

**10.7(b) POSSESSING, THROWING, MAKING, PLACING, PROJECTING, OR
DISCHARGING A DESTRUCTIVE DEVICE [WITH INTENT TO DO [BODILY
HARM] [PROPERTY DAMAGE]] [RESULTING IN DISRUPTION OF
[GOVERNMENTAL OPERATIONS] [COMMERCE] [THE PRIVATE AFFAIRS OF
ANOTHER PERSON]]**
§ 790.161(2), Fla. Stat.

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

1. (Defendant) **willfully and unlawfully**

[made]

[possessed]

[threw]

[placed]

[projected]

[discharged]

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

a destructive device.

Give those parts of element 2 as applicable.

2. a. (Defendant's) **act was committed with the intent to**

[do bodily harm to another person].

[do property damage].

- b. (Defendant's) **act resulted in**

[a disruption of governmental operations].

[a disruption of commerce].

**[a disruption of the private affairs of another
person].**

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

POSSESSING, THROWING, MAKING, PLACING, PROJECTING, OR DISCHARGING DESTRUCTIVE DEVICE, ETC. — 790.161(2)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Possessing, throwing, making placing, projecting, or discharging destructive device		790.161(1)	10.7(a)
	Aggravated assault	784.021	8.2
	Assault	784.011	8.1

Comment

This instruction was adopted in 1992 and amended in 2019.