

IN THE SUPREME COURT OF FLORIDA

**IN RE: STANDARD JURY
INSTRUCTIONS CRIMINAL CASES
REPORT 2011-04**

CASE NO.: SC11-

To the Chief Justice and Justices of the Supreme Court of Florida:
This report, proposing amended instructions to the Florida Standard Jury Instructions in Criminal Cases, is filed pursuant to Article V, section 2(a), Florida Constitution.

	<u>Instruction #</u>	<u>Topic</u>
Proposal 1	11.14, 11.14(a)-11.14(h)	Sexual Offender Instructions
Proposal 2	11.15(a)-11.15(l)	Sexual Predator Instructions

The proposals are provided in Appendix A. Words to be deleted are shown with strike-through marks; words to be added are underlined.

All the proposals, except 11.14(h), were published in *The Florida Bar News* on July 15, 2011. The proposal for 11.14(h) was published in *The Florida Bar News* on August 15, 2011.

One comment, which is contained in Appendix B, was received from the Florida Public Defender Association (FPDA).

Explanation of Proposals

Proposal 1 – 11.14, 11.14(a)-11.14(h) – Sexual Offender Instructions

Member Brian Iten reviewed the Sexual Offender instructions for the committee.

For 11.14, 11.14(a)-11.14(g), Mr. Iten proposed that the instructions be updated to include a reference to “transient residence.” The committee unanimously agreed.

For 11.14(f) – Failure to Report Intent to Remain within the State, Mr. Iten proposed that the element #3 reflect the exact wording of Fla. Stat. 943.0435(8), that the defendant indicated his/her intent to establish a permanent, temporary, or transient residence in another state or jurisdiction. The committee unanimously agreed with this suggestion also.

Mr. Iten then proposed that for Instructions 11.14 and 11.14(g), the instruction should state that a sexual offender is required under law to provide a

physical residential address and that a post office box shall not be provided in lieu of a physical residential address. That proposal generated some discussion because some people do not have physical residential addresses. Nonetheless, Mr. Iten's proposal initially passed the committee but was published to generate comments.

One comment was received from Mr. John Eddy Morrison of the FPDA who pointed out that the statute does not necessarily require sexual offenders provide a physical residential address. The committee agreed and unanimously decided to delete the following parts of 11.14 and 11.14(g): "*Read only if the defendant is charged with failing to provide a physical residential address. The defendant shall provide a physical residential address.*" The committee concluded that this language was unnecessary given the elements that are set out in the instruction.

For 11.14(h), Sexual Offender Definitions, the committee unanimously made the following changes:

a) Added a definition for the word "convicted" based on Fla. Stat. 943.0435(1)(b);

b) Deleted "'Physical residential address' does not include a post office box" because the term "physical residential address" is not in the jury instructions.

c) Tracked Fla. Stat. 775.21(2)(l) for the definition of "temporary residence."

d) Added a definition for "transient residence" based on Fla. Stat. 775.021(2)(m).

Note: The committee's published proposal for Instruction 11.14(h) included a definition for "sanction." Based on the comment from the FPDA, the committee agreed to omit the definition of "sanction" from its proposal.

After considering the FPDA comments and making the changes noted above, the Sexual Offender proposals passed the committee unanimously.

Proposal 2 – 11.15(a)-11.15(l) – Sexual Predator Instructions

Member Brian Iten reviewed the Sexual Predator instructions for the committee.

For 11.15(a), 11.15(c), 11.15(d), 11.15(e), 11.15(f), and 11.15(h), the committee agreed unanimously with Mr. Iten's suggestion to include a reference to "transient residence."

For 11.15(b) and 11.15(k), the committee agreed unanimously with Mr. Iten's suggestion to include a reference to "transient residence." Also, because of the FPDA comment and because the elements are set out in the instruction, the committee deleted: "*Read only if the defendant is charged with failing to provide a physical residential address. The defendant shall provide a physical residential address.*"

For 11.15(g), the committee agreed unanimously with Mr. Iten's suggestion to include a reference to "transient residence." Also, a reference to "temporary residences" needed to be added to elements #3b and #3c.

For 11.15(i), the committee agreed unanimously with Mr. Iten's suggestion to include a reference to "transient residence." Also, a reference to "temporary residences" needed to be added to element #3a. Finally, based on the FPDA comment, the committee ultimately thought it best to delete: "*Read only if the defendant is charged with failing to provide a physical residential address. The defendant shall provide a physical residential address.*"

For 11.15(j), the committee agreed unanimously with Mr. Iten's suggestion to include a reference to "transient residence." Also, element #3 needed to be updated to include "permanent residence" and "temporary residence" in addition to "transient residence."

For the Sexual Predator Definitions in 11.15(l), the proposed changes mirror the changes in the instructions for Sexual Offender Definitions. Specifically, a definition for the word "convicted" was added. The reference to "physical residential address" was deleted. The definitions for "temporary residence" and "transient residence" were updated to track Fla. Stat. 775.21(2). Finally, based on the comment from the FPDA, the committee omitted a definition for the word "sanction."

After considering the FPDA comments and making the changes noted above, the Sexual Predator proposals passed the committee unanimously.

Respectfully submitted this ____ day of
October, 2011.

The Honorable Samantha L. Ward
Thirteenth Judicial Circuit
Chair, Supreme Court Committee on
Standard Jury Instructions in Criminal Cases
800 East Twiggs Street
Tampa, Florida 33602
Florida Bar Number 862207

CERTIFICATE OF FONT SIZE

I hereby certify that this report has been prepared using Times New Roman 14 point font in compliance with the font requirements of Florida Rule of Appellate Procedure 9.210(a)(2).

HONORABLE SAMANTHA L. WARD
Chair, Committee on Standard Jury
Instructions in Criminal Cases
Florida Bar Number 862207