

11.14(c) FAILURE BY A SEXUAL OFFENDER TO COMPLY WITH REGISTRATION REQUIREMENTS.

(Failure to Report to Department of Highway Safety and Motor Vehicles)

§ 943.0435(3), Fla. Stat.

To prove the crime of Failure by a Sexual Offender to Comply with Registration Requirements, the State must prove the following three elements beyond a reasonable doubt:

Give 1a or 1b as applicable.

1. (Defendant)
 - a. **is a sexual offender.**
 - b. **has agreed or stipulated that [he] [she] has been convicted as a sexual offender; therefore, you should consider the sexual offender status element as proven by agreement of the parties.**

If the defendant offers to stipulate, the court must accept the offer after conducting an on-the-record colloquy with the defendant. See Brown v. State, 719 So. 2d 882 (Fla. 1998); Johnson v. State, 842 So. 2d 228 (Fla. 1st DCA 2003). If there is a stipulation, the court should not give the definition of “sexual offender” or “convicted.”

2. (Defendant) **[established] [maintained] a permanent, temporary, or transient residence in (name of county) County, Florida.**

Give 3a or 3b as applicable.

3. (Defendant)
 - a. **having registered as a sexual offender with an office of the sheriff of (name of county) County, knowingly failed to report in person to a driver’s license office of the Department of Highway Safety and Motor Vehicles within 48 hours after registering to present proof of this registration, and knowingly failed to [secure a Florida driver’s license] [renew [his] [her] Florida driver’s license] [secure a Florida identification card].**
 - b. **reported in person to a driver’s license office of the Department of Highway Safety and Motor Vehicles and [secured a Florida driver’s license] [renewed [his] [her] Florida driver’s license] [secured a Florida identification card], but in doing so,**

Give one or both of the following as applicable to the charge.

- i. **failed to report to that office that [he] [she] was a sexual offender.**
- ii. **failed to provide that office with [(name the single unprovided registration item charged, as worded in the statute)] [any one or more of the following items: (name the unprovided registration items charged, as worded in the statute)].**

Give if the defendant meets his or her burden of production. See Barnes v. State, 108 So. 3d 700

(*Fla. 1st DCA 2013*).

It is a defense to the crime of Failure by a Sexual Offender to Comply with Registration Requirements that (defendant) attempted to comply with the requirements but was misinformed or otherwise prevented from complying by the Department of Highway Safety and Motor Vehicles.

There is no statute for the defense of being misinformed or otherwise prevented from complying, and the case law is silent as to (1) which party bears the burden of persuasion of the affirmative defense and (2) the standard for the burden of persuasion. Under the common law, defendants had both the burden of production and the burden of persuasion on an affirmative defense by a preponderance of the evidence.

*The Florida Supreme Court has often decided, however, that once a defendant meets the burden of production on an affirmative defense, the burden of persuasion is on the State to disprove the affirmative defense beyond a reasonable doubt (e.g., self-defense and consent to enter in a burglary prosecution). In the absence of case law, trial judges must resolve the issue via a special instruction. See the opinion in *Dixon v. United States*, 548 U.S. 1 (2006), for further guidance.*

If burden of persuasion is on the defendant:

If you find that (defendant) proved (insert appropriate burden of persuasion) that the Department of Highway Safety and Motor Vehicles misinformed [him] [her] or otherwise prevented [him] [her] from complying with the registration requirements, you should find [him] [her] not guilty. If the defendant did not prove (insert appropriate burden of persuasion) that the Department of Highway Safety and Motor Vehicles misinformed [him] [her] or otherwise prevented [him] [her] from complying, you should find [him] [her] guilty if all the elements of the charge have been proven beyond a reasonable doubt.

Or, if the burden of disproving the affirmative defense is on the State under the beyond a reasonable standard:

If you find that the State proved beyond a reasonable doubt that the Department of Highway Safety and Motor Vehicles did not misinform (defendant) or did not otherwise prevent [him] [her] from complying with the registration requirements, you should find [him] [her] guilty, if all of the elements of the charge have also been proven beyond a reasonable doubt. However, if you have a reasonable doubt on the issue of whether the Department of Highway Safety and Motor Vehicles misinformed (defendant) or otherwise prevented [him] [her] from complying with the registration requirements, you should find [him] [her] not guilty.

Definitions. See instruction 11.14(h) for the applicable definitions.

Lesser Included Offenses

No lesser included offenses have been identified.

Comment

This instruction was adopted in 2008 [983 So.2d 531] and amended in 2012 [85 So. 3d 1090] and

2014.