

8.28 VIOLATION OF A RISK PROTECTION ORDER

§ 790.401(11)(b), Fla. Stat.

To prove the crime of Violation of a Risk Protection Order, the State must prove the following three elements beyond a reasonable doubt:

- 1. A [temporary] [final] risk protection order was issued by a court against (defendant).**
- 2. (Defendant) knew that [he] [she] was prohibited from [possessing] [or] [having in [his] [her] custody or control] [or] [receiving] [or] [purchasing] [a firearm] [or] [ammunition] because of that court order.**
- 3. (Defendant) violated the court order by knowingly [possessing] [or] [having in [his] [her] custody or control] [or] [receiving] [or] [purchasing] [a firearm] [or] [ammunition].**

Give as applicable.

§ 790.001, Fla. Stat.

A “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 another crime. An antique firearm is (insert definition in § 790.001, Fla. Stat.)] [A destructive device is (insert definition in § 790.001, Fla. Stat.)].

§ 790.001, Fla. Stat.

“Ammunition” means an object consisting of all of the following:

- a. A fixed metallic or nonmetallic hull or casing containing a primer.**
- b. One or more projectiles, one or more bullets, or shot.**
- c. Gunpowder.**

Possession.

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

Give if applicable.

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

control the [firearm] [or] [ammunition] or the present ability to direct its control by another.

Joint possession.

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

Lesser Included Offense

VIOLATION OF A RISK PROTECTION ORDER —790.401(11)(b)			
CATEGORY ONE	CATEGORY TWO	FLA. STAT	INS. NO.
None			
	Attempt	777.04(1)	5.1

Comment

This instruction was adopted in 2018.