

8.22 WRITTEN THREAT TO [KILL] [DO BODILY INJURY] [CONDUCT A MASS SHOOTING] [CONDUCT AN ACT OF TERRORISM]

§ 836.10, Fla. Stat.

To prove the crime of Written Threat to [Kill] [Do Bodily Injury] [Conduct a Mass Shooting] [Conduct an Act of Terrorism], the State must prove the following three elements beyond a reasonable doubt:

**There are two ways to violate § 836.10, Fla. Stat. Give as applicable.*

1. (Defendant) [wrote] [composed] a[n] [letter] [electronic communication] [inscribed communication].
2. The [letter] [electronic communication] [inscribed communication] contained a threat to [kill] [do bodily injury to] [(victim)] [any member of (victim’s) family].
3. (Defendant) [sent] [procured the sending of] that [letter] [electronic communication] [inscribed communication] to (victim).

Give if applicable.

It is not necessary for the State to prove that the [letter] [electronic communication] [inscribed communication] had been signed.

Definitions. Give if applicable.

An “inscribed communication” is a communication that is written or printed.

To “procure” means to persuade, induce, prevail upon, or cause a person to do something.

**The second way to violate § 836.10, Fla. Stat. is set forth below.*

1. (Defendant) [made] [posted] [transmitted] a writing or other record.
2. The writing or other record contained a threat to conduct [a mass shooting] [or] [an act of terrorism].
3. (Defendant) [made] [posted] [transmitted] the writing or other record in a manner that allowed another person to view the threat.

A “record” includes an electronic record.

Lesser Included Offenses

WRITTEN THREAT TO [KILL] [DO BODILY INJURY] [CONDUCT A MASS SHOOTING] [CONDUCT AN ACT OF TERRORISM] – 836.10			
CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Attempt	777.04(1)	5.1
	Assault	784.011	8.1

Comments

The statute may raise First Amendment concerns. Trial judges and attorneys should consider *Elonis v. United States*, 135 S. Ct. 2001 (2015) and *Saidi v. State*, 845 So. 2d 1022 (Fla. 5th DCA 2003).

The name of (victim) in the first set of elements 2 and 3 must be the same person.

There is no statutory definition for the term “electronic communication.” In the absence of case law, trial judges will have to fashion their own definition, perhaps by looking at § 934.02(12), Fla. Stat. and § 668.602(7), Fla. Stat. The definition for inscribed communication comes from the dictionary definition of the word inscribed. The definition of procure comes from the manslaughter standard instruction.

*The act of posting a message on social media that threatened to “shoot up” a school did not constitute a violation of law under the clause of § 836.10, Fla. Stat., that prohibits the sending of threats to a specific victim because it was not sent directly to the victims. *J.A.W. v. State*, 210 So. 3d 142 (Fla. 2d DCA 2016). In response to *J.A.W.*, the Legislature created an alternative way to commit the crime by removing the requirement that the threat be sent to the person threatened.

This instruction was adopted in 2013 [131 So. 3d 720] and amended in 2018.