

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

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

§ 775.21(6)(f), Fla. Stat.

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.”

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

Give as applicable.

3. (Defendant) was not incarcerated and had registered as a sexual predator with an office of the sheriff of (name of county) County,

a. but [he] [she] failed to report in person at a driver license office of the Department of Highway Safety and Motor Vehicles within 48 hours after registering with the sheriff’s office to present proof of this registration.

b. and had reported in person to a driver license office of the Department of Highway Safety and Motor Vehicles, but [he] [she] knowingly failed to [secure a Florida driver’s license] [renew a Florida driver’s license] [secure an identification card].

c. and had reported in person to a driver license office of the Department of Highway Safety and Motor Vehicles, but [he] [she] did not report to that office that [he] [she] was a sexual predator.

d. and had reported in person to a driver license office of the Department of Highway Safety and Motor Vehicles, but [he] [she] failed to provide that office with (insert unprovided registration items).

e. and had reported in person to a driver license office of the Department of Highway Safety and Motor Vehicles, but [he] [she] failed to provide that office

with (insert unprovided registration item), which were necessary to confirm [his] [her] identity.

- f. and had reported in person to a driver license office of the Department of Highway Safety and Motor Vehicles, but [his] [her] place of residence was a [motor vehicle] [trailer] [mobile home] [manufactured home] [vessel] and [he] [she] failed to provide that office with (insert unprovided registration item).**

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 Department of Highway Safety and Motor Vehicles.

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 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 11.15(l) for the applicable definitions.

Lesser Included Offenses

No lesser included offenses have been identified for this offense.

Comments

§ 775.21(6)(f), Fla. Stat., has an exception if a driver license or identification card that complies with the requirements of § 322.141(3), Fla. Stat., was previously secured or updated under § 944.607, Fla. Stat. If this provision of the statute is an issue in the case, the trial judge will have to draft a special instruction.

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.