

**8.27 VIOLATION OF AN INJUNCTION FOR PROTECTION AGAINST
EXPLOITATION OF A [VULNERABLE ADULT] [PERSON 65 YEARS OF AGE
OR OLDER]**

§ 825.1036(4), Fla. Stat.; § 817.5695(6), Fla. Stat.

**To prove the crime of Violation of an Injunction for Protection Against
Exploitation of a [Vulnerable Adult] [Person 65 Years of Age or Older], the
State must prove the following two elements beyond a reasonable doubt:**

- 1. A [temporary] [final] injunction for protection against exploitation
of a [vulnerable adult] [person 65 years of age or older] was issued
by a court against (defendant) for the benefit of (victim).**
- 2. (Defendant) willfully violated the injunction by (alleged violation* of
§§ 825.1036(4)(a)1.-7., Fla. Stat.).**

“Willfully” means knowingly, intentionally, and purposely.

*If the allegation involves the defendant exploiting a vulnerable adult, define
“exploitation” from § 825.103(1), Fla. Stat.*

Lesser Included Offense

**VIOLATION OF AN INJUNCTION FOR PROTECTION AGAINST EXPLOITATION OF
A [VULNERABLE ADULT] [PERSON 65 YEARS OF AGE OR OLDER] — 825.1036**

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

Comments

*If more than one method of violating the injunction is alleged, the courts will likely require a unanimous verdict for each alternative. *Jacobs v. State*, 272 So. 3d 838 (Fla. 2d DCA 2019).

The crime of Violation of an Injunction for Protection Against Exploitation of a Vulnerable Adult is bumped up from a first-degree misdemeanor to a third-degree felony if the defendant had two or more prior convictions for violating either an injunction or a foreign protection order involving the same victim. It is unclear whether the courts will require the historical fact of the prior convictions against the same victim to be proven to the jury or whether only the sentencing judge may find that the prior convictions against the same victim exist. If the issue is to be submitted to a jury, it is error to inform the jury of the allegation of prior convictions until the verdict on the underlying Violation of an Injunction is rendered. Therefore, if the charging document contains an allegation of prior Violation of Injunction convictions, do not read that allegation and do not send the information or indictment into the jury room prior to a verdict. If the defendant is found guilty of Violation of an Injunction for

Protection Against Exploitation of a Vulnerable Adult, the historical fact of prior convictions against the same victim shall be determined separately in a bifurcated proceeding. *State v. Harbaugh*, 754 So. 2d 691 (Fla. 2000). The term “conviction” means a determination of guilt that is the result of a plea or a trial, regardless of whether adjudication is withheld or a plea of nolo contendere is entered. § 825.1036(4)(b), Fla. Stat.

Exploitation of a vulnerable adult includes a person 65 years of age or older who is or may be subject to exploitation as described in § 817.5695, Fla. Stat. See § 825.1036, Fla. Stat. and Instruction 14.9(a).

This instruction was adopted in 2018 [259 So. 3d 753], and amended on June 6, 2022, and on March 8, 2024.