.
  - b. solicited (victim) to commit a lewd or lascivious act.
2. At the time of the offense, (victim) was under the age of 16 years.

*Give 3a or 3b as applicable.*

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

*Definitions.*

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.*

§ 777.04(2), Fla. Stat.

To “solicit” means to command, encourage, hire, or request another person to engage in specific conduct.

§ 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.

§ 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 Conduct, 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 CONDUCT, DEFENDANT 18 OR OLDER – 800.04(6)(b)</b>			
<b>CATEGORY ONE</b>	<b>CATEGORY TWO</b>	<b>FLA. STAT.</b>	<b>INS. NO.</b>
Lewd or lascivious conduct; defendant less than 18		800.04(6)(c)	11.10(d)
	Attempt	777.04(1)	5.1
	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 (if element 1a is charged)*	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 age of the defendant is not in dispute, the parties may agree to not give the necessary lesser-included offense.

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