

**10.20 [CARE] [CUSTODY] [POSSESSION] [CONTROL] OF [A FIREARM]
[AMMUNITION] WHILE A FINAL INJUNCTION FOR [DOMESTIC VIOLENCE]
[STALKING] [CYBERSTALKING] IS IN EFFECT**

§ 790.233(1), Fla. Stat.

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

- 1. A judge issued a final injunction for protection against [domestic violence] [stalking] [cyberstalking] against (defendant).**
- 2. The final injunction had been served upon (defendant) or (defendant) had acknowledged receipt.**
- 3. While the final injunction was in force and effect, (defendant) had [ammunition] [a firearm] in [his] [her] care, custody, possession, or control.**

Give as applicable. § 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; any machine gun. [The term “firearm” does not include an antique firearm unless the antique firearm is used in the commission of another crime.] See § 790.001, Fla. Stat. for the definition of antique firearm.

“Destructive device” means any bomb, grenade, mine, rocket, missile, pipebomb, or similar device containing an explosive, incendiary, or poison gas and includes any frangible container filled with an explosive, incendiary, explosive gas, or expanding gas, which is designed or so constructed as to explode by such filler and is capable of causing bodily harm or property damage; any combination of parts either designed or intended for use in converting any device into a destructive device and from which a destructive device may be readily assembled; any device declared a destructive device by the Bureau of Alcohol, Tobacco, and Firearms; any type of weapon which will, is designed to, or may readily be converted to expel a projectile by the action of any explosive and which has a barrel with a bore of one-half inch or more in diameter; and ammunition for such destructive devices, but not including shotgun shells or any other ammunition designed for use in a firearm other than a destructive device.

“Destructive device” does not include:

- a. A device which is not designed, redesigned, used, or intended for use as a weapon;**

- b. Any device, although originally designed as a weapon, which is redesigned so that it may be used solely as a signaling, line-throwing, safety, or similar device;
- c. Any shotgun other than a short-barreled shotgun; or
- d. Any nonautomatic rifle (other than a short-barreled rifle) generally recognized or particularly suitable for use for the hunting of big game.

“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.

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

Possession.

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

Give if applicable.

Control can be exercised over [a firearm] [ammunition] **whether it is carried on a person, near a person, or in a completely separate location. Mere proximity to** [a firearm] [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] [ammunition] **or the present ability to direct its control by another.**

Joint possession.

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

Lesser Included Offense

**[CARE] [CUSTODY] [POSSESSION] [CONTROL] OF [A FIREARM] [AMMUNITION]
WHILE A FINAL INJUNCTION FOR [DOMESTIC VIOLENCE] [STALKING]
[CYBERSTALKING] IS IN EFFECT — 790.233(1)**

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

Comments

This crime does not apply to a state or local officer as defined in § 943.10(14), Fla. Stat., holding an active certification, who received or possessed a firearm or ammunition for use in performing official duties on behalf of the officer's employing agency, unless otherwise prohibited by the employing agency.

This instruction was adopted in 2014 [148 So. 3d 1204] and amended in 2018.