

**12.4(b) [DESTROYING OR DEMOLISHING] [OR] [PULLING DOWN] [A
MEMORIAL] [HISTORIC PROPERTY]**

§ 806.135(2), Fla. Stat.

To prove the crime of [Destroying or Demolishing] [or] [Pulling Down] [a Memorial] [Historic Property], the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) [destroyed or demolished] [or] [pulled down] [a memorial] [historic property].
2. The [destruction or demolishment] [or] [pulling down] of the [memorial] [historic property] was done willfully and maliciously.

Definitions.

“Willfully” means intentionally, knowingly, and purposely.

“Maliciously” means wrongfully, intentionally, without legal justification or excuse, and with the knowledge that injury or damage will or may be caused to the property of another person.

Give as applicable. § 806.135(1), Fla. Stat.

“Memorial” means a plaque, statue, marker, flag, banner, cenotaph, religious symbol, painting, seal, tombstone, structure name, or display that is constructed and located with the intent of being permanently displayed or perpetually maintained; is dedicated to a historical person, an entity, an event, or a series of events; and honors or recounts the military service of any past or present United States Armed Forces military personnel, or the past or present public service of a resident of the geographical area comprising the state or the United States.

“Historic Property” means any building, structure, site or object that has been officially designated as a historic building, historic structure, historic site, or historic object through a federal, state, or local designation program.

Affirmative defense. Give only if defendant meets his or her burden of production that he or she was authorized by the owner to destroy, demolish, or pull down the memorial or historic property. As of November 2021, there was no case law that decided who has the burden of persuasion for the affirmative defense and what that burden is (e.g., preponderance, clear and convincing, or beyond a reasonable doubt). In the absence of case law, trial judges will have to draft a special instruction on that issue.

It is a defense to the crime of [Destroying or Demolishing] [or] [Pulling Down] [a Memorial] [Historic Property] if (defendant) was authorized by the owner to [destroy or demolish] [or] [pull down] the [memorial] [historic property].

Lesser Included Offenses

[DESTROYING OR DEMOLISHING] [OR] [PULLING DOWN] [A MEMORIAL] [HISTORIC PROPERTY] — 806.135(2)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Criminal Mischief*		806.13(1)(b)1	12.4
	Criminal Mischief	806.13(1)(b)3	12.4
	Criminal Mischief	806.13(1)(b)2	12.4
	Attempt	777.04(1)	5.1

Comments

*If the memorial or historic property were destroyed or demolished, the Criminal Mischief in § 806.13(1)(b)1., Fla. Stat., would be a necessary lesser-included offense. However, a memorial or historic property could conceivably be pulled down without being damaged. In such a circumstance, the Criminal Mischief in § 806.13(1)(b)1., Fla. Stat., would not be a Category One lesser-included offense because that crime requires damage to the property.

This instruction was adopted on December 15, 2021.