

**11.15(j) FAILURE BY A SEXUAL PREDATOR TO COMPLY WITH
REGISTRATION REQUIREMENTS
(Failure to Report Intent to Remain within the State or Jurisdiction)
§ 775.21(6)(j), Fla. Stat.**

To prove the crime of Failure by a Sexual Predator to Comply with Registration Requirements, the State must prove the following five 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 also give the definition of “sexual predator” or “convicted.”

- 2. (Defendant) established or maintained a permanent, temporary, or transient residence in (name of county) County, Florida.**
- 3. (Defendant) indicated to an office of the sheriff of (name of county) County [his] [her] intent to leave this state on (date of intended departure) and establish a permanent, temporary, or transient residence in another state or jurisdiction or intent to travel to another country.**
- 4. (Defendant) later decided to remain in this state.**
- 5. Within 48 hours after the date of [his] [her] originally intended departure from this state, (defendant) knowingly failed to report to an office of the sheriff of (name of county) County that [he] [she] instead decided to remain in this state.**

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 Comply with Registration Requirements as a Sexual Predator that (defendant) attempted to comply with the requirements 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 [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 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], and on June 27, 2025.