

10.21 IMPROPER EXHIBITION OF A [WEAPON] [FIREARM] [AT A SCHOOL-SPONSORED EVENT] [ON SCHOOL PROPERTY] [ON A SCHOOL BUS] [AT A SCHOOL BUS STOP] [WITHIN 1,000 FEET OF A SCHOOL]

§ 790.115(1), Fla. Stat.

To prove the crime of Improper Exhibition of a [Weapon] [Firearm] [Sword] [Sword Cane] [Electric Weapon or Device] [Destructive Device] [at] [on] [within] [(insert prohibited place in Fla. Stat. 790.115(1))], the State must prove the following four elements beyond a reasonable doubt.

- 1. (Defendant) had or carried a[n] [weapon] [firearm] [sword] [sword cane] [electric weapon or device] [destructive device].**
- 2. (Defendant) exhibited the [weapon] [firearm] [sword] [sword cane] [electric weapon or device] [destructive device] in a rude, careless, angry, or threatening manner.**
- 3. (Defendant) did so in the presence of one or more persons.**
- 4. At the time, (defendant) was [at a school-sponsored event] [on the grounds [or facilities] of a [school] [school bus]] [school bus stop] [within 1,000 feet of the real property that compromises a [public or private elementary school] [middle school] [secondary school] during school hours [or during the time of a sanctioned school activity]].**

Definitions. Give as applicable.

§ 790.001 and § 790.115, Fla. Stats.

“Weapon” means any dirk, knife, metallic knuckles, slungshot, billie, tear gas gun, chemical weapon or device, razor blade, box cutter, common pocketknife, box cutter, or a deadly weapon, except a plastic knife or blunt-bladed table knife.

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

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

“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.] *The definition of “antique firearm is in Fla. Stat.*

§ 790.001, Fla. Stat.

“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.

See § 790.001, Fla. Stat. for the definition of “destructive device.”

Lesser Included Offenses

IMPROPER EXHIBITION OF A [WEAPON] [FIREARM] AT SCHOOL – 790.115(1)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Improper Exhibition of a Weapon or Firearm (except if the weapon is a closed common pocketknife)		790.10	10.5
	Attempt	777.04(1)	5.1
	Assault	784.011	8.1

Comments

The statute has an exception if the exhibition of the weapon or firearm was authorized and in support of school-sanctioned activities. *See* § 790.115, Fla. Stat.

This crime does not apply if the exhibition of the weapon or firearm was on private real property, within 1,000 feet of a school, by the owner of the property or by a person who had been authorized, licensed, or invited by the owner to be on the property. *See* § 790.115, Fla. Stat.

This crime does not apply if the defendant was a law enforcement officer as defined in § 943.10(1), (2), (3), (4), (6), (7), (8), (9), or (14), Fla. Stat. *See* § 790.115(3), Fla. Stat.

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

Read instruction 3.6(f) or 3.6(g) as applicable, if the defendant is claiming self-defense, defense of others, or defense of property.

This instruction was adopted in 2014 [148 So. 3d 1204] and amended on April 3, 2020.