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APPENDIX A

**COMMITTEE ON STANDARD JURY INSTRUCTIONS IN CRIMINAL
CASES
THE HONORABLE F. RAND WALLIS, CHAIR
REPORT 2017-02**

**23.1 MAINTAINING A PLACE OF PROSTITUTION,
LEWDNESS, OR ASSIGNATION**

§ 796.07(2)(a), Fla. Stat.

To prove the crime of Maintaining a Place of [Prostitution] [Lewdness] [Assignment], the State must prove the following element beyond a reasonable doubt:

(Defendant) [established] [owned] [maintained] [operated] any [place] [structure] [building] [conveyance] for the purpose of [lewdness] [assignment] [prostitution].

Give if applicable. § 796.07(7)(a), Fla. Stat.; § 480.043(1), Fla. Stat.; § 480.033, Fla. Stat.

If you find the defendant guilty of Maintaining a Place of [Prostitution] [Lewdness] [Assignment], you must also determine whether the State has proven beyond a reasonable doubt that the [place] [structure] [building] [conveyance] that was [established] [owned] [maintained] [operated] for the purpose of [lewdness] [assignment] [prostitution] was a massage establishment that was or should have been licensed by the Florida Department of Health.

All “massage establishments” must be licensed by the Florida Department of Health. A “massage establishment” means a site or premises, or portion thereof, wherein a massage therapist practices massage. A “massage therapist” means a person licensed as required by law who administers massage for compensation. “Massage” means the manipulation of the soft tissues of the human body with the hand, foot, arm, or elbow, whether or not such manipulation is aided by hydrotherapy, including colonic irrigation, or thermal therapy; any electrical or mechanical device; or the application to the human body of a chemical or herbal preparation.

Give if applicable. Fla. Stat. § 796.036

~~If you find the defendant guilty of Maintaining a Place of [Prostitution] [Lewdness] [Assignment], you must then determine whether the State has proven beyond a reasonable doubt that:~~

- a. ~~—A minor was engaged in the [prostitution] [lewdness] [assignment] [sexual conduct] [(other conduct prohibited in Chapter 796)]; and,~~

~~b. — The minor was not the person charged in this case.~~

Definitions.

§ 796.07(1)(a), Fla. Stat.

“Prostitution” is the giving or receiving of the body for sexual activity for hire but excludes sexual activity between spouses.

§ 796.07(1)(b), Fla. Stat.

“Lewdness” is any indecent or obscene act. “Indecent” means wicked, lustful, unchaste, licentious, or sensual intention on the part of the person doing the act.

§ 796.07(1)(c), Fla. Stat.

“Assignment” means the making of any appointment or engagement for prostitution or lewdness, or any act in furtherance of such appointment or engagement.

§ 810.011(1), Fla. Stat. *Dubose v. State*, 210 So. 3d 641 (Fla. 2017).

A “structure” is any building of any kind, either temporary or permanent, which has a roof over it and includes any closely adjoining land enclosed by a fence or wall. [The enclosure need not be continuous as it may have an ungated opening for entering and exiting.]

§ 810.011(3), Fla. Stat.

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

§ 796.07(1)(d), Fla. Stat.

“Sexual activity” means oral, anal, or vaginal penetration by, or union with, the sexual organ of another; anal or vaginal penetration of another by any other object; or the handling or fondling of the sexual organ of another for the purpose of masturbation; however, the term does not include acts done for bona fide medical purposes.

Lesser Included Offenses

**MAINTAINING A PLACE OF PROSTITUTION, LEWDNESS, OR
ASSIGNATION — 796.07(2)(A), FLA. STAT.**

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempt	777.04(1)	5.1

Comments

The crimes in § 796.07(2)(a), Florida Statutes, and § 796.07(7)(a), Florida Statutes, are enhanced based on the number of prior violations. As of July 2017, it is unclear whether the existence of a prior violation will be treated as an element of the crime that must be found by the jury in a bifurcated trial or whether a prior violation can be proven to the judge at sentencing.

