

11.15(d) FAILURE BY A SEXUAL PREDATOR TO COMPLY WITH REGISTRATION REQUIREMENTS

(Failure to Comply with [Registration] [or] [a Change] of [Enrollment] [Employment] [Volunteering] at an Institution of Higher Education)

§ 775.21(6)(a)1.c., Fla. Stat. and § 775.21(6)(g)5.b.

To prove the crime of Failure by a Sexual Predator 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 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.”

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

Give 3a or 3b as applicable. 3a is for initial registration with the sheriff and 3b is for changes to the initial information.

2. a. (Defendant) was enrolled or employed, whether for compensation or as a volunteer, at an institution of higher education in this state, and knowingly failed to provide the office of the sheriff of (name of county) County with the name, address, and county of each institution, including each campus attended, and [his] [her] enrollment, volunteer, or employment status.

b. (Defendant) was enrolled or employed, whether for compensation or as a volunteer, at an institution of higher education in this state, and knowingly failed to provide [through the on-line system of the Florida Department of Law Enforcement] [or] [in person at an office of the sheriff of (name of county) County] [or] [in person at the Department of Corrections if [he] [she] was in the custody or control, or under the supervision of the Department of Corrections] [or] [in person at the Department of Juvenile Justice if [he] [she] was in the custody or control, or under the supervision of the Department of Juvenile Justice] with a change in the name, address, and county of each institution, including each campus attended, and [his] [her] enrollment, volunteer, or employment status, within 48 hours after the change.

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 Predator to Comply with Registration

Requirements that (defendant) attempted to comply with the requirements but was misinformed or otherwise prevented from complying by the [office of the sheriff] [Department of Corrections] [Department of Juvenile Justice].

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 [office of the sheriff] [Department of Corrections] [Department of Juvenile Justice] 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 [office of the sheriff] [Department of Corrections] [Department of Juvenile Justice] 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 [office of the sheriff] [Department of Corrections] [Department of Juvenile Justice] 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 [office of the sheriff] [Department of Corrections] [Department of Juvenile Justice] misinformed (defendant) or otherwise prevented [him] [her] from complying with the registration requirements, 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 2012 [85 So. 3d 1090],

2014 [148 So. 3d 1204], 2016 [195 So. 3d 1088], and 2018.