

**10.13 SHOOTING OR THROWING A [MISSILE] [STONE] [HARD SUBSTANCE] [AT] [WITHIN] [INTO] [IN] A[N] [BUILDING] [VEHICLE] [VESSEL] [AIRCRAFT]**

§ 790.19, Fla. Stat.

To prove the crime of (crime charged), the State must prove the following three elements beyond a reasonable doubt:

*Give 1a–1c as applicable.*

1. (Defendant)

- a. [shot] [or] [threw] a missile that would produce death or great bodily harm.
- b. hurled or projected a stone or other hard substance that would produce death or great bodily harm.
- \*c. shot a firearm that would produce death or great bodily harm.

*Give 2a–2f as applicable.*

2. [He] [She] did so [at] [within] [into] [in]

- a. a public or private building, occupied or unoccupied.
- b. a public or private bus, that was being used or occupied by any person.
- c. a train, locomotive, railway car, caboose, cable railway car, street railway car, or monorail car that was being used or occupied by any person.
- d. a vehicle of any kind that was being used or occupied by any person.
- e. a boat, vessel, ship, or barge lying in or plying the waters of this state.
- f. an aircraft flying through the air space of this state.

3. The defendant’s act was done wantonly or maliciously.

*State v. Kettell, 980 So. 2d 1061 (Fla. 2008).*

**“Wantonly” means consciously and intentionally, with reckless indifference to consequences and with the knowledge that damage is likely to be done to some person.**

*State v. Kettell, 980 So. 2d 1061 (Fla. 2008).*

**“Maliciously” means wrongfully, intentionally, without legal justification or excuse, and with the knowledge that injury or damage will or may be caused to another person or the property of another person.**

*Give if applicable. § 790.001(6), 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(1), Fla. Stat.)]

*Wheeler v. State*, 203 So. 3d 1007 (Fla. 4th DCA 2016).

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

*Give if applicable. Polite v. State*, 454 So. 2d 769 (Fla. 1st DCA 1984).

It is not necessary for the State to prove a defendant acted with malevolence toward a vehicle or structure itself if the State proved [he] [she] acted with a wanton or malicious attitude directed toward an individual within or near the vehicle or structure.

### Lesser Included Offenses

SHOOTING OR THROWING A [MISSILE] [STONE] [HARD SUBSTANCE][[AT] [WITHIN] [INTO] [IN] A[N] [BUILDING] [VEHICLE] [VESSEL] [AIRCRAFT] — 790.19			
CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempt	777.04(1)	5.1
	Criminal Mischief	806.13	12.4
	Discharging firearm in public	790.15	10.6

### Comments

\*According to the Fourth District Court of Appeal, § 790.19, Fla. Stat., cannot be reclassified pursuant to § 775.087(1), Fla. Stat., because the use of a weapon or a firearm is an essential element of the crime. *Jefferson v. State*, 927 So. 2d 1037 (Fla. 4th DCA 2006). However, in *Robertson v. State*, 807 So. 2d 708 (Fla. 4th DCA 2002), the Fourth District also held it was proper to add 18 firearm points on the scoresheet because possession of a firearm is not an essential element of the crime. The First District Court of Appeal held in *Horn v. State*, 677 So. 2d 320 (Fla. 1st DCA 1996), that the use of a firearm was a necessary element of shooting at an occupied vehicle in violation of § 790.19, Fla. Stat. The Third District Court of Appeal has also held that the use of a firearm is a necessary element of shooting into an occupied vehicle. *Jones v. Singletary*, 621 So. 2d 760 (Fla. 3d DCA 1993).

Trial judges should therefore consider whether to instruct on element #1c based on the charging document and the evidence.

This instruction was adopted in 1981 and amended in 2018 [253 So. 3d 1024] and 2019.