This instruction was adopted in 1981 and amended in 2008 [995 So. 2d 476], 2010 [48 So. 3d 41], ~~and 2013 [122 So. 3d 302], and 2017.~~

23.2 SOLICITING FOR THE PURPOSE OF PROSTITUTION OR A LEWD OR INDECENT ACT

§ 796.07(2)(b), Fla. Stat.

To prove the crime of Soliciting for the Purpose of [Prostitution] [Any Lewd or Indecent Act], the State must prove the following element beyond a reasonable doubt:

(Defendant) [offered] [offered to secure] [agreed to secure] another person for the purpose of [prostitution] [any lewd or indecent act].

Give if applicable. Fla. Stat. § 796.036.

~~If you find the defendant guilty of Soliciting for the Purpose of [Prostitution] [Any Lewd or Indecent Act], you must then determine whether the State has proven beyond a reasonable doubt that:~~

~~a. — A minor was engaged in the [prostitution] [lewdness] [assignment] [sexual conduct] [(other conduct prohibited in Chapter 796)]; and,~~

~~b. — The minor was not the person charged in this case.~~

Definitions.

§ 796.07(1)(a), Fla. Stat.

“Prostitution” is the giving or receiving of the body for sexual activity for hire but excludes sexual activity between spouses.

§ 796.07(1)(b), Fla. Stat.

A “lewd act” is any indecent or obscene act. “Indecent” means wicked, lustful, unchaste, licentious, or sensual intention on the part of the person doing the act.

§ 796.07(1)(d), Fla. Stat.

“Sexual activity” means oral, anal, or vaginal penetration by, or union with, the sexual organ of another; anal or vaginal penetration of another by any other object; or the handling or fondling of the sexual organ of another for the purpose of masturbation; however, the term does not include acts done for bona fide medical purposes.

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comments

The crime in § 796.07(2)(b), Florida Statutes, is enhanced based on the number of prior violations. As of July 2017, it is unclear whether the existence of a prior violation will be treated as an element of the crime that must be found by the jury in a bifurcated trial or whether a prior violation can be proven to the judge at sentencing.

This instruction was adopted in 1981 and amended in 2008 [995 So. 2d 476], 2010 [48 So. 3d 41], ~~and~~ 2013 [122 So. 3d 302], and 2017.

23.3 RECEIVING FOR THE PURPOSE OF PROSTITUTION, LEWDNESS OR ASSIGNATION

§ 796.07(2)(c), Fla. Stat.

To prove the crime of Receiving for the Purpose of [Prostitution] [Lewdness] [Assignment], the State must prove the following element beyond a reasonable doubt:

Give element 1 or element 2 as applicable.

1. (Defendant) [received] [offered to receive] [agreed to

receive] a person into a [place] [structure] [building]
[conveyance] for the purpose of [prostitution] [lewdness]
[assignation].

2. (Defendant) permitted a person to remain in a [place]
[structure] [building] [conveyance] for the purpose of
[prostitution] [lewdness] [assignation].

Give if applicable. Fla. Stat. § 796.036.

**~~If you find the defendant guilty of Receiving for the Purpose of
[Prostitution] [Lewdness] [Assignation], you must then determine whether the
State has proven beyond a reasonable doubt that:~~**

**~~a. — A minor was engaged in the [prostitution] [lewdness]
[assignation] [sexual conduct] [(other conduct prohibited in
Chapter 796)]; and,~~**

~~b. — The minor was not the person charged in this case.~~

Definitions.

§ 796.07(1)(a), Fla. Stat.

**“Prostitution” is the giving or receiving of the body for sexual activity
for hire but excludes sexual activity between spouses.**

§ 796.07(1)(b), Fla. Stat.

**“Lewdness” is any indecent or obscene act. “Indecent” means wicked,
lustful, unchaste, licentious, or sensual intention on the part of the person
doing the act.**

§ 796.07(1)(d), Fla. Stat.

