

11.15 FAILURE TO REGISTER AS A SEXUAL PREDATOR
(Initially Register – In Custody, Control or under the Supervision of the
Department of Corrections)
§ 775.21(6)(b), Fla. Stat.

To prove the crime of Failure to Register as a Sexual Predator, the State must prove the following three elements beyond a reasonable doubt:

Give 1a or 1b as applicable.

1. (Defendant)
 - a. **is a sexual predator.**
 - b. **has agreed or stipulated that [he] [she] has been convicted as a sexual predator; therefore, you should consider the sexual predator 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 predator” or “convicted.”

2. (Defendant) **is [in the custody or control of the Department of Corrections] [under the supervision of the Department of Corrections] [in the custody of a contractor-operated correctional facility] [under the supervision of the Department of Corrections, but not incarcerated].**
3. (Defendant) **[knowingly failed to register with the Department of Corrections as a sexual predator] [knowingly failed to register with the Department of Corrections within 3 days of having been classified as a sexual predator].**

Give if applicable. § 944.710, Fla. Stat.

A “contractor-operated correctional facility” is any facility, which is not operated by the Department of Corrections, for the incarceration of adults or juveniles who have been sentenced by a court and committed to the custody of the Department of Corrections.

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 to Register as a Sexual Predator that (defendant) attempted to register as required by law but was misinformed or otherwise prevented from timely registering by the Department of Corrections.

There is no statute for the defense of being misinformed or otherwise prevented from registering, 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 Corrections misinformed [him] [her] or otherwise prevented [him] [her] from registering, you should find [him] [her] not guilty. If the defendant did not prove (insert appropriate burden of persuasion) that the Department of Corrections misinformed [him] [her] or otherwise prevented [him] [her] from registering, 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 Corrections did not misinform (defendant) or did not otherwise prevent [him] [her] from registering, 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 Corrections misinformed (defendant) or otherwise prevented [him] [her] from registering, you should find [him] [her] not guilty.

Definitions. See instruction 11.15(l) for the applicable definitions.

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comment

This instruction was adopted in 2008 [983 So. 2d 531] and amended in 2014 [148 So. 2d 1204] and on September 20, 2024.