

## 28.4 LEAVING THE SCENE OF A CRASH INVOLVING [DEATH] [SERIOUS BODILY INJURY] [INJURY]

§ 316.027(2), Fla. Stat.

To prove the crime of Leaving the Scene of a Crash Involving [Death] [Serious Bodily Injury] [Injury], the State must prove the following four elements beyond a reasonable doubt:

1. (Defendant) **was the driver of a vehicle involved in a crash occurring on public or private property resulting in [injury to] [the death of]** (victim).
2. (Defendant) **knew that [he] [she] was involved in a crash.**

*Give 3a if death is charged or 3b if injury or serious bodily injury is charged.*

3.
  - a. (Defendant) **knew, or should have known from all of the circumstances, including the nature of the crash, of the injury to or death of** (victim).
  - b. (Defendant) **knew, or should have known from all of the circumstances, including the nature of the crash, of the injury to** (victim).

*See Comment section for cases involving death.*

4. (Defendant) **willfully failed to immediately stop at the scene of the crash or as close to the crash as possible and failed to remain until [he] [she] had completed two things:**
  - a. **given identifying information to [(victim)] [the driver] [an occupant] [a person attending the vehicle] and to any police officer investigating the crash;**  
**and**
  - b. **rendered reasonable assistance to** (victim).

*Patterson v. State, 512 So. 2d 1109 (Fla. 1st DCA 1987).*

**“Willfully” means knowingly, intentionally, and purposely.**

*§ 316.062(1), Fla. Stat.*

**“Identifying information” means the name, address, vehicle registration number, and, if available and requested, the exhibition of the defendant’s license or permit to drive.**

**“Reasonable assistance” includes carrying or making arrangements to carry an injured person to a physician or hospital for medical treatment if it is apparent that treatment is necessary, or if such carrying is requested by the injured person.**

*Gaulden v. State*, 195 So. 3d 1123 (Fla. 2016); *State v. Elder*, 975 So.2d 481 (Fla. 2d DCA 2007).

**For the defendant to be “involved in a crash,” a vehicle, though not necessarily the defendant’s vehicle, must collide with another vehicle, person, or object.**

*Give if applicable. State v. Elder*, 975 So.2d 481 (Fla. 2d DCA 2007).

**“Involved” means to draw in as a participant, to implicate, to relate closely, to connect, to have an effect on, to concern directly, or to affect.**

§ 316.003, Fla. Stat. *Some of these terms have their own statutory definitions, which should be given if necessary.*

**A “vehicle” is any device in, upon, or by which any person or property is, or may be, transported or drawn upon a highway[, except personal delivery devices, mobile carriers, and devices used exclusively upon stationary rails or tracks].**

*Give if serious bodily injury is charged. § 316.027(1)(a), Fla. Stat.*

§ 316.027(2)(b), Fla. Stat.

**If you find that (defendant) committed the crime of Leaving the Scene of a Crash Involving Injury, you must then determine whether the State proved beyond a reasonable doubt that the injury was a serious bodily injury.**

**“Serious bodily injury” means an injury to a person, including the driver, which consists of a physical condition that creates a substantial risk of death, serious disfigurement, or protracted loss or impairment of the function of a bodily member or organ.**

*Give if it is alleged in the charging document that the defendant caused victim injury or death. § 921.0021(7)(e), Fla. Stat.*

**If you find that (defendant) committed the crime of Leaving the Scene of a Crash Involving [Death] [Serious Bodily Injury] [Injury], you must then determine whether the State proved beyond a reasonable doubt that [he] [she] caused [death] [or] [severe injury] [or] [moderate injury] [or] [slight injury] to (victim).**

*Give when the State alleged the victim was a “vulnerable road user.”*

§ 316.027(2)(f), Fla. Stat.

**If you find that (defendant) committed the crime of Leaving the Scene of a Crash Involving [Death] [Serious Bodily Injury] [or] [Injury], you must then determine whether the State proved beyond a reasonable doubt that (victim) was:**

**[a pedestrian].**

**[actually engaged in work upon a highway].**

**[actually engaged in work upon utility facilities along a highway].**

**[engaged in the provision of emergency services within the right-of-way].**

**[operating a [bicycle] [an electric bicycle] [motorcycle] [scooter] [moped] lawfully on the roadway].**

**[riding an animal].**

**[lawfully operating [a farm tractor or similar vehicle designed primarily for farm use] [a skateboard] [roller-skates] [in-line skates] [a horse-drawn carriage] [an electric personal assistive mobility device] [a wheelchair] on [a public right-of-way] [crosswalk] [shoulder of the roadway]].**

*If the “vulnerable road user” enhancement is given, insert applicable definitions from § 316.003, Fla. Stat.*

### **Lesser Included Offenses**

#### **LEAVING THE SCENE OF A CRASH INVOLVING DEATH — 316.027(2)(c)**

<b>CATEGORY ONE</b>	<b>CATEGORY TWO</b>	<b>FLA. STAT.</b>	<b>INS. NO.</b>
Leaving the Scene of a Crash Involving Serious Bodily Injury*		316.027(2)(b)	28.4
Leaving the Scene of a Crash Involving Injury*		316.027(2)(a)	28.4
	Attempt	777.04(1)	5.1

#### **LEAVING THE SCENE OF A CRASH INVOLVING SERIOUS BODILY INJURY — 316.027(2)(b)**

<b>CATEGORY ONE</b>	<b>CATEGORY TWO</b>	<b>FLA. STAT.</b>	<b>INS. NO.</b>
Leaving the Scene of a Crash Involving Injury		316.027(2)(a)	28.4
	Attempt	777.04(1)	5.1

### **Comments**

Element #4 will need to be modified in cases where someone died because the deceased cannot receive information or assistance to which he or she is entitled under § 316.062(1), Fla. Stat. The revised instruction on element #4 will also depend on whether a police officer is present. In a case where someone died and no police officer was present, § 316.062(2), Fla. Stat., requires the driver of a vehicle involved in the crash to forthwith report the crash to the nearest office of a duly authorized police authority and provide the information specified in § 316.062(1), Fla. Stat.

§ 921.0021(7)(e), Fla. Stat. states that if a defendant is convicted for violating § 316.027, Fla. Stat., and if the court finds that the defendant caused victim injury, victim injury points may be assessed against the offender. *Apprendi v. New Jersey*, 530 U.S. 466 (2000) and *Gaymon v. State*, 288 So. 3d 1087 (Fla. 2020) will require a special instruction and a jury finding on the issue of causation of victim injury.

\*In *Williams v. State*, 732 So. 2d 431 (Fla. 2d DCA 1999), the court stated in dictum that Leaving the Scene of a Crash Involving Injury is a necessarily lesser-included offense of Leaving the Scene of a Crash Involving Death. In other areas, however, where there is no dispute that a person was killed as a result of an incident giving rise to criminal charges, non-death lessers are not appropriate. *See, e.g., State v. Barritt*, 531 So. 2d 338 (Fla. 1988); *Humphrey v. State*, 690 So. 2d 1351 (Fla. 3d DCA 1997).

This instruction was adopted in 1995 [665 So. 2d 212] and amended in 2008 [973 So. 2d 432], 2015 [166 So. 3d 161], 2016 [192 So. 3d 1190], 2018 [236 So. 2d 244], 2019 [262 So. 3d 59], on October 2, 2020, on April 1, 2022, and on December 15, 2023.