**“Sexual activity” means oral, anal, or vaginal penetration by, or union
with, the sexual organ of another; anal or vaginal penetration of another by
any other object; or the handling or fondling of the sexual organ of another
for the purpose of masturbation; however, the term does not include acts done
for bona fide medical purposes.**

§ 796.07(1)(c), Fla. Stat.

“Assignment” includes the making of any appointment or engagement for prostitution or lewdness or any act in furtherance of such appointment or engagement.

§ 810.011(1), Fla. Stat. *Dubose v. State*, 210 So. 3d 641 (Fla. 2017).

A “structure” is any building of any kind, either temporary or permanent, which has a roof over it and includes any closely adjoining land enclosed by a fence or wall. [The enclosure need not be continuous as it may have an ungated opening for entering and exiting.]

§ 810.011(3), Fla. Stat.

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

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comments

The crime in § 796.07(2)(c), Florida Statutes, is enhanced based on the number of prior violations. As of July 2017, it is unclear whether the existence of a prior violation will be treated as an element of the crime that must be found by the jury in a bifurcated trial or whether a prior violation can be proven to the judge at sentencing.

This instruction was adopted in 1981 and amended in 2008 [995 So. 2d 476], 2010 [48 So. 3d 41], ~~and~~ 2013 [122 So. 3d 302], and 2017.

23.4 TRANSPORTING FOR THE PURPOSE OF PROSTITUTION, LEWDNESS OR ASSIGNATION

§ 796.07(2)(d), Fla. Stat.

To prove the crime of Transporting for the Purpose of [Prostitution] [Lewdness] [Assignment], the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) [directed] [took] [transported] [offered or agreed to [direct] [take] [transport]] a person to [a place] [a structure] [a building] [another person].

2. At the time, (defendant) knew or had reasonable cause to believe that such [directing] [taking] [transporting] was for the purpose of [prostitution] [lewdness] [assignment].

Give if applicable. Fla. Stat. § 796.036.

If you find the defendant guilty of Transporting for the Purpose of [Prostitution] [Lewdness] [Assignment], you must then determine whether the State has proven beyond a reasonable doubt that:

a. — A minor was engaged in the [prostitution] [lewdness] [assignment] [sexual conduct] [(other conduct prohibited in Chapter 796)]; and,

b. — The minor was not the person charged in this case.

Definitions.

§ 796.07(1)(a), Fla. Stat.

“Prostitution” is the giving or receiving of the body for sexual activity for hire but excludes sexual activity between spouses.

§ 796.07(1)(b), Fla. Stat.

“Lewdness” is any indecent or obscene act. “Indecent” means wicked, lustful, unchaste, licentious, or sensual intention on the part of the person doing the act.

§ 796.07(1)(d), Fla. Stat.

“Sexual activity” means oral, anal, or vaginal penetration by, or union with, the sexual organ of another; anal or vaginal penetration of another by any other object; or the handling or fondling of the sexual organ of another for the purpose of masturbation; however, the term does not include acts done for bona fide medical purposes.

§ 796.07(1)(c), Fla. Stat.

“Assignment” includes the making of any appointment or engagement for prostitution or lewdness or any act in furtherance of such appointment or engagement.

§ 810.011(1), Fla. Stat. Dubose v. State, 210 So. 3d 641 (Fla. 2017).

A “structure” is any building of any kind, either temporary or permanent, which has a roof over it and includes any closely adjoining land enclosed by a fence or wall. [The enclosure need not be continuous as it may have an ungated opening for entering and exiting.]

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comments

The crime in § 796.07(2)(d), Florida Statutes, is enhanced based on the number of prior violations. As of July 2017, it is unclear whether the existence of a prior violation will be treated as an element of the crime that must be found by the jury in a bifurcated trial or whether a prior violation can be proven to the judge at sentencing.

