

10.4 OPEN CARRYING OF A [FIREARM] [ELECTRIC WEAPON OR DEVICE]
§ 790.053(1), Fla. Stat.

To prove the crime of Open Carrying of a [Firearm] [Electric Weapon or Device], the State must prove the following two elements beyond a reasonable doubt:

- 1. (Defendant) knowingly carried a [firearm] [electric weapon or device] on or about [his] [her] person.**
- 2. The [firearm] [electric weapon or device] was carried openly.**

Give as applicable. § 790.001, Fla. Stat. “Destructive device,” “machine gun,” and “antique firearm” have their own definitions in § 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.]

“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.

Ensor v. State, 403 So. 2d 349 (Fla. 1981); Dorelus v. State, 747 So. 2d 368 (Fla. 1999).

The term “on or about [his] [her] person” means physically on the person or readily accessible to [him] [her].

Lesser Included Offense

OPEN CARRYING OF A [FIREARM] [ELECTRIC WEAPON OR DEVICE] — 790.053

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

Comments

§ 790.053(1) Fla. Stat. states that it is not a violation of the statute for a person who carried a concealed firearm as authorized in § 790.01(1), Fla. Stat., to briefly and openly display the firearm to the ordinary sight of another person, unless the firearm was intentionally displayed in an angry or threatening manner, not in necessary self-defense. As of November 2023, it was unclear whether those circumstances should be treated as affirmative defenses or as elements.

This instruction was adopted on December 15, 2023.