

firearm” since the legislature has excluded that class of firearms in § 790.27(3). The portion of the instruction that contains a definition of “possess” and an instruction on actual or constructive possession is borrowed from standard jury instruction 25.7 (Drug Abuse – Possession).

No lesser included offenses have been identified by the committee.

**Proposal 12      11.17(a)      Soliciting a Child for Unlawful Sexual Conduct  
Using Computer Services or Devices**

The committee met on July 18, 2008, to consider proposing a new jury instruction for the Computer Pornography and Child Exploitation Prevention Act. The 2007 Florida Legislature enacted Chapter 2007-143, Laws of Florida. The chapter law is attached at Appendix B. The legislature amended § 847.0135(3)(a) by incorporating all of the offenses listed in Chapter 794, Chapter 800, and Chapter 827. In addition, the legislature expanded the possible offenses that could be committed by an offender to include any unlawful sexual conduct with a child or with another person believed by the person to be a child.

Elements 1, 2, and 3, of the proposal, track § 847.0135(3)(a), Florida Statutes (2008). Element 4 is given if the offender represents that he or she is a minor. A misrepresentation of age increases the offense from a felony of the third degree to a felony of the second degree.

The definitions included in the instruction are taken from Chapter 2007-143, Laws of Florida and § 847.001, Florida Statutes (2008).

One paragraph of the proposed instruction was extensively debated by the committee. The paragraph originally read:

**The fact that an undercover operative or law enforcement officer was involved in the detection and investigation of this offense shall not constitute a defense from prosecution.**

Mr. Trettis made a motion that committee remove this paragraph from the proposed instruction. He felt that the wording of the paragraph negated the defense of entrapment. Judge Thomas commented that he did not want an instruction that precluded the defense. Mr. Way stated that the paragraph in the proposal looked like it was a comment on the defense of entrapment. Mr. Cervone and Mr. Migliore disagreed. Neither felt that the sentence eliminated the defense,

and commented that defense counsel could ask the court for an entrapment instruction if the facts warranted it. Mr. Schneider noted that the paragraph was taken directly from §847.0135(2), Florida Statutes. Judge Scola believed the paragraph should stay in the instruction since it was in the statute. The committee voted 7 to 5 to keep the paragraph in place. The committee then voted unanimously to reword the instruction to read:

**The mere fact that an undercover operative or law enforcement officer was involved in the detection and investigation of this offense shall not constitute a defense from prosecution.**

The committee did not identify any lesser included offenses for this proposed instruction.

The committee met again on October 31, 2008, to give final approval to the proposed instruction. Although no comments had been received, the committee readdressed element 3 of the proposal. The paragraph published in *The Florida Bar News* read:

**3. (Defendant) [seduced] [solicited] [lured] [enticed] [attempted to] [seduce] [solicit] [lure] [entice] (victim) to engage in (any illegal act as charged in the indictment or information under chapter 794, 800, or 827) [otherwise engaged in other unlawful sexual conduct with (victim)].**

Mr. Trettis did not think that that the words “otherwise engaged in other unlawful sexual activity” made any sense. He noted that the offense is one of solicitation and not a completed act. Mr. Cervone commented that the reason the past tense was used in element 3 was because the offense had already been completed. The committee crafted several possible changes to the paragraph and final approval, by a unanimous vote, was given to have element 3 read as follows:

**3. (Defendant) [seduced] [solicited] [lured] [enticed] [attempted to] [seduce] [solicit] [lure] [entice] (victim) to engage in (any illegal act as charged in the indictment or information under chapter 794, 800, 827 or other unlawful sexual conduct).**

The committee also recognized that the following sentence should be deleted from the proposed instruction:

**Neither the child’s lack of chastity nor the child’s consent is a defense to the crime charged.**

This language does not appear in § 847.0135(4)(a). The sentence is not applicable to this proposed instruction; the offense is the solicitation of a child to engage in sex, not engaging in actual sex acts with a child. The committee approved the deletion by a unanimous vote.

