

10.1 CARRYING A CONCEALED [FIREARM] [WEAPON] [ELECTRIC WEAPON OR DEVICE]

§ 790.01, Fla. Stat.

To prove the crime of Carrying a Concealed [Firearm] [Weapon] [Electric Weapon or Device], the State must prove the following three* elements beyond a reasonable doubt:

1. (Defendant) **knowingly carried on or about [his] [her] person [a firearm] [a concealed weapon] [an electric weapon or device].**
2. **The [firearm] [concealed weapon] [electric weapon or device] was concealed from the ordinary sight of another person.**
3. ***At that time,**
 - a. **[he] [she] was not licensed by the Department of Agriculture and Consumer Services** to carry a[n] concealed [firearm] [weapon] [electrical weapon or device];**
and
 - b. **was ineligible to receive and maintain such a license because of** (insert reason defendant cannot get a license because he or she does not meet the criteria in § 790.06(2)(a)-(f) and (i)-(n), (3), and (10), Fla. Stat).

Ensor v. State, 403 So. 2d 349 (Fla. 1981); *Dorelus v. State*, 747 So. 2d 368 (Fla. 1999).

The term “on or about [his] [her] person” means physically on the person or readily accessible to [him] [her].

The term “ordinary sight of another person” means the casual and ordinary observation of another in the normal associations of life. A [firearm] [concealed weapon] [electric weapon or device] need not be completely hidden for you to find that it was concealed. However, a[n] [firearm] [concealed weapon] [electric weapon or device] is not concealed if, although not fully exposed, its status as a[n] [firearm] [concealed weapon] [electric weapon or device] is detectable by ordinary observation.

Give only the applicable paragraphs.

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.)*.**]**.

A “concealed weapon” means any dirk, metallic knuckles, billie, tear gas gun, chemical weapon or device, or other deadly weapon carried on or about a person in such manner as to conceal the weapon from the ordinary sight of another person.

A “deadly weapon” is any object that will likely cause death or great bodily harm if used in the ordinary and usual manner contemplated by its design and construction.

An object not designed to inflict bodily harm may nonetheless be a “deadly weapon” if it was intended to be used [or threatened to be used] in a manner likely to cause death or great bodily harm.

“Great bodily harm” means great as distinguished from slight, trivial, minor, or moderate harm.

“Electric weapon or device” means any device which, through the application or use of electrical current, is designed, redesigned, used, or intended to be used for offensive or defensive purposes, the destruction of life, or the infliction of injury.

“Tear gas gun” and “chemical weapon or device” are defined in § 790.001, Fla. Stat.

*§ 790.01(5)(b), Fla. Stat. The statute and case law are silent as to: (1) which party bears the burden of persuasion of the affirmative defense, and (2) the standard for the burden of persuasion. Under the common law, defendants had both the burden of production and the burden of persuasion on affirmative defenses by a preponderance of the evidence. The Florida Supreme Court has often decided, however, that once a defendant meets the burden of production on an affirmative defense, the burden of persuasion is on the State to disprove the affirmative defense beyond a reasonable doubt (e.g., self-defense and consent to enter in a burglary prosecution). In the absence of case law, trial judges must resolve the issue via a special instruction. See the opinion in *Dixon v. United States*, 548 U.S. 1 (2006), for further guidance.*

It is a defense for a person who carries for purposes of lawful self-defense, in a manner concealed from the ordinary sight of another person:

- 1. A self-defense chemical spray.**
- 2. A nonlethal stun gun or dart-firing stun gun or other nonlethal electric weapon or device that is designed solely for defensive purposes.**

Lesser Included Offenses

CARRYING A CONCEALED [FIREARM] [WEAPON] [ELECTRIC WEAPON OR DEVICE] — 790.01

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

Comments

A special instruction will be necessary in cases where the deadly weapon was an animal or a substance or something that is not commonly referred to as an “object.”

*As of November 2024, it was unclear whether element #3 is required when the concealed item at issue is not listed in § 790.06(1)(a), Fla. Stat. For example, metallic knuckles are listed as a concealed weapon in § 790.001, Fla. Stat., but metallic knuckles are not an item for which someone can obtain a license to carry in a concealed manner. In the absence of appellate case law that interprets the interaction between § 790.01, Fla. Stat., and § 790.06(1)(a), Fla. Stat., trial judges will need to determine whether to instruct on element #3 in certain circumstances.

**§ 790.015, Fla. Stat. allows a resident of the United States but a nonresident of Florida to carry a concealed weapon/firearm if the nonresident is 21 years of age or older, and either satisfies certain criteria to have a concealed weapon/firearm license in Florida or has a valid concealed weapon/firearm license in his or her immediate possession that had been issued to him or her in his or her state of residence. A special jury instruction will be necessary if those circumstances are relevant.

Pursuant to § 790.25, Fla. Stat., a person 18 years of age or older who was in lawful possession of a handgun or other weapon may possess it within the interior of a private conveyance if the handgun or weapon was securely encased or otherwise not readily accessible for immediate use.

This instruction was adopted in 1981 and was amended in 1989, 2013 [131 So. 3d 720], 2018 [253 So. 3d 1040], on April 3, 2020, on January 29, 2021, December 15, 2023, and on December 6, 2024.