

10.8 THREAT TO THROW, PLACE, PROJECT, OR DISCHARGE ANY DESTRUCTIVE DEVICE

§ 790.162, Fla. Stat.

To prove the crime of Threat to [Throw] [Place] [Project] [Discharge] Any Destructive Device, the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) **threatened to [throw] [place] [project] [discharge] a destructive device.**
2. **The threat conveyed an intent to do [bodily harm to] [damage to the property of] any person.**

Give if requested. Valdes v. State, 443 So. 2d 221 (Fla. 1st DCA 1983); Reid v. State, 405 So. 2d 500 (Fla. 2d DCA 1981).

It is not necessary for the State to prove the defendant had the actual intent to cause [harm] [or] [damage], or that [he] [she] had the ability to carry out the threat, or that there was an actual destructive device.

Definition. Adapt as appropriate. § 790.001, Fla. Stat.

A “destructive device” means any bomb, grenade, mine, rocket, missile, pipebomb, or similar device containing an explosive, incendiary, or poison gas and includes any frangible container filled with an explosive, incendiary, explosive gas, or expanding gas, which is designed or so constructed as to explode by such filler and is capable of causing bodily harm or property damage; any combination of parts either designed or intended for use in converting any device into a destructive device and from which a destructive device may be readily assembled; any device declared a destructive device by the Bureau of Alcohol, Tobacco, and Firearms; any type of weapon which will, is designed to, or may readily be converted to expel a projectile by the action of any explosive and which has a barrel with a bore of one-half inch or more in diameter; and ammunition for such destructive devices, but not including shotgun shells or any other ammunition designed for use in a firearm other than a destructive device.

“Destructive device” does not include:

- a. **A device which is not designed, redesigned, used, or intended for use as a weapon;**
- b. **Any device, although originally designed as a weapon, which is redesigned so that it may be used solely as a signaling, line-throwing, safety, or similar device;**
- c. **Any shotgun other than a short-barreled shotgun; or**
- d. **Any nonautomatic rifle (other than a short-barreled rifle)**

generally recognized or particularly suitable for use for the hunting of big game.

Lesser Included Offenses

**THREAT TO THROW, PROJECT, PLACE, OR DISCHARGE ANY DESTRUCTIVE
DEVICE — 790.162**

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempt	777.04(1)	5.1
	Aggravated Assault	784.021	8.2
	Assault	784.011	8.1

Comment

This instruction was adopted in 1981 and was amended in 1989 and 2017.