

**10.3 PERSONS ENGAGED IN CRIMINAL OFFENSE HAVING [WEAPON]
[ELECTRIC WEAPON OR DEVICE] [CONCEALED WEAPON] [FIREARM]
[CONCEALED FIREARM]**

§§ 790.07(1) and (2), Fla. Stat.

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

Give 1a or 1b or both as applicable.

1. (Defendant)

- a. [displayed] [used] [threatened to use] [attempted to use]
[a weapon].
[a firearm].
[an electric weapon or device].**

b. carried a [weapon] [firearm], that was concealed from the ordinary sight of another person.

2. [He] [She] did so while [committing or attempting to commit a[n] (felony alleged)] [under indictment].

- 1. Define the felony alleged. The felony cannot be antitrust violations, unfair trade practices, restraints of trade, nonsupport of dependents, bigamy, or other similar offenses. See § 790.07(3), Fla. Stat.*
- 2. Define “attempt” if applicable (see instruction 5.1).*

Give if firearm is applicable. § 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.)].

Give if weapon in element #1a is applicable. § 790.001, Fla. Stat. Slungshot is defined in § 790.001, Fla. Stat.

A “weapon” is any dirk, knife, metallic knuckles, slungshot, billie, tear gas gun, chemical weapon or device, or other deadly weapon except a firearm or a common pocketknife, 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] [or] [attempted 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.

There is a conflict within the district courts about whether an open common pocketknife is a weapon:

Give if applicable. Porter v. State, 798 So. 2d 855 (Fla. 5th DCA 2001); J.R.P. v. State, 979 So. 2d 1178 (Fla. 3d DCA 2008).

However, an open pocketknife could constitute a weapon.

Give if applicable. G.R.N. v. State, 220 So. 3d 1267 (Fla. 4th DCA 2017).

If a common pocketknife is open, it is still considered to be a common pocketknife.

Give if electric weapon or device in element #1a is applicable. § 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.

Give if element #1b is applicable.

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

Give if concealed weapon in element #1b is applicable. § 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.

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.

An object not designed to inflict bodily harm may nonetheless be a “deadly weapon” if it was 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.

Lesser Included Offenses

**PERSONS ENGAGED IN CRIMINAL OFFENSE, HAVING [WEAPON] [ELECTRIC WEAPON OR DEVICE] [CONCEALED WEAPON] [FIREARM] [CONCEALED FIREARM]
— 790.07**

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempt (may be applicable when concealed weapon is charged)	777.04(1)	5.1
	Carrying concealed firearm	790.01	10.1
	Carrying concealed weapon	790.01	10.1
	Improper exhibition of dangerous weapon	790.10	10.5

Comments

The crimes in § 790.07(1), Florida Statutes, and § 790.07(2), Florida Statutes, are bumped up to a first-degree felony if a defendant has previously been convicted of subsection (1) or (2). *See* § 790.07(4), Fla. Stat. As of November 2019, it is unclear whether the existence of a prior conviction will be treated as an element of the crime that must be found by the jury in a bifurcated proceeding or whether a prior violation can be proven to the judge at sentencing. It is also unclear whether a conviction includes a withhold of adjudication.

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.”

This instruction was adopted in 1981, and amended in 1989, 1992, and on April 3, 2020.