

**10.15 CONVICTED FELON CARRYING A CONCEALED WEAPON OR
CONVICTED FELON POSSESSING [A FIREARM] [AMMUNITION] [AN
ELECTRIC WEAPON OR DEVICE]**

§ 790.23, Fla. Stat.

To prove the crime of (crime charged), **the State must prove the following two elements beyond a reasonable doubt:**

- 1. (Defendant) had been convicted of a felony.**

Give 2a or 2b or both as applicable.

- 2. After the conviction, (defendant) knowingly**
 - a. owned or had in [his] [her] care, custody, possession, or control [a firearm] [an electric weapon or device] [ammunition].**
 - b. carried a concealed weapon.**

Give if applicable. § 790.23(1)(a), (1)(c), or (1)(e), Fla. Stat.

The court instructs you that (name of felony) **was a felony under [Florida state] [federal] [(insert the name of the state, territory, or country) law and was punishable by imprisonment for a term exceeding 1 year] on** (insert relevant date).

For purposes of § 790.23(1)(a), Fla. Stat., a withhold of adjudication does not qualify as a “conviction.” State v. Menuto, 912 So. 2d 603 (Fla. 2d DCA 2005).

“Convicted” means that a judgment has been entered in a criminal proceeding by a court pronouncing the accused guilty.

Give as appropriate. § 790.001, Fla. Stat.

A “firearm” means any weapon [including a starter gun] which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; [the frame or receiver of any such weapon;] [any firearm muffler or firearm silencer;] [any destructive device;] [any machine gun]. [The term “firearm” does not include an antique firearm unless the antique firearm is used in the commission of another crime. An antique firearm is (insert definition in § 790.001, Fla. Stat.). [A destructive device is (insert definition in § 790.001, Fla. Stat.).]

An “electric weapon or device” means any device which, through the application or use of electrical current, is designed, redesigned, used, or intended to be used for offensive or defensive purposes, the destruction of life, or the infliction of injury.

“Ammunition” means an object consisting of all of the following:

- a. A fixed metallic or nonmetallic hull or casing containing a primer.**
- b. One or more projectiles, one or more bullets, or shot.**
- c. Gunpowder.**

Give only if defendant is charged with Convicted Felon Carrying a Concealed Weapon. See § 790.001, Fla. Stat.

A “concealed weapon” means any dirk, metallic knuckles, billie, tear gas gun, chemical weapon or device, or other deadly weapon carried on or about a person in such manner as to conceal the weapon from the ordinary sight of another person.

Give the following paragraph only if applicable.

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

Give the following paragraph only if applicable.

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

Give the following paragraph only if applicable.

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

The explanations of “on or about a person” and “ordinary sight of another person” apply only when convicted felon carried a concealed weapon is alleged.

The term “on or about a person” means physically on the person or readily accessible to [him] [her].

The term “ordinary sight of another person” means the casual and ordinary observation of another in the normal associations of life. A weapon need not be completely hidden for you to find that it was concealed. However, a weapon is not concealed if, although not fully exposed, its status as a weapon is detectable by ordinary observation.

Give only if element 2a alleged.

“Care” and “custody” mean immediate charge and control exercised by a person over the named object. The terms care, custody, and control may be used interchangeably.

Possession. Give only if element 2a alleged.

To prove (defendant) “possessed” [a firearm] [an electric weapon or device] [ammunition], the State must prove beyond a reasonable doubt that [he] [she] a) knew of the existence of the [firearm] [electric weapon or device] [ammunition] and b) intentionally exercised control over it.

Give if applicable and only if element 2a alleged.

Control can be exercised over [a firearm] [an electric weapon or device] [ammunition] whether it is carried on a person, near a person, or in a completely separate location. Mere proximity to [a firearm] [an electric weapon or device] [ammunition] does not establish that the person intentionally exercised control

over it in the absence of additional evidence. Control can be established by proof that (defendant) had direct personal power to control the [firearm] [electric weapon or device] [ammunition] or the present ability to direct its control by another.

Joint possession. Give if applicable and only if element 2a alleged.

Possession of [a firearm] [an electric weapon or device] [ammunition] may be sole or joint, that is, two or more persons may possess it.

Optional Definitions. Shaw v. State, 510 So. 2d 349 (Fla. 2d DCA 1987).

“Knowingly” means with actual knowledge and understanding of the facts or the truth.

“Knowingly” means an act done voluntarily and intentionally and not because of mistake or accident or other innocent reason.

Lesser Included Offenses

CONVICTED FELON CARRYING A CONCEALED WEAPON OR CONVICTED FELON POSSESSING [A FIREARM] [AMMUNITION] [AN ELECTRIC WEAPON OR DEVICE]— 790.23

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Carrying a Concealed Weapon if Carrying a Concealed Weapon by a Convicted Felon is charged		790.01(1)	10.1
	Attempt	777.04(1)	5.1
	Carrying concealed firearm	790.01(2)	10.1

Comments

A special instruction will be necessary in cases where the concealed weapon was an animal or a substance or something that is not commonly referred to as an “object.”

The term “possession” in what is commonly referred to as the “10-20-life” statute is defined in § 775.087(4), Fla. Stat. Because the definition of “actual possession” for purposes of § 775.087(2), Fla. Stat., differs from the definition of “actual possession” in the opinions that explain the difference between actual and constructive possession, judges should consider using instruction 3.3(d) for “10-20-life” cases.

This instruction was adopted in 1981 and amended in 1989 [543 So. 2d 1205], 1992 [603 So. 2d 1175], 2007 [953 So. 2d 495], 2013 [131 So. 3d 720], 2018 [253 So. 3d 1024], on April 3, 2020, on July 9, 2021, and April 1, 2022.