

10.16 USING A FIREARM WHILE UNDER THE INFLUENCE

§ 790.151, Fla. Stat.

To prove the crime of Using a Firearm While Under the Influence, the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) **used a firearm.**
2. (Defendant) **was under the influence of [an alcoholic beverage] [any chemical substance] [any controlled substance] when affected to the extent that [his] [her] normal faculties were impaired, when using the firearm.**

§ 790.001, Fla. Stat.

“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; or any machine gun. The term “firearm” does not include an antique firearm unless the antique firearm is used in the commission of a crime.

“Use a firearm” means to discharge a firearm or to have a firearm readily accessible for immediate discharge.

“Readily accessible for immediate discharge” means loaded and in a person's hand.

Give if applicable.

“Alcoholic beverages” are considered to be substances of any kind and description which contain alcohol.

§ 877.111, Fla. Stat.

(Chemical substance) **is a chemical substance under Florida law.**

Ch. 893, Fla. Stat.

(Controlled substance) **is a controlled substance under Florida law.**

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comment

This instruction was adopted in 2007.