

7.7(b) UNNECESSARY KILLING TO PREVENT AN UNLAWFUL ACT

§ 782.11, Fla. Stat.

In the absence of an express concession that the homicide was not excusable or justified, the trial judge must also read Instruction 7.1, Introduction to Homicide.

To prove the crime of Unnecessary Killing to Prevent an Unlawful Act, the State must prove the following four elements beyond a reasonable doubt:

- 1. (Victim) attempted to commit [a felony] [an unlawful act].**
- 2. (Victim's) attempt to commit [a felony] [an unlawful act] was independent of a[n] [[threatened] unlawful act] directed solely toward (defendant).**
- 3. (Defendant) resisted (victim's) [failed] attempt to commit [a felony] [an unlawful act] by intentionally committing an act or acts that caused the death of (victim).**
- 4. (Defendant's) killing of (victim) was unnecessary.**

A[n] (name of felony or unlawful act attempted to be committed by victim) **is defined as** (give elements of felony or unlawful act). **The Court instructs you that** (name of felony or unlawful act) **is [a felony] [an unlawful act].**

In order for (victim) to have attempted to commit (name of felony or unlawful act), **the following would have had to have occurred:**

- 1. (Victim) did some act toward committing the** (name of felony or unlawful act) **that went beyond just thinking or talking about it.**
- 2. (Victim) would have committed the** (name of felony or unlawful act) **except that someone prevented [him] [her] from committing it or [he] [she] failed.**

The defendant cannot be guilty of Unnecessary Killing to Prevent an Unlawful Act if the killing was either justifiable or excusable homicide, as I have previously instructed you. *(The explanations of justifiable homicide and excusable homicide are in Instruction 7.1, Introduction to Homicide.)*

Give if requested.

In order to convict of Unnecessary Killing to Prevent Unlawful Act, the State does not need to prove the defendant intended to cause (victim's) death.

Lesser Included Offenses

UNNECESSARY KILLING TO PREVENT AN UNLAWFUL ACT — 782.11

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None		782.07	7.7
	(Nonhomicide lessers*) Aggravated battery	784.045	8.4
	Attempt	777.04(1)	5.1
	Felony battery	784.041	8.5
	Aggravated assault	784.021	8.2
	Battery	784.03	8.3
	Assault	784.011	8.1
	Culpable negligence	784.05	8.9

Comments

This instruction should not be given as a substitute for self-defense, defense of others, or defense of property with non-deadly force. It is applicable only where a victim was attempting to commit a felony or other unlawful act independent of an act directed solely at the defendant. *Mattier v. State*, 711 So. 2d 256 (Fla. 4th DCA 1998); *State v. Kadet*, 455 So. 2d 389 (Fla. 5th DCA 1984).

*Non-homicide lesser-included offenses do not have to be given if the parties agree that causation is not in dispute and that the victim is dead. See *Eversley v. State*, 748 So. 2d 963 (Fla. 1999). In cases in which causation is an issue, it will be necessary to determine if a special jury instruction on causation is needed.

This instruction was adopted on April 1, 2020.