

10.15(a) [POSSESSION OF [A FIREARM] [AN ELECTRIC WEAPON OR DEVICE] [AMMUNITION]] [OR] [CARRYING A CONCEALED WEAPON] BY A PERSON UNDER THE AGE OF 24 WHO HAS BEEN FOUND DELINQUENT OF AN OFFENSE THAT WOULD BE A FELONY IF COMMITTED BY AN ADULT
§ 790.23(1)(b) or (1)(d), Fla. Stat.

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

1. (Defendant) **had been found by [a court of this state] [a court of another [state] [territory] [country]] to have committed a delinquent act that would be a felony if committed by an adult [and which was punishable by imprisonment for a term exceeding 1 year].**

Give 2a or 2b or both as applicable.

2. **After being found to have committed that delinquent act,** (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.**
3. (Defendant) **was under 24 years of age at the time [he] [she] [owned or had in [his] [her] care, custody, possession, or control, [the firearm] [the electric weapon or device] [the ammunition]] [or] [carried the concealed weapon].**

“Found” refers to a finding of fact by a court of competent jurisdiction and does not require an adjudication of guilt. State v. Menuto, 912 So. 2d 603 (Fla. 2d DCA 2005).

Give if applicable. § 790.23(1)(b) or (1)(d), Fla. Stat.

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

§ 985.03(9), Fla. Stat.

“Delinquent act” is a violation of law found by a court to have been committed by any married or unmarried child under 18 years of age.

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 such weapon; any firearm muffler or firearm silencer; any destructive device; or 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.)*].

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

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

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.

Give only if element 2b alleged.

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

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. Absolute invisibility is not a necessary element to a finding of concealment.

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

CARRYING A CONCEALED WEAPON OR POSSESSING FIREARM/AMMUNITION/ELECTRIC WEAPON OR DEVICE BY A PERSON UNDER THE AGE OF 24 WHO HAS BEEN FOUND DELINQUENT OF AN OFFENSE THAT WOULD BE A FELONY IF COMMITTED BY AN ADULT- 790.23(1)(b) OR (d)

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

Comments

The 3-year minimum mandatory sentence for actual possession of a firearm does not apply because this crime is not listed in § 775.087(2), Fla. Stat. *Potter v. State*, 997 So. 2d 1215 (Fla. 1st DCA 2008).

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

This instruction was adopted in 2012 [95 So. 3d 868] and amended in 2018 [253 So. 3d 1024], on April 3, 2020, and on April 1, 2022.