

**8.12 AGGRAVATED ASSAULT ON A[N] [LAW ENFORCEMENT OFFICER]
[INSERT VICTIM'S JOB]
§ 784.07(2)(c), Fla. Stat.**

To prove the crime of Aggravated Assault on a [Law Enforcement Officer] [Firefighter] [Emergency Medical Care Provider] [Hospital Personnel] [Traffic Accident Investigation Officer] [Traffic Infraction Enforcement Officer] [Parking Enforcement Specialist] [Law Enforcement Explorer] [a Non-sworn Law Enforcement Agency Employee Certified as an Agency Inspector] [Blood Alcohol Analyst] [Breath Test Operator] [Railroad Special Officer] [Licensed Security Officer] [Security Officer Employed by the Board of Trustees of a Community College], the State must prove the following seven elements beyond a reasonable doubt. The first three elements define the crime of Assault.

1. (Defendant) **intentionally and unlawfully threatened, either by word or act, to do violence to** (victim).
2. **At the time,** (defendant) **appeared to have the ability to carry out the threat.**
3. **The act of** (defendant) **created in the mind of** (victim) **a well-founded fear that the violence was about to take place.**

Give 4a or 4b or both as applicable. If 4b is alleged, give the elements of the felony charged.

4.
 - a. **The Assault was made with a deadly weapon.**
 - b. **The Assault was made with a fully-formed, conscious intent to commit** (felony charged) **upon** (victim).
5. (Victim) **was at the time a** [law enforcement officer] [firefighter] [emergency medical care provider] [hospital personnel] [traffic accident investigation officer] [traffic infraction enforcement officer] [parking enforcement specialist] [security officer employed by the board of trustees of a community college] [law enforcement explorer] [nonsworn law enforcement agency employee who was certified as an agency inspector] [blood alcohol analyst] [breath test operator while such employee was in uniform and engaged in processing, testing, evaluating, analyzing, or transporting a person who was detained or under arrest for DUI] [railroad special officer] [licensed security officer who wore a uniform that bore at least one patch or emblem that was visible at all times that clearly identified the employing agency and that clearly identified the person as a licensed security officer].
6. (Defendant) **knew** (victim) **was a** [law enforcement officer] [firefighter] [emergency medical care provider] [hospital personnel] [traffic accident investigation officer] [traffic infraction enforcement officer]

[parking enforcement specialist] [security officer employed by the board of trustees of a community college] [law enforcement explorer][nonsworn law enforcement agency employee who was certified as an agency inspector] [blood alcohol analyst] [a breath test operator] [railroad special officer] [licensed security officer].

7. At the time of the Assault, (victim) was engaged in the lawful performance of [his] [her] duties.

For cases where the alleged victim is a law enforcement officer, do not refer to the victim by name when instructing on the sentence below. Instead, the instruction must state the class of officers to which the victim belongs, e.g., deputy sheriff, probation officer, correctional officer. See Wright v. State, 586 So. 2d 1024 (Fla. 1991).

The court now instructs you that a (name of official position of victim designated in charge) is a law enforcement officer.

For cases involving other types of victims, insert definitions from § 784.07(1)(a)-(g), Fla. Stat., as appropriate.

Give if applicable. McClain v. State, 383 So. 2d 1146 (Fla. 4th DCA 1980); Smithson v. State, 689 So. 2d 1226 (Fla. 5th DCA 1997); Gilbert v. State, 347 So. 2d 1087 (Fla. 3d DCA 1977).

If the circumstances were such as to ordinarily induce a well-founded fear in the mind of a reasonable person, then (victim) may be found to have been in fear, and actual fear on the part of (victim) need not be shown.

Give if element 4a alleged.

A “deadly weapon” is any object that will likely cause death or great bodily harm if used or threatened to be 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 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.

It is not necessary for the State to prove that the defendant had an intent to kill.

Lesser Included Offenses

AGGRAVATED ASSAULT ON A[N] [LAW ENFORCEMENT OFFICER] [INSERT VICTIM'S JOB]—784.07(2)(c)

CATEGORY ONE	CATEGORY TWO	FLA. STAT	INS. NO.
Aggravated assault		784.021	8.2
Assault on law enforcement officer		784.07(2)(a)	8.10
Improper exhibition of a dangerous weapon or firearm, if § 784.021(1)(a), Fla. Stat., is charged*		790.10*	10.5*
Assault		784.011	8.1
	Attempt	777.04(1)	5.1
	Discharging a firearm in public	790.15	10.6

Comments

*It is not clear whether a charging document that tracks the statute for Aggravated Assault with a Deadly Weapon necessarily charges Improper Exhibition. Contrast *Christ v. State*, 104 So. 3d 1262 (Fla. 2d DCA 2013) and *Michaud v. State*, 47 So. 3d 374 (Fla. 5th DCA 2010) with *Mack v. State*, 305 So. 2d 264 (Fla. 3d DCA 1974).

See *Spurgeon v. State*, 114 So. 3d 1042 (Fla. 5th DCA 2013)(holding that a conviction for a violation of § 784.07(2), Fla. Stat., had to be vacated because the statute does not include physicians, employees, agents, or volunteers of facilities that do not satisfy the definition of a hospital under chapter 395).

Num-chucks, which were originally designed as a farm tool, can be a deadly weapon. *R.V. v. State*, 497 So. 2d 912 (Fla. 5th DCA 1986). Jurors could find that a 7-inch straight-edged razor might be a dangerous weapon. *R.R. v. State*, 826 So. 2d 465 (Fla. 5th DCA 2002). In trials involving these types of objects, the judge should consider a special instruction informing jurors that an object can be a deadly weapon if its sole modern use is to cause great bodily harm or death. A special instruction may also 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.”

This instruction was approved in 1992 [603 So. 2d 1175] and amended in 1995 [657 So. 2d 1152], 2007 [962 So. 2d 310], 2008 [994 So. 2d 1038], 2013 [131 So. 3d 755], 2015 [157 So. 3d 1027], 2016 [195 So. 3d 356], on April 3, 2020, and on March 24, 2024.