

11.14 FAILURE BY A SEXUAL OFFENDER TO COMPLY WITH REGISTRATION REQUIREMENTS

(Initially Register, Report, or Provide Registration Items)

§ 943.0435(2), 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 an 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, 3b, 3c, 3d, 3e, or 3f as applicable.

3. (Defendant)

**a. knowingly failed to register in person at an office of the
sheriff of** (name of county) **County within 48 hours after
establishing permanent, temporary, or transient
residence within this state.**

**b. knowingly failed to report in person at an office of the
sheriff of** (name of county) **County within 48 hours after
being released from the [custody, control, or
supervision of the Florida Department of Corrections]
[custody of a contractor-operated correctional facility].**

**c. knowingly failed to register in person at an office of the
sheriff of** (name of county) **County within 48 hours after
having been convicted by a court in that county of an
offense requiring registration.**

d. knowingly failed to provide an office of the sheriff of
(name of county) **County with [his] [her] [(name the single
unprovided registration item charged, as worded in the**

statute)] **[any one or more of the following items: [his] [her] (name the unprovided registration items charged, as worded in the statute).]**

- e. **knowingly failed to report in person at an office of the sheriff of (name of county) within 48 hours after any change in vehicles owned to report those vehicle information changes.**
- f. **knowingly failed to provide an office of the sheriff of (name of county) with (insert information, such as criminal and corrections records, nonprivileged personnel and treatment records, and evidentiary genetic markers), which [he] [she] knew had been deemed necessary by the Department of Law Enforcement and which was available.**

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 by a Sexual Offender to Comply with Registration Requirements that (defendant) attempted to comply but was misinformed or otherwise prevented from complying by the office of the sheriff.

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 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 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 did not misinform (defendant) **or did not otherwise prevent [him] [her] from complying with the registration requirements, you should find** (defendant) **guilty if all of the elements of the charge have been proven beyond a reasonable doubt. However, if you have a reasonable doubt on the issue of whether the office of the sheriff 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 for this offense.

Comments

In some cases, a special instruction will be needed if the sexual offender initially reported but then failed to properly report a change in the information required to be provided pursuant to § 943.0435(2)(a)2., Fla. Stat.

This instruction was adopted in 2008 [983 So.2d 531] and amended in 2012 [85 So. 3d 1090], 2013 [113 So. 3d 754], 2014 [148 So. 3d 1204], 2016 [195 So. 3d 1088], 2018 [249 So. 2d 554], and on September 20, 2024, and on June 27, 2025.