The committee voted unanimously to move the last paragraph of the proposed instruction and place it under element 4. The committee felt that its importance would be diminished by having it follow the definitions.

The committee also voted unanimously to include the words “*Give the following definitions if applicable.*” This sentence precedes the definitions in the proposed instruction.

Subsequent to the October 31, 2008 meeting, the committee voted unanimously, via electronic mail, to change the title of the instruction to more closely match the statutory language.

The committee does not believe that any of the changes made at the meeting require that the proposed instruction be republished for comment since no substantive changes have been made to the proposal.

**Proposal 13      11.17(b)      Soliciting a Parent of a Child for Unlawful Sexual Conduct Using Computer Services or Devices**

The committee met on July 18, 2008, to consider proposing a new jury instruction for Computer Pornography and Child Exploitation Prevention Act. The 2007 Florida Legislature enacted chapter 2007-143, Laws of Florida. The legislature amended § 847.0135, Florida Statutes (2007), by adding a new subdivision (b) to the statute. This subsection makes it unlawful to solicit, entice, lure, or attempt to solicit, entice, or lure a parent, a legal guardian, or a custodian of a child, to consent to having the child participate in any illegal act under chapter 794, 800, 827, or to otherwise engage in any sexual conduct.

Elements 1, 2, and 3, of the proposal, track § 847.0135(3)(b), Florida Statutes (2008). Element 4 is given if the offender represents that he or she is a

minor. A misrepresentation of age increases the offense from a felony of the third degree to a felony of the second degree.

The definitions included in the instruction are taken from chapter 2007-143, Laws of Florida and § 847.001, Florida Statutes (2008).

The committee passed the instruction by a unanimous vote after agreeing to conform the language in this proposal to proposed instruction 11.17(a).

The committee met again on October 31, 2008, to give final approval to the proposed instruction. Although no comments had been received, the committee readdressed element 3 of the proposal. The paragraph published in *The Florida Bar News* read:

**3. (Defendant) [seduced] [solicited] [lured] [enticed] [attempted to] [seduce] [solicit] [lure] [entice] a [parent] [legal guardian] [custodian of (victim)] [person believed to be [a parent] [legal guardian] [custodian of (victim)] to [consent to the participation of (victim) in any act described in (any illegal act as charged in the indictment or information under chapter 794, 800, or 827)] [engage in other unlawful sexual conduct].**

Based on the changes made to proposed instruction 11.17(a), the committee voted unanimously to change element 3 to read:

**3. (Defendant) [seduced] [solicited] [lured] [enticed] [attempted to] [seduce] [solicit] [lure] [entice] a [parent] [legal guardian] [custodian of (victim)] [person believed to be [a parent] [legal guardian] [custodian of (victim)] to consent to the participation of (victim) in any act described in (any illegal act as charged in the indictment or information under chapter 794, 800, or 827 or other unlawful sexual conduct).**

The committee also recognized that the following sentence should be deleted from the proposed instruction:

**Neither the child's lack of chastity nor the child's consent is a defense to the crime charged.**

This language does not appear in § 847.0135(4) (a). It does not appear the language is applicable; the offense is the solicitation of a child to engage in sex, not engaging in actual sex acts with a child.

The committee voted unanimously to move the last paragraph of the proposed instruction and place it under element 4. The committee felt that its importance would be diminished by having it follow the definitions.

The committee also voted unanimously to include the words “*Give the following definitions if applicable.*” This sentence precedes the definitions in the proposed instruction.

Subsequent to the October 31, 2008 meeting, the committee voted unanimously, via electronic mail, to change the title to the instruction to more closely match the statutory language.

The committee does not believe that any of the changes made at the meeting require that the proposed instruction be republished for comment since no substantive changes were made to the proposal.

#### **Proposal 14      11.17(c)      Traveling to Meet a Minor**

The committee met on July 18, 2008, to consider proposing a new jury instruction for Traveling to Meet a Minor.

The 2007 Florida Legislature enacted Chapter 2007-143, Laws of Florida. The legislature amended § 847.0135, Florida Statutes (2007), by adding subsection (4) to the statute.

