

## **8.10 ASSAULT ON LAW ENFORCEMENT OFFICER, FIREFIGHTER, ETC.**

§ 784.07(2)(a), Fla. Stat.

To prove the crime of Assault on a [Law Enforcement Officer] [Firefighter] [Emergency Medical Care Provider] [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 six elements beyond a reasonable doubt:

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.**
4. (Victim) **was at the time a** [law enforcement officer] [firefighter] [emergency medical care provider] [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] [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].
5. (Defendant) **knew** (victim) **was a** [law enforcement officer] [firefighter] [emergency medical care provider] [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].

**6. 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), 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.**

**Lesser Included Offenses**

**ASSAULT ON LAW ENFORCEMENT OFFICER, FIREFIGHTER, ETC. — 784.07(2)(a)**

<b>CATEGORY ONE</b>	<b>CATEGORY TWO</b>	<b>FLA. STAT.</b>	<b>INS. NO.</b>
Assault		784.011	8.1
	Attempt	777.04(1)	5.1

**Comments**

*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).*

This instruction was adopted in 1981 [431 So. 2d 594] and amended in 1992 [603 So. 2d 1175], 1995 [657 So. 2d 1152], 2007 [962 So. 2d 310], 2008 [994 So. 2d 1038], 2015 [157 So. 3d 1027], and 2016.