This instruction was adopted in 1981 and amended in 2008 [995 So. 2d 476], 2010 [48 So. 3d 41], ~~and 2013 [122 So. 3d 302], and 2017.~~

23.5 OFFERING TO COMMIT, COMMITTING, OR ENGAGING IN PROSTITUTION, LEWDNESS, OR ASSIGNATION

§ 796.07(2)(e), Fla. Stat.

To prove the crime of Offering to Commit, Committing, or Engaging in [Prostitution] [Lewdness] [Assignment], the State must prove the following two elements beyond a reasonable doubt:

- 1. _____ (Defendant) [offered to commit] [committed] [engaged in] [prostitution] [lewdness] [assignment].**
- 2. At the time, (defendant) was 18 years of age or older.**

~~Give if applicable. Fla. Stat. § 796.036.~~

~~If you find the defendant guilty of Offering to Commit, Committing, or Engaging in [Prostitution] [Lewdness] [Assignment], you must then determine whether the State has proven beyond a reasonable doubt that:~~

a. ~~—A minor was engaged in the [prostitution] [lewdness] [assignation] [sexual conduct] [(other conduct prohibited in Chapter 796)]; and,~~

b. ~~—The minor was not the person charged in this case.~~

Definitions.

§ 796.07(1)(a), Fla. Stat.

“Prostitution” is the giving or receiving of the body for sexual activity for hire but excludes sexual activity between spouses.

§ 796.07(1)(b), Fla. Stat.

“Lewdness” is any indecent or obscene act. “Indecent” means wicked, lustful, unchaste, licentious, or sensual intention on the part of the person doing the act.

§ 796.07(1)(d), Fla. Stat.

“Sexual activity” means oral, anal, or vaginal penetration by, or union with, the sexual organ of another; anal or vaginal penetration of another by any other object; or the handling or fondling of the sexual organ of another for the purpose of masturbation; however, the term does not include acts done for bona fide medical purposes.

§ 796.07(1)(c), Fla. Stat.

“Assignation” includes the making of any appointment or engagement for prostitution or lewdness or any act in furtherance of such appointment or engagement.

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comments

The crime in § 796.07(2)(e), Florida Statutes, is enhanced based on the number of prior violations. As of July 2017, it is unclear whether the existence of a prior violation will be treated as an element of the crime that must be found by the jury in a bifurcated trial or whether a prior violation can be proven to the judge at sentencing.

This instruction was adopted in 1981 and amended in 2008 [995 So. 2d 476], 2010 [48 So. 3d 41], ~~and 2013 [122 So. 3d 302], and 2017.~~

23.6 SOLICITING FOR PROSTITUTION, LEWDNESS, OR ASSIGNATION

§ 796.07(2)(f), Fla. Stat.

To prove the crime of Soliciting for [Prostitution] [Lewdness] [Assignment], the State must prove the following element beyond a reasonable doubt:

(Defendant) [solicited] [induced] [enticed] [procured] another to commit [prostitution] [lewdness] [assignment].

Give if applicable. Fla. Stat. § 796.036.

~~If you find the defendant guilty of Soliciting for [Prostitution] [Lewdness] [Assignment], you must then determine whether the State has proven beyond a reasonable doubt that:~~

~~a. — A minor was engaged in the [prostitution] [lewdness] [assignment] [sexual conduct] [(other conduct prohibited in Chapter 796)]; and,~~

~~b. — The minor was not the person charged in this case.~~

Definitions.

§ 796.07(1)(a), Fla. Stat.

“Prostitution” is the giving or receiving of the body for sexual activity for hire but excludes sexual activity between spouses.

§ 796.07(1)(b), Fla. Stat.

“Lewdness” is any indecent or obscene act. “Indecent” means wicked, lustful, unchaste, licentious, or sensual intention on the part of the person doing the act.

§ 796.07(1)(d), Fla. Stat.

“Sexual activity” means oral, anal, or vaginal penetration by, or union with, the sexual organ of another; anal or vaginal penetration of another by any other object; or the handling or fondling of the sexual organ of another

for the purpose of masturbation; however, the term does not include acts done for bona fide medical purposes.

