

IN THE SUPREME COURT OF FLORIDA

IN RE: STANDARD JURY

INSTRUCTIONS IN

CRIMINAL CASES –

REPORT NO. 2012- 02 /

CASE NO.: SC12-

**STANDARD JURY INSTRUCTION (CRIMINAL) COMMITTEE’S
RESPONSE TO COURT’S MARCH 29, 2012 REFERRAL
LETTER REGARDING “PHYSICAL RESIDENTIAL ADDRESS”
IN THE SEXUAL OFFENDER/PREDATOR INSTRUCTIONS**

On March 29, 2012, the Court rejected the Committee’s recommendation to delete all references to “physical residential address” in some of the sexual offender/predator instructions. The Court also asked for a new report addressing the Committee’s prior recommendation in light of statutory language that “[a] post office box shall not be provided in lieu of a physical residential address.” The Court further stated that if the Committee still wanted to amend these instructions, the Committee should re-present its proposals along with an explanation. The Court’s referral letter to the Committee is attached in Appendix A.

Explanation of prior proposal

The sexual offender statute is Fla. Stat. 943.0435. Pursuant to Fla. Stat. 943.0435(2)(b), the offender must report his or her “address of permanent or legal residence or address of any current temporary residence, within the state or out of state, including a rural route and a post office box; if no permanent or temporary address, any transient residence within the state, . . .” There is no statutory requirement for an offender to provide a physical residential address, although the provision specifies that a post office box shall not be provided in lieu of a physical residential address.

The sexual predator statute has a materially identical provision. Fla. Stat. 775.21(6)(a).

Fla. Stats. 943.0435(14)(c)1., 775.21(6)(f)1., and 775.21(8)(a)1., which state that the offender/predator must provide a “permanent,” “temporary,” or “transient” residence, including a rural route address and a post office box, also provide that “[a] post office box shall not be provided in lieu of a physical residential address.

In sending its previous proposals, the Committee did not overlook the parts of the statutes that state a post office box shall not be provided in lieu of a

physical residential address. Because there is no explicit statutory requirement for a sexual offender/predator to provide a “physical residential address,” the Committee did not think the State would allege that the defendant failed to provide a “physical residential address.” The Committee thought defendants would instead be charged with “failing to report a permanent, temporary, or transient residence.” In fact, in the elements sections, the trial judge is directed to insert the name of the unprovided registration item charged, *as worded in the statute* (emphasis supplied). Thus, the Committee contemplated that the trial judge would instruct: “Defendant knowingly failed to provide an office of the sheriff of X County with his/her address of [permanent][temporary][transient] residence.” Because the defendant would not be charged with failing to provide a “physical residential address,” the Committee proposed 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.

During its discussions, the Committee contemplated that an offender/predator might be homeless. In those cases, committee members were concerned that an instruction that an offender must provide a physical residential address would lead some jurors to require a mailing address. The Committee sought to foreclose this possibility by eliminating the instruction that “The defendant shall provide a physical residential address.” The Committee thought that if the person lived under the Julia Tuttle Causeway, the person should register with an address of “under the Julia Tuttle Causeway.” If the homeless person did not register that he lived under the Julia Tuttle Causeway, he should be charged with failing to provide a permanent, temporary, or transient address, not failing to provide a physical residential address. Accordingly, the Committee decided to delete the entire reference to “physical residential address” in some of the sexual offender/predator instructions.

Explanation for new proposals

The Committee met to discuss this Court’s March 29th opinion rejecting the Committee’s proposal and its referral letter from the Court to the Committee. The Committee also asked Atty. John Morrison from the Florida Public Defender’s Association if he would provide his thoughts because his post-publication comment brought this issue to the Committee’s attention in the first place. Atty. Morrison graciously sent the Committee his thoughts in a letter dated April 12, 2012, which is attached in Appendix B.

Atty. Morrison suggests that the standard instructions omit “physical residential address” and instead use “permanent, temporary, or transient

residence.” He also suggests that the instruction include a phrase that the offender/predator must provide a post office box if he/she has one. He points out that providing a post office box is illegal only if done in lieu of another address. He recommends, in essence:

Read only if the defendant is charged with failing to provide a ~~physical residential address~~ permanent, temporary, or transient address:

The defendant shall provide a physical residential address. A sexual [offender] [predator] is required under law to provide a place of permanent, temporary or transient residence. A post office box or rural route address may be provided as part of the registration, but a post office box cannot be provided instead of such a place of permanent, temporary, or transient residence.

In the alternative, he suggests that if the Court insists on using the phrase “physical residential address,” the instruction read:

Read only if the defendant is charged with failing to provide a ~~physical residential address~~ permanent, temporary, or transient address:

The defendant shall provide a physical residential address. A sexual [offender] [predator] is required under law to provide a place of permanent, temporary or transient residence. A post office box or rural route address may be provided as part of the registration, but a post office box cannot be provided instead of such a place of such a physical residential address.

Although it considered this proposal, the Committee moved in a different direction. Because the Court’s opinion retained the references to “physical residential address,” the Committee declined to again propose that the phrase be removed. The Committee voted 8-2 to add to Instructions 11.14, 11.14(g), 11.15(b), 11.15(i), and 11.15(k): **The defendant shall provide a physical residential address. A post office box shall not be provided in lieu of a physical residential address.** Then, in the instructions for definitions (11.14(h) and 11.15(l)), the Committee voted 7-3 to add: **“Physical residential address” does not include a post office box, but may be a location which does not have a mailing address.**

The Committee’s view was that no matter what specific violation of failure to register or report is charged, the trial judge could read these sections, which would cover all possibilities, including cases involving homeless defendants. The

new proposals for Instructions 11.14, 11.14(g), 11.15(b), 11.15(i), 11.15(k) and 11.14(h) and 11.15(l) are attached in Appendix C. These seven proposals have not been published.

Respectfully submitted this _____ day of
April, 2012.

The Honorable Jacqueline Hogan Scola
Eleventh Judicial Circuit
Chair, Supreme Court Committee on
Standard Jury Instructions in Criminal Cases
73 West Flagler Street
Room 414
Miami, Florida 33130
Florida Bar Number 350869

CERTIFICATE OF SERVICE AND FONT SIZE

I hereby certify that this Response to Court's March 29, 2012 Referral Letter Regarding "Physical Residential Address" in the Sexual Offender/Predator Instructions 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) and that a copy has been sent by U.S. Mail to Atty. John Morrison, Assistant Public Defender, 1320 NW 14th Street, Miami, Florida, 33125, this _____ day of April, 2012..

HONORABLE JACQUELINE HOGAN SCOLA
Chair, Committee on Standard Jury
Instructions in Criminal Cases
Florida Bar Number 350869