

28.8(b) AGGRAVATED FLEEING OR ELUDING
(Leaving a Crash Involving Serious Bodily Injury, Injury, or Death then Causing Serious Bodily Injury or Death)

§ 316.1935(4)(b) and § 316.027, Fla. Stat.

To prove the crime of Aggravated Fleeing or Eluding, the State must prove the following seven elements beyond a reasonable doubt:

- 1. (Defendant) was the driver of a vehicle involved in a crash occurring on public or private property resulting in [injury to] [death of] (victim).**
- 2. (Defendant) knew that [he] [she] was involved in a crash.**

Give 3a if death is charged or 3b if injury or serious bodily injury is charged.

- 3. a. (Defendant) knew, or should have known from all of the circumstances, including the nature of the crash, of the injury to or death of (victim).**
- b. (Defendant) knew, or should have known from all of the circumstances, including the nature of the crash, of the injury to (victim).**

See Comment section for cases involving death.

- 4. (Defendant) willfully failed to immediately stop at the scene of the crash or as close to the crash as possible and failed to remain until [he] [she] had completed two things:**
 - a. given identifying information to [(victim)] [the driver] [an occupant] [a person attending the vehicle] and to any police officer investigating the crash;**
 - and**
 - b. rendered reasonable assistance to (victim).**
- 5. A duly authorized law enforcement officer ordered (defendant) to stop.**
- 6. (Defendant), knowing [he][she] had been ordered to stop by a law enforcement officer, [willfully refused or failed to stop [his][her] vehicle in compliance with the order to stop] [and after having stopped in knowing compliance with the order to stop, willfully fled in a vehicle in an attempt to elude the law enforcement officer.]**
- 7. As a result of (defendant) fleeing or eluding, [he] [she] caused [serious bodily injury to] [the death of] (name of victim).**

Give if it is alleged in the charging document that the defendant caused victim injury or death as part of violating § 316.027, Fla. Stat. § 921.0021(7)(e), Fla. Stat.

If you find that (defendant) **committed Aggravated Fleeing, you must then determine whether the State proved beyond a reasonable doubt that [he] [she] caused [death] [or] [severe injury] [or] [moderate injury] [or] [slight injury] to** (victim).

Give when the State alleged the victim was a “vulnerable road user.”
§ 316.027(2)(f), Fla. Stat. Insert applicable definitions from § 316.003, Fla. Stat.

If you find that the State proved beyond a reasonable doubt that (defendant) **committed elements #1 – #4, you must then determine whether the State also proved beyond a reasonable doubt that** (victim) **in element #1 was:**

[a pedestrian].

[actually engaged in work upon a highway].

[actually engaged in work upon utility facilities along a highway].

[engaged in the provision of emergency services within the right-of-way].

[operating a [bicycle] [electric bicycle] [motorcycle] [scooter] [moped] lawfully on the roadway].

[riding an animal].

[lawfully operating [a farm tractor or similar vehicle designed primarily for farm use] [a skateboard] [roller-skates] [in-line skates] [a horse-drawn carriage] [an electric personal assistive mobility device] [a wheelchair] on [a public right-of-way] [crosswalk] [shoulder of the roadway]].

Gaulden v. State, 195 So. 3d 1123 (Fla. 2016); State v. Elder, 975 So.2d 481 (Fla. 2d DCA 2007).

For the defendant to be “involved in a crash,” a vehicle, though not necessarily the defendant’s vehicle, must collide with another vehicle, person, or object.

Give if applicable. State v. Elder, 975 So.2d 481 (Fla. 2d DCA 2007).

“Involved” means to draw in as a participant, to implicate, to relate closely, to connect, to have an effect on, to concern directly, or to affect.

Patterson v. State, 512 So. 2d 1109 (Fla. 1st DCA 1987).

“Willfully” means intentionally, knowingly, and purposely.

§ 316.062(1), Fla. Stat.

“Identifying information” means the name, address, vehicle registration number, and, if available and requested, the exhibition of the defendant’s license or permit to drive.

“Reasonable assistance” includes carrying or making arrangement to carry the injured person to a physician or hospital for medical treatment if it is apparent that treatment is necessary, or if such carrying is requested by the injured person.

§ 316.003, Fla. Stat. Some of these terms have their own statutory definitions, which should be given if necessary.

“Vehicle” means every device, in, upon, or by which any person or property is or may be transported or drawn upon a highway[, except personal delivery devices, mobile carriers, and devices used exclusively upon stationary rails or tracks].

§ 316.027(1)(a), Fla. Stat.

“Serious bodily injury” means an injury to a person [including the driver,] which consists of a physical condition that creates a substantial risk of death, serious disfigurement, or protracted loss or impairment of the function of a bodily member or organ.

Lesser Included Offenses

AGGRAVATED FLEEING OR ELUDING (LEAVING A CRASH INVOLVING DEATH AND THEN CAUSING SERIOUS INJURY BODILY INJURY OR DEATH) — 316.1935(4)(b) AND 316.027(2)(c)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Leaving Scene of a Crash Involving Death*		316.027(2)(c)	28.4
Leaving the Scene of a Crash Involving Serious Bodily Injury*		316.027(2)(b)	28.4
Aggravated Fleeing		316.1935(4)(a)	28.8(d)
Leaving Scene of a Crash Involving Injury*		316.027(2)(a)	28.4
Fleeing to Elude LEO		316.1935(1)	28.6
	Fleeing to Elude LEO	316.1935(3)(b)	28.8(a)
	Fleeing to Elude LEO	316.1935(3)(a)	28.8
	Fleeing to Elude LEO	316.1935(2)	28.7
Reckless Driving (if there was evidence that the fleeing was in a motor vehicle)		316.192(1)(b)	28.5
	Disobedience to Police or Fire Department Officials**	316.072(3)	28.18

Comments

Element #4 will need to be modified in cases where someone died because the deceased cannot receive information or assistance to which he or she is entitled under § 316.062(1), Fla. Stat. The revised instruction on element #4 will also depend on whether a police officer is present. In a case where someone died and no police officer was present, § 316.062(2), Fla. Stat., requires the driver of a vehicle involved in the crash to forthwith report the crash to the nearest office of a duly authorized police authority and provide the information specified in § 316.062(1), Fla. Stat.

*§ 316.1935(4), Fla. Stat., states that a person may be charged with both Aggravated Fleeing or Eluding and Leaving the Scene of a Crash Involving Death, Serious Bodily Injury, or Injury. Therefore, if a Leaving the Scene crime is charged as a separate count, then Leaving the Scene should not be given as a lesser-included offense of Aggravated Fleeing or Eluding.

**The Second District Court of Appeal requires Disobedience to Police to be given as a lesser when the charging document tracks the Fleeing statute. *See Koch v. State*, 39 So. 3d 464 (Fla. 2d DCA 2010); *Lucas v. State*, 192 So. 3d 1269 (Fla. 2d DCA 2016). The Committee retained Disobedience to Police in the Category Two box, however, because Disobedience to Police requires the police order or direction to be lawful and the crime of Fleeing to Elude LEO does not contain that element. *See State v. Kirer*, 120 So. 3d 60 (Fla. 4th DCA 2013); *Jackson v. State*, 463 So. 2d 372 (Fla. 5th DCA 1985).

This instruction was adopted in 2008 [976 So. 2d 1081] and amended in 2011 [73 So. 3d 136], 2015 [166 So. 3d 161], 2016 [192 So. 3d 1190], 2018 [236 So. 3d 244], 2019 [262 So. 3d 59], on October 2, 2020, on April 1, 2022, and on December 15, 2023.