

**21.9 [ATTEMPTED] RETALIATING AGAINST A [WITNESS] [VICTIM]
[INFORMANT]
§ 914.23, Fla. Stat.**

To prove the crime of [Attempted] Retaliating Against a [Witness] [Victim] [Informant], the State must prove the following two elements beyond a reasonable doubt:

Give as applicable.

- 1. (Defendant) knowingly**
 - a. [attempted] [threatened] to [cause bodily injury to (victim)] [damage the tangible property of (victim)].**
 - b. caused [bodily injury to (victim)] [damage to the tangible property of (victim)].**

Give as applicable.

- 2. (Defendant) did so, with intent to retaliate against [any person] [(name of person)] for**
 - a. the attendance of a [witness] [party] at an official proceeding.**
 - b. any [testimony given] [record, document, or object produced] by a witness in an official proceeding.**
 - c. information given by [a person] [(name of person)] to a law enforcement officer relating to the commission or possible commission of [an offense] [a violation of a condition of [probation] [parole] [release pending a judicial proceeding]].**

Define “attempt” using instruction 5.1, if appropriate.

Definitions.

§ 914.21(1), Fla. Stat.

- 1. “Bodily injury” means:**
 - a. A cut, abrasion, bruise, burn, or disfigurement;**
 - b. Physical pain;**
 - c. Illness;**
 - d. Impairment of the function of a bodily member, organ, or mental faculty; or**
 - e. Any other injury to the body, no matter how temporary.**

§ 914.21(4), Fla. Stat.

2. “Official proceeding” means:

- a. A proceeding before a judge or court or a grand jury;
- b. A proceeding before the Legislature;
- c. A proceeding before a federal agency that is authorized by law;
- d. A proceeding before the Commission on Ethics.

Lesser Included Offenses

[ATTEMPTED] RETALIATING AGAINST A [WITNESS] [VICTIM] [INFORMANT]—914.23

CATEGORY ONE	CATEGORY TWO	FLA. STAT	INS. NO.
None			
	Aggravated Battery	784.045	8.4/8.4(a)
	Felony Battery	784.041	8.5
	Battery	784.03	8.3
	Aggravated Assault	784.021	8.2
	Assault	784.011	8.1
	Criminal Mischief	806.13	12.4

Comments

It is not necessary for the State to prove that the defendant had the intent to communicate his or her threat(s) to the witness nor that the defendant had the intent to carry out his or her threat(s). *State v. Jones*, 642 So. 2d 804 (Fla. 5th DCA 1994).

Pursuant to § 914.23, Fla. Stat., the defendant is guilty of a second degree felony only if the victim suffered bodily injury as a result of the defendant’s conduct. Otherwise, the defendant is guilty of a third degree felony. Therefore, a specific finding of bodily injury caused by the defendant is necessary when appropriate.

This instruction was adopted in 2013.