

8.25 VIOLATION OF A CONDITION OF PRETRIAL RELEASE FROM A DOMESTIC VIOLENCE CHARGE

§ 741.29(6), Fla. Stat.

To prove the crime of Violation of a Condition of Pretrial Release from a Domestic Violence Charge, the State must prove the following four elements beyond a reasonable doubt:

1. (Defendant) was arrested for an act of domestic violence.
2. Before [his] [her] trial, (defendant's) release on the domestic violence charge was set with a condition of (insert condition of pretrial release in Fla. Stat. 903.047).
3. (Defendant) knew that a condition of [his] [her] pretrial release was (insert condition).
4. (Defendant) willfully violated that condition of pretrial release by (insert the manner* in which the defendant is alleged to have violated pretrial release).

§ 741.28, Fla. Stat.

“Domestic violence” means any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member.

“Family or household members” means spouses, former spouses, persons related by blood or marriage, persons who are presently residing together as if a family or who have resided together in the past as if a family, and persons who are parents of a child in common regardless of whether they have been married. With the exception of persons who have a child in common, the family or household members must be currently residing or have in the past resided together in the same single dwelling unit.

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

“Willfully” means knowingly, intentionally, and purposely.

Give as applicable and if the defendant is charged with violating a no contact order.

§ 903.047(1)(b), Fla. Stat.

An order of “no contact” is effective immediately and is valid for the duration of the pretrial release or until it is modified by a judge.

Unless otherwise stated by the judge, “no contact” means it is prohibited for (defendant) to have communicated orally or in any written form, either in person, telephonically, electronically, or in any other manner, either directly or indirectly through a third person, with [(victim)] [or] [(any other person named in the order)].

It is also a violation of a “no contact” order if (defendant):

- a. had physical or violent contact with (victim) [or] [(other named person)] or

[his] [or] [her] property.

- b. **was within 500 feet of** (victim's) [or] [(other named person's)] **residence, even if the defendant and** (victim) [or] [(other named person)] **share the residence.**
- c. **was within 500 feet of** (victim's) [or] [(other named person's)] **[vehicle] [place of employment] [or] [(a specified place frequented regularly by such person)].**

Lesser Included Offense

**VIOLATION OF A CONDITION OF PRETRIAL RELEASE FROM A DOMESTIC VIOLENCE
CHARGE — 741.29(6)**

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

Comments

*If more than one method of violating the condition of pretrial release is alleged, the courts will likely require a unanimous verdict for each alternative. *Jacobs v. State*, 272 So. 3d 838 (Fla. 2d DCA 2019).

This instruction was adopted in 2014 [141 So. 3d 1201] and amended in 2017 [213 So. 3d 680], and on June 6, 2022.