

16.1 AGGRAVATED CHILD ABUSE

§ 827.03(2)(a), Fla. Stat.

To prove the crime of Aggravated Child Abuse, the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant)

Give 1a–1e as applicable.

- a. committed Aggravated Battery upon (victim).**
- b. willfully tortured (victim).**
- c. maliciously punished (victim).**
- d. willfully and unlawfully caged (victim).**
- e. knowingly or willfully committed Child Abuse upon (victim) and in so doing caused great bodily harm, permanent disability, or permanent disfigurement to (victim).**

2. (Victim) was under the age of 18 years.

Give if element 1a is alleged.

In order to prove that an Aggravated Battery was committed, the State must prove the following two elements. The first element is a definition of Battery.

1. (Defendant) actually and intentionally

Give 1a or 1b or both as applicable.

- a. touched or struck (victim) against the will of (victim).**
- b. caused bodily harm to (victim).**

Give 2a or 2b or both as applicable.

- 2. a. In so doing, (defendant) [intentionally or knowingly caused [great bodily harm] [permanent disability] [permanent disfigurement]] [or] [used a deadly weapon].**
- b. At the time, (victim) was pregnant and (defendant) knew or should have known (victim) was pregnant.**

Give if applicable.

A “deadly weapon” is any object that will likely cause death or great bodily harm if used or threatened to be used in the ordinary and usual manner contemplated by its design and construction.

Give if applicable.

An object not designed to inflict bodily harm may nonetheless be a “deadly weapon” if it was used or threatened to be used in a manner likely to cause death or great bodily harm.

Give if applicable.

“Great bodily harm” means great as distinguished from slight, trivial, minor, or moderate harm, and as such does not include mere bruises.

Give only if applicable. Fey v. State, 125 So. 3d 828 (Fla. 4th DCA 2013).

An intentional touching or striking includes situations where a defendant knows that a touch or strike is substantially certain to result from his or her act.

Give only if applicable. Clark v. State, 783 So. 2d 967 (Fla. 2001).

A Battery may be found as a result of the intentional touching or intentional striking of something other than the actual body of the person. However, the object that is touched or struck must have such an intimate connection with the person that it is to be regarded as a part or as an extension of the person. [For example, in cases where a person intentionally drove into another occupied vehicle, it is for you to determine whether the vehicle that was struck should be considered as a part or as an extension of the person inside that vehicle. This determination may include consideration about whether the person was “touched” through the force of impact by being jostled or otherwise impacted through the transfer of energy from the collision.]

Give if element 1b, 1d, or 1e is alleged.

“Willfully” means intentionally and purposely.

Give if element 1c is alleged. § 827.03(c), Fla. Stat.

“Maliciously” means wrongfully, intentionally, and without legal justification or excuse. Maliciousness may be established by circumstances from which one could conclude that a reasonable parent would not have engaged in the damaging acts toward the child for any valid reason and that the primary purpose of the acts was to cause the victim unjustifiable pain or injury.

Give if element 1e is alleged. § 827.03(1)(b), Fla. Stat.

“Child Abuse” means [the intentional infliction of physical or mental injury upon a child] [an intentional act that could reasonably be expected to result in physical or mental injury to a child] [active encouragement of any person to commit an act that results or could reasonably be expected to result in physical or mental injury to a child].

Give if applicable. § 827.03(1)(d), Fla. Stat.

“Mental injury” means injury to the intellectual or psychological capacity of a child as evidenced by a discernible and substantial impairment in the ability of the child to function within the normal range of performance and behavior as supported by expert testimony.

Parental affirmative defense. Give if applicable. See Raford v. State, 828 So. 2d 1012 (Fla. 2002). See § 39.01(49), Florida Statutes, if the defendant's status as a parent is at issue.

