

800.04 Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age.—

(1) DEFINITIONS.—As used in this section:

(a) “Sexual activity” means the oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object; however, sexual activity does not include an act done for a bona fide medical purpose.

(b) “Consent” means intelligent, knowing, and voluntary consent, and does not include submission by coercion.

(c) “Coercion” means the use of exploitation, bribes, threats of force, or intimidation to gain cooperation or compliance.

(d) “Victim” means a person upon whom an offense described in this section was committed or attempted or a person who has reported a violation of this section to a law enforcement officer.

(2) PROHIBITED DEFENSES.—Neither the victim’s lack of chastity nor the victim’s consent is a defense to the crimes proscribed by this section.

(3) IGNORANCE OR BELIEF OF VICTIM’S AGE.—The perpetrator’s ignorance of the victim’s age, the victim’s misrepresentation of his or her age, or the perpetrator’s bona fide belief of the victim’s age cannot be raised as a defense in a prosecution under this section.

(4) LEWD OR LASCIVIOUS BATTERY.—

(a) A person commits lewd or lascivious battery by:

1. Engaging in sexual activity with a person 12 years of age or older but less than 16 years of age; or

2. Encouraging, forcing, or enticing any person less than 16 years of age to engage in sadomasochistic abuse, sexual bestiality, prostitution, or any other act involving sexual activity.

(b) Except as provided in paragraph (c), an offender who commits lewd or lascivious battery commits a felony of the second degree, punishable as provided in s. [775.082](#), s. [775.083](#), or s. [775.084](#).

(c) A person commits a felony of the first degree, punishable as provided in s. [775.082](#), s. [775.083](#), or s. [775.084](#) if the person is an offender 18 years of age or older who commits lewd or lascivious battery and was previously convicted of a violation of:

1. Section [787.01\(2\)](#) or s. [787.02\(2\)](#) when the violation involved a victim who was a minor and, in the course of committing that violation, the defendant committed against the minor a sexual battery under chapter 794 or a lewd act under this section or s. [847.0135\(5\)](#);

2. Section [787.01\(3\)\(a\)2.](#) or 3.;

3. Section [787.02\(3\)\(a\)2.](#) or 3.;

4. Chapter 794, excluding s. [794.011\(10\)](#);

5. Section [825.1025](#);

6. Section [847.0135\(5\)](#); or

7. This section.

(5) LEWD OR LASCIVIOUS MOLESTATION.—

(a) A person who intentionally touches in a lewd or lascivious manner the breasts, genitals, genital area, or buttocks, or the clothing covering them, of a person less than 16 years of age, or forces or entices a person under 16 years of age to so touch the perpetrator, commits lewd or lascivious molestation.

(b) An offender 18 years of age or older who commits lewd or lascivious molestation against a victim less than 12 years of age commits a life felony, punishable as provided in s. [775.082\(3\)\(a\)4](#).

(c)1. An offender less than 18 years of age who commits lewd or lascivious molestation against a victim less than 12 years of age; or

2. An offender 18 years of age or older who commits lewd or lascivious molestation against a victim 12 years of age or older but less than 16 years of age

commits a felony of the second degree, punishable as provided in s. [775.082](#), s. [775.083](#), or s. [775.084](#).

(d) An offender less than 18 years of age who commits lewd or lascivious molestation against a victim 12 years of age or older but less than 16 years of age commits a felony of the third degree, punishable as provided in s. [775.082](#), s. [775.083](#), or s. [775.084](#).

(e) A person commits a felony of the first degree, punishable as provided in s. [775.082](#), s. [775.083](#), or s. [775.084](#) if the person is 18 years of age or older and commits lewd or lascivious molestation against a victim 12 years of age or older but less than 16 years of age and the person was previously convicted of a violation of:

1. Section [787.01\(2\)](#) or s. [787.02\(2\)](#) when the violation involved a victim who was a minor and, in the course of committing the violation, the defendant committed against the minor a sexual battery under chapter 794 or a lewd act under this section or s. [847.0135\(5\)](#);
2. Section [787.01\(3\)\(a\)2.](#) or 3.;
3. Section [787.02\(3\)\(a\)2.](#) or 3.;
4. Chapter 794, excluding s. [794.011\(10\)](#);
5. Section [825.1025](#);
6. Section [847.0135\(5\)](#); or
7. This section.

(6) LEWD OR LASCIVIOUS CONDUCT.—

(a) A person who:

1. Intentionally touches a person under 16 years of age in a lewd or lascivious manner; or
2. Solicits a person under 16 years of age to commit a lewd or lascivious act

commits lewd or lascivious conduct.

(b) An offender 18 years of age or older who commits lewd or lascivious conduct commits a felony of the second degree, punishable as provided in s. [775.082](#), s. [775.083](#), or s. [775.084](#).

(c) An offender less than 18 years of age who commits lewd or lascivious conduct commits a felony of the third degree, punishable as provided in s. [775.082](#), s. [775.083](#), or s. [775.084](#).

(7) LEWD OR LASCIVIOUS EXHIBITION.—

(a) A person who:

1. Intentionally masturbates;
2. Intentionally exposes the genitals in a lewd or lascivious manner; or
3. Intentionally commits any other sexual act that does not involve actual physical or sexual contact with the victim, including, but not limited to, sadomasochistic abuse, sexual bestiality, or the simulation of any act involving sexual activity

in the presence of a victim who is less than 16 years of age, commits lewd or lascivious exhibition.

(b) An offender 18 years of age or older who commits a lewd or lascivious exhibition commits a felony of the second degree, punishable as provided in s. [775.082](#), s. [775.083](#), or s. [775.084](#).

(c) An offender less than 18 years of age who commits a lewd or lascivious exhibition commits a felony of the third degree, punishable as provided in s. [775.082](#), s. [775.083](#), or s. [775.084](#).

(8) EXCEPTION.—A mother's breastfeeding of her baby does not under any circumstance constitute a violation of this section.

History.—s. 1, ch. 21974, 1943; s. 1, ch. 26580, 1951; s. 780, ch. 71-136; s. 66, ch. 74-383; s. 1, ch. 75-24; s. 40, ch. 75-298; s. 291, ch. 79-400; s. 5, ch. 84-86; s. 1, ch. 90-120; s. 5, ch. 93-4; s. 6, ch. 99-201; s. 1, ch. 2000-246; s. 5, ch. 2005-28; s. 3, ch. 2008-172; s. 3, ch. 2008-182; s. 6, ch. 2014-4.