§ 796.07(1)(c), Fla. Stat.

“Assignment” includes the making of any appointment or engagement for prostitution or lewdness or any act in furtherance of such appointment or engagement.

§ 777.04(2), Fla. Stat.

To “solicit” means to ~~ask earnestly or to try to induce the person solicited to do the thing solicited~~command, encourage, hire, or request another person to engage in specific conduct.

To “procure” means to persuade, induce, prevail upon or cause a person to do something.

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comments

The crime in § 796.07(2)(f), Florida Statutes, is enhanced based on the number of prior violations. As of July 2017, it is unclear whether the existence of a prior violation will be treated as an element of the crime that must be found by the jury in a bifurcated trial or whether a prior violation can be proven to the judge at sentencing.

This instruction was adopted in 1981 and amended in 2008 [995 So. 2d 476], 2010 [48 So. 3d 41], ~~and~~ 2013 [122 So. 3d 302], and 2017.

23.7 ENTERING FOR THE PURPOSE OF PROSTITUTION, LEWDNESS, OR ASSIGNATION

§ 796.07(2)(g), Fla. Stat.

To prove the crime of Entering for the Purpose of [Prostitution] [Lewdness] [Assignment], the State must prove the following element beyond a reasonable doubt:

(Defendant) [resided in] [entered] [remained in] a [place] [structure] [building] [conveyance] for the purpose of [prostitution] [lewdness] [assignation].

Give if applicable. Fla. Stat. § 796.036.

~~If you find the defendant guilty of Entering for the Purpose of [Prostitution] [Lewdness] [Assignation], you must then determine whether the State has proven beyond a reasonable doubt that:~~

~~a. — A minor was engaged in the [prostitution] [lewdness] [assignation] [sexual conduct] [(other conduct prohibited in Chapter 796)]; and,~~

~~b. — The minor was not the person charged in this case.~~

Definitions.

§ 796.07(1)(a), Fla. Stat.

“Prostitution” is the giving or receiving of the body for sexual activity for hire but excludes sexual activity between spouses.

§ 796.07(1)(b), Fla. Stat.

“Lewdness” is any indecent or obscene act. “Indecent” means wicked, lustful, unchaste, licentious, or sensual intention on the part of the person doing the act.

§ 796.07(1)(d), Fla. Stat.

“Sexual activity” means oral, anal, or vaginal penetration by, or union with, the sexual organ of another; anal or vaginal penetration of another by any other object; or the handling or fondling of the sexual organ of another for the purpose of masturbation; however, the term does not include acts done for bona fide medical purposes.

§ 796.07(1)(c), Fla. Stat.

“Assignation” includes the making of any appointment or engagement for prostitution or lewdness or any act in furtherance of such appointment or engagement.

§ 810.011(1), Fla. Stat. *Dubose v. State*, 210 So. 3d 641 (Fla. 2017).

A “structure” is any building of any kind, either temporary or permanent, which has a roof over it and includes any closely adjoining land enclosed by a fence or wall. [The enclosure need not be continuous as it may have an ungated opening for entering and exiting.]

§ 810.011(3), Fla. Stat.

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

Lesser Included Offenses

ENTERING FOR THE PURPOSE OF PROSTITUTION, LEWDNESS, OR ASSIGNATION — 796.07(2)(g), Fla. Stat.			
CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempt	777.04(1)	5.1

Comments

The crime in § 796.07(2)(g), Florida Statutes, is enhanced based on the number of prior violations. As of July 2017, it is unclear whether the existence of a prior violation will be treated as an element of the crime that must be found by the jury in a bifurcated trial or whether a prior violation can be proven to the judge at sentencing.

This instruction was adopted in 1981 and amended in 2008 [995 So. 2d 476], 2010 [48 So. 3d 41], ~~and~~ 2013 [122 So. 3d 302], and 2017.