

13.5 TRESPASS ON SCHOOL PROPERTY WITH A [FIREARM] [WEAPON] § 810.095(1), Fla. Stat.

To prove the crime of Trespass on School Property with a [Firearm] [Weapon], the State must prove the following three elements beyond a reasonable doubt:

- 1. (Defendant) [entered] [remained] on school property.**

Give as applicable.

- 2. a. (Defendant) did not have any legitimate business on the school property or any other authorization, license, or invitation to enter upon the school property.**

b. (Defendant) had been authorized, licensed, or invited to enter the school property but then refused to depart when told to do so by [the principal] [the principal's designee].

c. (Defendant) was a student under suspension or expulsion at the time [he] [she] [entered] [remained] on the school property.
- 3. At the time (defendant) was on the school property, [he] [she] brought onto or was in possession of a [firearm] [weapon].**

§ 810.095, Fla. Stat.

“School property” means the grounds or facility of any kindergarten, elementary school, middle school, junior high school, secondary school, career center or postsecondary school, whether public or nonpublic.

§ 790.001, Fla. Stat. Slungshot is defined in § 790.001, Fla. Stat.

“Weapon” means any dirk, knife, metallic knuckles, slungshot, billie, tear gas gun, chemical weapon or device, or other deadly weapon except a firearm or a common pocketknife, plastic knife, or blunt-bladed table knife.

A “deadly weapon” is any object other than a firearm that will likely cause death or great bodily harm if used in the ordinary and usual manner contemplated by its design and construction.

An object not designed to inflict bodily harm may nonetheless be a “deadly weapon” if it was [used] [or] [intended to be used] [or] [threatened to be used] in a manner likely to cause death or great bodily harm.

“Great bodily harm” means great as distinguished from slight, trivial, minor, or moderate harm, and as such does not include mere bruises.

There is a conflict within the district courts about whether an open common pocketknife is a weapon:

Give if applicable. Porter v. State, 798 So. 2d 855 (Fla. 5th DCA 2001); J.R.P. v. State, 979 So. 2d 1178 (Fla. 3d DCA 2008).

However, an open pocketknife could constitute a weapon.

Give if applicable. G.R.N. v. State, 220 So. 3d 1267 (Fla. 4th DCA 2017).

If a common pocketknife is open, it is still considered to be a common pocketknife.

§ 790.001, Fla. Stat.

“Firearm” means any weapon (including a starter gun) which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon, any firearm muffler or firearm silencer; any destructive device; any machine gun. [The term “firearm” does not include an antique firearm unless the antique firearm is used in the commission of a crime.] See Fla. Stat. § 790.001 for the definition of antique firearm.

§ 790.001, Fla. Stat.

“Chemical weapon or device” means any weapon of such nature, except a device known as a “self-defense chemical spray.” “Self-defense chemical spray” means a device carried solely for purposes of lawful self-defense that is compact in size, designed to be carried on or about the person, and contains not more than two ounces of chemical.

§ 790.001, Fla. Stat.

“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.

Possession.

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

Give if applicable.

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

Joint possession. Give if applicable.

Possession of a [firearm] [weapon] may be sole or joint, that is, two or more persons may possess a [firearm] [weapon].

Lesser Included Offenses

TRESPASS ON SCHOOL PROPERTY WITH A [FIREARM] [WEAPON] — 810.095(1)			
CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Trespass on School Grounds or Facility After Warning By Principal (if refusal to depart is charged)		810.097(2)	13.5(b)
Trespass Upon School Grounds or Facility (if no legitimate business or student suspended is charged)		810.097(1)	13.5(a)
	Attempt	777.04(1)	5.1
	Trespass in Structure or On Property Other than a Structure (depending on charging document)	810.08 or 810.09	13.3 or 13.4

Comments

A special instruction will be necessary in cases where the deadly weapon was an animal or a substance or something that is not commonly referred to as an “object.”

This instruction was adopted in 2013 [122 So. 3d 263] and amended in 2018 [253 So. 3d 1040], and on April 3, 2020.