

10.15(b) [POSSESSION OF [A FIREARM] [AMMUNITION] [AN ELECTRIC WEAPON OR DEVICE]] [OR] [CARRYING A CONCEALED WEAPON] BY A PERSON WHO MET THE CRITERIA IN § 775.084(1)(d) AND § 790.235(2) FLA. STATS.

§ 790.235, Fla. Stat.

To prove the crime of (crime charged), **the State must prove the following two elements beyond a reasonable doubt:**

Give 1a or 1b or both as applicable.

1. (Defendant) **knowingly**
 - a. **owned or had in [his] [her] care, custody, possession, or control [a firearm] [an electric weapon or device] [ammunition].**
 - b. **carried a concealed weapon.**
2. **Before that time, [he] [she] met the criteria in § 775.084(1)(d) and § 790.235(2), Florida Statutes.**

In some cases, there is a stipulation that the defendant qualified as a violent career criminal. In those cases, trial judges should read instruction #2.3 instead of the following paragraphs.

There are six elements the State must prove beyond a reasonable doubt for you to find the defendant met the criteria in § 775.084(1)(d) and § 790.235(2), Florida Statutes. They are as follows:

Give only the crimes for which evidence was presented.

1. **The defendant was convicted as an adult [or was adjudicated delinquent] three or more times for a crime in this state [or other qualified offense], specifically:**
 - a. *(List forcible felony from s. 776.08);*
 - b. **Aggravated stalking, as described in s. 784.048(3) and (4);**
 - c. **Aggravated child abuse, as described in s. 827.03(2)(a);**
 - d. **Aggravated abuse of [an elderly person] [disabled adult], as described in s. 825.102(2);**
 - e. **[Lewd or lascivious battery] [Lewd or lascivious molestation] [Lewd or lascivious conduct, [Lewd or lascivious exhibition] as described in s. 800.04 or s. 847.0135(5);**
 - f. **Escape, as described in s. 944.40; or**
 - g. *(List felony violation of chapter 790 involving the use or possession of a firearm).*

2. The defendant has been incarcerated in a state prison or a federal prison.
3. The crime [in Count x] for which you are now rendering a verdict was committed on or after October 1, 1995, and:
 - a. while the defendant was serving a prison sentence or other sentence, or court-ordered or lawfully imposed supervision that was imposed as a result of a prior conviction [or adjudication of delinquency] for a crime found in #1 above;
 - or
 - b. within 5 years after the conviction of the last crime found in #1 above, or within 5 years after the defendant's release from a prison sentence, probation, community control, control release, conditional release, parole, or court-ordered or lawfully imposed supervision or other sentence that was imposed as a result of a prior conviction for a crime found in #1 above, whichever was later.
4. The defendant has not received a pardon for any crime found in #1.*
5. None of the defendant's convictions [or adjudications of delinquency] for the crimes found in #1 have been set aside in any postconviction proceeding.*
6. The crimes [or adjudications of delinquency] found in #1 were all sentenced in separate proceedings.

Give if applicable. § 775.084, Fla. Stat.

"Qualified offense" means any offense, substantially similar in elements and penalties to an offense in this state, which is in violation of a law of any other jurisdiction, whether that of another state, the District of Columbia, the United States or any possession or territory thereof, or any foreign jurisdiction, that was punishable under the law of such jurisdiction at the time of its commission by the defendant by death or imprisonment exceeding 1 year.

§ 775.084, Fla. Stat.

A withhold of adjudication for a person placed on probation or community control qualifies as a prior conviction.

Give as appropriate. § 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.).*

An “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.

“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.**

Give only if defendant is charged with the alternative of carrying a concealed weapon. See § 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.

Give the following paragraph only if applicable.

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.

Give the following paragraph only if applicable.

An object not designed to inflict bodily harm may nonetheless be a “deadly weapon” if it was intended [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, and as such does not include mere bruises.

The explanations of “on or about a person” and “ordinary sight of another person” apply only in cases involving an allegation that the defendant carried a concealed weapon.

The term “on or about a 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 weapon need not be completely hidden for you to find that it was concealed. However, a weapon is not concealed if, although not fully exposed, its status as a weapon is detectable by ordinary observation.

Give only if element 2a alleged.

“Care” and “custody” mean immediate charge and control exercised by a person over the named object. The terms care, custody, and control may be used interchangeably.

Possession. Give only if element 2a alleged.

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

Give if applicable and only if element 2a alleged.

Control can be exercised over [a firearm] [an electric weapon or device] [ammunition] whether it is carried on a person, near a person, or in a completely separate location. Mere proximity to [a firearm] [an electric weapon or device] [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] [electric weapon or device] [ammunition] or the present ability to direct its control by another.

Joint possession. Give if applicable and only if element 2a alleged.

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

Optional Definitions. Shaw v. State, 510 So. 2d 349 (Fla. 2d DCA 1987).

“Knowingly” means with actual knowledge and understanding of the facts or the truth.

“Knowingly” means an act done voluntarily and intentionally and not because of mistake or accident or other innocent reason.

Affirmative defense. § 790.235(3), Fla. Stat. The defendant has the burden of producing evidence that his or her civil rights and firearm authority had been restored. As of February 2026, the statute and case law are silent as to (1) which party bears the burden of persuasion of the affirmative defense and (2) the level of proof for that burden of persuasion. Trial judges will need to decide whether the defendant must prove his or her civil rights and firearm authority had been restored, or the State must prove the defendant’s civil rights and firearm authority had not been restored. No matter which party has the burden of persuasion, judges will also need to decide the level of proof for that burden. Under the common law, defendants had the burden of proving an affirmative defense by a preponderance of the evidence. However, the Florida Supreme Court has often allocated the burden to the State to disprove an affirmative defense under the beyond a reasonable doubt standard (e.g., self-defense).

It is a defense to the crime of (crime charged) if the defendant’s civil rights and firearm authority had been restored. (Instruct on appropriate burden.)

Lesser Included Offenses

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CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
Carrying a Concealed Weapon or Possessing a Firearm, Ammunition, or Electric Weapon or Device by a Convicted Felon		790.23	10.15
Carrying a Concealed Weapon if Carrying a Concealed Weapon by a Convicted Felon is charged		790.01(1)	10.1
	Attempt	777.04(1)	5.1
	Carrying concealed firearm	790.01(2)	10.1

Comments

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

Trial judges do not depart from the essential requirements of law by prohibiting the State, at jury trial, from using the term “violent career criminal.” *State v. Emmund*, 698 So. 2d 1318 (Fla. 3d DCA 1997).

*For sentencing as a violent career criminal, it is an affirmative defense that the defendant was pardoned for a prior felony or other qualified offense or that a prior conviction had been set aside in a postconviction proceeding. *See State v. Rucker*, 613 So. 2d 460 (Fla. 1993). Because, as of February 2026, there is no appellate court that has addressed whether a pardon or set aside is also an affirmative defense for purposes of § 790.235, Fla. Stat., the Committee on Standard Jury Instructions in Criminal Cases, in an abundance of caution, included pardons and set asides as elements #4 and #5.

This instruction was adopted on May 5, 2023, and amended on September 5, 2025, and on March 20, 2026.