

## **8.15 AGGRAVATED ASSAULT ON PERSON 65 YEARS OF AGE OR OLDER**

§ 784.08(2)(b), Fla. Stat.

To prove the crime of Aggravated Assault on a Person 65 Years of Age or Older, the State must prove the following five elements beyond a reasonable doubt. The first three elements define 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 65 years of age or older.**

§ 784.08(2), Fla. Stat.

**It is not necessary for the State to prove that** (defendant) **knew or had reason to know the age of** (victim).

*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 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 PERSON 65 YEARS OF AGE OR OLDER — 784.08(2)(b)

| CATEGORY ONE                                                                                      | CATEGORY TWO                    | FLA. STAT.   | INS. NO. |
|---------------------------------------------------------------------------------------------------|---------------------------------|--------------|----------|
| Aggravated assault                                                                                |                                 | 784.021      | 8.2      |
| Assault on person 65 years of age or older                                                        |                                 | 784.08(2)(d) | 8.17     |
| 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).

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 1997 [697 So. 2d 84], and amended in 2013 [131 So. 3d 755], 2016 [195 So. 3d 356], and on April 3, 2020.