§ 827.03, Fla. Stat., and case law are silent as to (1) which party bears the burden of persuasion of the affirmative defense and (2) the standard for the burden of persuasion. Under the common law, defendants had both the burden of production and the burden of persuasion on affirmative defenses by a preponderance of the evidence. The Florida Supreme Court has often decided, however, that once a defendant meets the burden of production on an affirmative defense, the burden of persuasion is on the State to disprove the affirmative defense beyond a reasonable doubt (e.g., self-defense and consent to enter in a burglary prosecution). In the absence of case law, trial judges must resolve the issue via a special instruction. See the opinions in Dixon v. United States, 548 U.S. 1 (2006), for further guidance.

It is not a crime for [a parent] [a person who is acting in place of a parent] of a child to impose reasonable physical discipline on a child for misbehavior under the circumstances even though physical injury resulted from the discipline.

If burden of persuasion is on the defendant:

If you find that the defendant proved *(insert appropriate burden of persuasion)* **that [he] [she] was [a parent] [a person acting in place of a parent] of (victim) and that [he] [she] imposed reasonable physical discipline on (victim) for misbehavior under the circumstances, you should find [him] [her] not guilty.**

If the defendant did not prove *(insert appropriate burden of persuasion)* **that [he] [she] was [a parent] [a person acting in place of a parent] of (victim) or if the defendant did not prove that [he] [she] imposed reasonable physical discipline on (victim) for misbehavior under the circumstances, you should find [him] [her] guilty, if all the elements of the charge have been proven beyond a reasonable doubt.**

If burden of persuasion is on the State:

If you find that the State proved *(insert appropriate burden of persuasion)* **that the defendant was not [a parent] [a person acting in place of a parent] of (victim) or if you find that the State proved** *(insert appropriate burden of persuasion)* **that the defendant's physical discipline on (victim) was not reasonable for misbehavior under the circumstances, you should find [him] [her] guilty, if all of the elements of the charge have been proven beyond a reasonable doubt.**

Lesser Included Offenses

AGGRAVATED CHILD ABUSE — 827.03(2)(a)			
CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Aggravated Battery; if element 1a is charged		784.045	8.4, 8.4(a)
Felony Battery; if element 1a is charged		784.041	8.5

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Battery; if element 1a is charged and only under certain circumstances. See <i>Kama v. State</i> , 507 So. 2d 154 (Fla. 2d DCA 1987)		784.03	8.3
Child Abuse; if element 1e is charged		827.03(2)(c)	16.3
	Attempt	777.04(1)	5.1

Comments

Florida law on alternative conduct statutes is unsettled. For example, in a DUI case, it is permissible for some jurors to conclude the State proved only driving while impaired, and other jurors to conclude the State proved only driving with an unlawful breath alcohol level. *Euceda v. State*, 711 So. 2d 122 (Fla. 3d DCA 1998). However, according to the Second District, in Aggravated Battery cases, it is improper for some jurors to conclude the State proved only that the defendant intentionally caused great bodily harm and other jurors to conclude the State proved only that the defendant used a deadly weapon. *Miller v. State*, 123 So. 3d 595 (Fla. 2d DCA 2013). Unless the case law changes, in Aggravated Child Abuse cases based on a theory of Aggravated Battery where the State has charged both alternatives, trial judges must give a special instruction that informs jurors they must be unanimous on each alternative theory. For other Aggravated Child Abuse cases, as of September 2019, it is undetermined whether jurors must be unanimous for each alternative within element #1.

Num-chucks, which were originally designed as a farm tool, can be a deadly weapon. *R.V. v. State*, 497 So. 2d 912 (Fla. 5th DCA 1986). Jurors could find that a 7-inch straight-edged razor might be a dangerous weapon. *R.R. v. State*, 826 So. 2d 465 (Fla. 5th DCA 2002). In trials involving these types of objects, the judge should consider a special instruction informing jurors that an object can be a deadly weapon if its sole modern use is to cause great bodily harm or death. A special instruction may also be necessary in cases where the deadly weapon was an animal or a substance or something that is not commonly referred to as an “object.”

This instruction was adopted in 1981 and amended in 2002 [824 So. 2d 881], 2005 [911 So. 2d 766], 2013 [122 So. 3d 263], 2014 [152 So. 3d 475], 2016 [190 So. 3d 614], and on April 3, 2020.