

**10.7(d) POSSESSING, THROWING, MAKING, PLACING, PROJECTING, OR
DISCHARGING A DESTRUCTIVE DEVICE RESULTING IN DEATH**

§ 790.161(4), Fla. Stat.

In the absence of an express concession that the homicide was not excusable or justified, the trial judge must also read Instruction 7.1, Introduction to Homicide.

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.

2. **The act resulted in the death 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 — 790.161(4)			
CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Possessing, throwing, making, placing, projecting, or discharging destructive device resulting in bodily harm		790.161(3)	10.7(c)
Possessing, throwing, making, placing, projecting, or discharging destructive device		790.161(1)	10.7(a)
	Possessing, throwing, making, placing, projecting, or discharging destructive device, etc.	790.161(2)	10.7(b)
	Aggravated assault	784.021	8.2
	Assault	784.011	8.1

Comment

This instruction was adopted in 1992 and amended in 2018.