

**8.22 WRITTEN [OR ELECTRONIC] THREAT TO [KILL] [DO BODILY INJURY]
[CONDUCT A MASS SHOOTING] [CONDUCT AN ACT OF TERRORISM]**

§ 836.10, Fla. Stat.

To prove the crime of Written [or Electronic] Threat to [Kill] [Do Bodily Injury] [Conduct a Mass Shooting] [Conduct an Act of Terrorism], the State must prove the following four elements beyond a reasonable doubt:

- 1. (Defendant) made a threat to [kill] [or] [do bodily harm to another person] [or] [conduct a mass shooting] [or] [conduct an act of terrorism] in a writing [or other record].**
- 2. (Defendant) [sent, posted, or transmitted] [or] [procured the sending, posting, or transmission of] that writing [or other record].**
- 3. (Defendant) did so in any manner in which it may be viewed by another person.**
- 4. (Defendant) intended the threat to be a true threat.**

A true threat is a serious expression of an intent to commit an act of violence.

Give if applicable.

To “procure” means to persuade, induce, prevail upon, or cause a person to do something.

Give if applicable.

“Other record” includes an electronic record. The term “electronic record” means any record created, modified, archived, received, or distributed electronically which contains any combination of text, graphics, video, audio, or pictorial represented in digital form, but does not include a telephone call.

Give if applicable. § 775.30(1), Fla. Stat. The judge may need to instruct on certain criminal laws that are violent acts or acts dangerous to human life, or a violation of § 815.06, Fla. Stat. (Instructions #12.6-12.8).

“Terrorism” means an activity that:

(a) involves:

- 1. a violent act or an act dangerous to human life which is a violation of the criminal laws of this state or of the United States;
or**
 - 2. A violation of s. 815.06;**
- and**

(b) is intended to:

1. **intimidate, injure, or coerce a civilian population;**
2. **influence the policy of a government by intimidation or coercion; or**
3. **affect the conduct of government through destruction of property, assassination, murder, kidnapping, or aircraft piracy.**

Lesser Included Offenses

WRITTEN [OR ELECTRONIC] THREAT TO [KILL] [DO BODILY INJURY] [CONDUCT A MASS SHOOTING] [CONDUCT AN ACT OF TERRORISM] – 836.10

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

Comments

T.R.W. v. State, 363 So. 3d 1081 (Fla. 4th DCA 2023) and *Counterman v. Colorado*, No. 22-138, 2023 WL 4187751 (U.S. June 27, 2023) require a *mens rea* element to be added to the statute. As of November 2023, it was unclear whether other district courts of appeal or the Florida Supreme Court will determine that intent is not required because a recklessness standard is sufficient.

As of November 2023, it is unclear whether the courts will require the state to prove either that the victim felt threatened or that a reasonable person in victim's position would have felt threatened.

This instruction was adopted in 2013 [131 So. 3d 720] and amended in 2018 [260 So. 3d 1024], on December 15, 2021, on January 6, 2023, on May 5, 2023, and on December 15, 2023.