

**10.7(a) POSSESSING, THROWING, MAKING, PLACING, PROJECTING, OR
DISCHARGING A DESTRUCTIVE DEVICE**

§ 790.161(1), Fla. Stat.

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

(Defendant) **willfully and unlawfully**

[made]

[possessed]

[threw]

[placed]

[projected]

[discharged]

[attempted to [make] [possess] [throw] [place] [project]

[discharge]]

a destructive device.

A “destructive device” is defined as (adapt from § 790.001, Fla. Stat., as required by the allegations).

“Willfully” means intentionally, knowingly, and purposely.

Possession. Give if applicable.

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

Give if applicable.

Control can be exercised over a destructive device whether the destructive device is carried on a person, near a person, or in a completely separate location. Mere proximity to a destructive device does not establish that the person intentionally exercised control over the destructive device in the absence of additional evidence. Control can be established by proof that (defendant) had direct personal power to control the destructive device or the present ability to direct its control by another.

Joint possession. Give if applicable.

Possession of a destructive device may be sole or joint, that is, two or more persons may possess a destructive device.

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comment

This instruction was adopted in 1981 and was amended in 1989, 1992, and 2019.