Elements 1, 2, and 3, of the proposal, track § 847.0135(4)(a), Florida Statutes (2008).

The definitions included in the instruction are taken from Chapter 2007-143, Laws of Florida and § 847.001, Florida Statutes (2008).

The committee met on October 31, 2008, to give final approval to the proposed instruction. At the meeting, the committee voted unanimously to conform 11.17(c) to proposed instruction 11.17(a). Element 3 originally read:

**3. (Defendant) [seduced] [solicited] [lured] [enticed] [attempted to] [seduce] [solicit] [lure] [entice] (victim) to engage in (any illegal act as charged in the indictment or information under chapter 794, 800, or 827) [otherwise engaged in other unlawful sexual conduct with (victim)].**

The committee voted unanimously to amend element 3 to read:

**3. (Defendant) [seduced] [solicited] [lured] [enticed] [attempted to] [seduce] [solicit] [lure] [entice] (victim) to engage in (any illegal act as charged in the indictment or information under chapter 794, 800, 827 or other unlawful sexual conduct).**

The committee voted unanimously to move the last paragraph of the proposed instruction and place it under element 3. The committee felt that its importance would be diminished by having it follow the definitions.

The committee also voted unanimously to include the words “*Give the following definitions if applicable.*” This sentence precedes the definitions in the proposed instruction.

The committee, after reviewing the proposed instruction after the October 31, 2008 meeting, recognized that the following sentence should be deleted from the proposed instruction:

**Neither the child’s lack of chastity nor the child’s consent is a defense to the crime charged.**

This language is not found in § 847.0135(4) (a). It does not appear the language is applicable; the offense is the solicitation of a child to engage in sex, not engaging in actual sex acts with a child. The committee voted unanimously, via electronic mail, to remove the sentence.

The committee voted unanimously, via an electronic vote taken after the October 31, 2008 meeting, to amend the proposal by eliminating the enhanced penalty provisions and element 4. There is no enhancement provision in s. 847.0135(4) (a), Florida Statutes (2008).

Subsequent to the October 31, 2008 meeting, the committee voted unanimously, via electronic mail, to amend element 1 of the proposed instruction. Element 1 has been subdivided into 2 elements. First, the offender knowingly

traveled or attempted to travel to meet the victim. Second, the offender did so with the intent to engage in an unlawful act. This amendment does nothing more than make the elements easier to read and understand. No substantive change was made in any of the elements contained in the publication in *The Florida Bar News*.

The committee does not believe that any of the changes made at the meeting or by electronic vote require that the proposed instruction be republished for comment since no substantive changes were made to the proposal.

**Proposal 15      11.17(d)      Traveling to Meet a Minor Facilitated by  
Parent or Custodian**

The committee met on July 18, 2008, to consider proposing a new jury instruction for Traveling to Meet a Minor.

The 2007 Florida Legislature enacted Chapter 2007-143, Laws of Florida. The legislature amended § 847.0135, Florida Statutes (2007), by adding subsection (4) to the statute.

Elements 1, 2, and 3, of the proposal, track § 847.0135(4) (b), Florida Statutes (2008).

The definitions included in the instruction are taken from Chapter 2007-143, Laws of Florida and § 847.001, Florida Statutes (2008).

The committee met on October 31, 2008, to give final approval to the proposed instruction. At the meeting, the committee voted unanimously to conform 11.17(d) to proposed instruction 11.17(b). Element 3 originally read:

**3. (Defendant) [seduced] [solicited] [lured] [enticed] [attempted to] [seduce] [solicit] [lure] [entice] a [parent] [legal guardian] [custodian of (victim)] [person believed to be [a parent] [legal guardian] [custodian of (victim)] to [consent to the participation of (victim) in any act described in (any illegal act as charged in the indictment or information under chapter 794, 800, or 827)] [engage in other unlawful sexual conduct].**

Based on the changes made to proposed instruction 11.17(b), the committee voted unanimously to change element 3 to read: