

10.5 IMPROPER EXHIBITION OF A [WEAPON] [FIREARM]

§ 790.10, Fla. Stat.

To prove the crime of Improper Exhibition of a [Weapon] [Firearm], the State must prove the following three elements beyond a reasonable doubt:

- 1. (Defendant) had or carried [a weapon] [a firearm] [a dirk] [a sword] [a sword cane] [an electric weapon or device].**
- 2. (Defendant) exhibited the [weapon] [firearm] [dirk] [sword] [sword cane] [electric weapon or device] in a [rude] [careless] [angry] [or] [threatening] manner.**
- 3. [He] [She] did so in the presence of one or more persons.**

Give only applicable paragraphs.

§ 790.001, Fla. Stat. *Slungshot is defined in § 790.001, Fla. Stat.*

A “weapon” is any dirk, knife, metallic knuckles, slungshot, billie, tear gas gun, chemical weapon or device, or other deadly weapon except a firearm or a common pocketknife, plastic knife, or blunt-bladed table knife.

There is a conflict within the district courts about whether an open common pocketknife is a weapon:

Porter v. State, 798 So. 2d 855 (Fla. 5th DCA 2001); J.R.P. v. State, 979 So. 2d 1178 (Fla. 3d DCA 2008).

However, an open pocketknife could constitute a weapon.

G.R.N. v. State, 220 So. 3d 1267 (Fla. 4th DCA 2017).

If a common pocketknife is open, it is still considered to be a common pocketknife.

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

Give if applicable.

An object not designed to inflict bodily harm may nonetheless be a “deadly weapon” if it was used, threatened to be used, or intended 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.

§ 790.001, Fla. Stat.

“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.

§ 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.)*].

Lesser Included Offenses

IMPROPER EXHIBITION OF A WEAPON OR FIREARM — 790.10			
CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempt	777.04(1)	5.1
	Assault	784.011	8.1

Comments

Read instructions 3.6(f) or 3.6(g) as applicable, if the defendant is claiming self-defense, defense of others, or defense of property.

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

This instruction was adopted in 1981 and amended in 2013 [131 So. 3d 720], 2016 [195 So. 3d 356], 2018 [253 So. 3d 1040], and on April 3, 2020.