

8.32 HARASSMENT OR INTIMIDATION BASED ON RELIGIOUS OR ETHNIC HERITAGE [WITH A CREDIBLE THREAT]

§ 784.0493, Fla. Stat.

To prove the crime of Harassment or Intimidation Based on Religious or Ethnic Heritage [With a Credible Threat], the State must prove the following two elements beyond a reasonable doubt:

1. (Defendant) **willfully and maliciously harassed or intimidated** (victim).
2. **The intimidation or harassment was based on** (victim's) **wearing or displaying any indicia relating to any religious or ethnic heritage.**

“Willfully” means intentionally, knowingly, and purposely.

As of August 2023, it was unclear whether the statute requires actual malice or legal malice. In the absence of clarification from the legislature or an appellate court, trial judges must choose one of the following:

“Maliciously” means intentionally and without any lawful justification or excuse.

“Maliciously” means with ill will, hatred, spite, or an evil intent.

“Harass” means to engage in a course of conduct directed at (victim), **that**

1. **served no legitimate purpose;**
2. **would cause substantial emotional distress to a reasonable person; and**
3. **did cause substantial emotional distress to** (victim).

“Course of conduct” means a pattern of conduct composed of a series of acts over a period of time, however short, which evidences a continuity of purpose.

“Intimidate” means that the defendant’s behavior caused (victim) **to be reasonably in fear of harm.**

Give if applicable.

If you find (defendant) **guilty of Harassment or Intimidation Based on Religious or Ethnic Heritage, you must further determine whether the State proved beyond a reasonable doubt that in the course of committing the crime, [he] [she] made a credible threat to** (victim).

“Credible Threat” is defined as a verbal or nonverbal threat, or a combination of the two, including threats delivered by electronic communication or implied by a pattern of conduct, which places the person who is the target of the threat in reasonable fear for his or her safety or the safety of

his or her family members or individuals closely associated with the person, and which is made with the apparent ability to carry out the threat to cause such harm. It is not necessary to prove that the person making the threat had the intent to actually carry out the threat; however, the State is required to prove the defendant was aware that a reasonable person could consider the threat as a serious expression of an intent to commit an act of violence. [The present incarceration of the person making the threat is not a bar to prosecution.]

Lesser Included Offenses*

HARASSMENT OR INTIMIDATION BASED ON RELIGIOUS OR ETHNIC HERITAGE WITH A CREDIBLE THREAT — 784.0493(4)			
CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Harassment or intimidation based on religious/ethnic heritage (no credible threat)		784.0493(2)	8.32
	Aggravated Stalking	784.048(3)	8.7(a)
	Stalking	784.048(2)	8.6
	Attempt	777.04(1)	5.1

Comments

*When the third-degree felony in § 784.0493(4), Fla. Stat., is charged, most judges will likely require the jurors to answer an interrogatory on the verdict form about whether the defendant made a credible threat. If so, there would be no lesser included crime of the first-degree misdemeanor in § 784.0493(3), Fla. Stat.

A special instruction may be necessary if the defendant claims that his or her behavior was protected by the First Amendment.

This instruction was adopted on September 8, 2023.