

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

To prove the crime of Aggravated Battery on 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] [Non-sworn Law Enforcement Agency Employee Certified as an Agency Inspector] [Blood Alcohol Analyst] [Breath Test Operator] [Railroad Special Officer] [Licensed Security Officer], the State must prove the following five elements beyond a reasonable doubt. The first element defines the crime of Battery.

Give 1a or 1b or both as applicable.

1. (Defendant)
 - a. **actually and intentionally touched or struck** (victim) **against** [his] [her] will.
 - b. **intentionally caused bodily harm to** (victim).

Give 2a or 2b or both as applicable.

2. (Defendant), **in committing the Battery,**
 - a. **intentionally or knowingly caused [great bodily harm] [permanent disability] [permanent disfigurement] to** (victim).
 - b. **used a deadly weapon.**
3. (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] [non-sworn 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] [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] [railroad special officer].**

4. (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] [non-sworn law enforcement agency employee who was certified as an agency inspector] [blood alcohol analyst] [breath test operator] [railroad special officer] [licensed security officer].**
5. (Victim) **was engaged in the lawful performance of [his] [her] duties when the Battery was committed against [him] [her].**

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 element 2b 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.

Give if applicable.

“Great bodily harm” means great as distinguished from slight, trivial, minor, or moderate harm, and as such does not include mere bruises.

Give only if applicable. Fey v. State, 125 So. 3d 828 (Fla. 4th DCA 2013).

An intentional touching or striking includes situations where a defendant knows that a touch or strike is substantially certain to result from his or her act.

Give only if applicable. Clark v. State, 783 So. 2d 967 (Fla. 2001).

A Battery may be found as a result of the intentional touching or intentional striking of something other than the actual body of the person. However, the object that is touched or struck must have such an intimate connection with the person that it is to be regarded as a part or as an extension of the person. For example, in cases where a person intentionally drove into another occupied vehicle, it is for you to determine whether the vehicle that was

struck should be considered as a part or as an extension of the person inside that vehicle. This determination may include consideration about whether the person was “touched” through the force of impact by being jostled or otherwise impacted through the transfer of energy from the collision.

Lesser Included Offenses

AGGRAVATED BATTERY ON A[N] [LAW ENFORCEMENT OFFICER] [INSERT VICTIM’S JOB] — 784.07(2)(d)

CATEGORY ONE	CATEGORY TWO	FLA. STAT	INS. NO.
Aggravated battery		784.045	8.4
Felony battery*		784.041	8.5
Battery on a law enforcement officer		784.07(2)(b)	8.11
Battery		784.03	8.3
	Attempt	777.04(1)	5.1

Comments

*The lesser included offense of Felony Battery is applicable only if element 2a is charged.

See Spurgeon v. State, 114 So. 3d 1042 (Fla. 5th DCA 2013) (holding that a conviction for a violation of § 784.07(2), Florida Statutes, 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).

Florida law on alternative conduct statutes is unsettled. For example, in a DUI case, it is permissible for some jurors to conclude the State proved only driving while impaired, and other jurors to conclude the State proved only driving with an unlawful breath alcohol level. *Euceda v. State*, 711 So. 2d 122 (Fla. 3d DCA 1998). However, according to the Second District, it is improper for some jurors to conclude the State proved only that the defendant intentionally caused great bodily harm, and other jurors to conclude the State proved only that the defendant used a deadly weapon. *Miller v. State*, 123 So. 3d 595 (Fla. 2d DCA 2013). Unless the case law changes, in Aggravated Battery cases where the State has charged both alternatives, trial judges must give a special instruction that informs jurors they must be unanimous on each alternative theory.

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 adopted in 1992 [603 So. 2d 1175] and was amended in 1995 [657 So. 2d 1152], 2007 [962 So. 2d 310], 2008 [994 So. 2d 1038], 2015 [157 So. 3d 1027], on April 3, 2020, and on March 8, 2024.