

IN THE SUPREME COURT OF FLORIDA

IN RE: STANDARD JURY
INSTRUCTIONS IN CRIMINAL CASES
REPORT 2015-05

CASE NO.: SC14-

To the Chief Justice and Justices of the Supreme Court of Florida:

This report, proposing new and amended instructions to the Florida Standard Jury Instructions in Criminal Cases, is filed pursuant to Article V, section 2(a), Florida Constitution.

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	<u>Instruction #</u>	<u>Topic</u>
PROPOSAL 1	11.14	FAILURE BY A SEXUAL OFFENDER TO COMPLY WITH REGISTRATION REQUIREMENTS (Initially Register, Report, or Provide Registration Items)
PROPOSAL 2	11.14(a)	FAILURE BY A SEXUAL OFFENDER TO COMPLY WITH REGISTRATION REQUIREMENTS (Failure to Comply with Registration of a Residence, Motor Vehicle, Trailer, Mobile Home, Manufactured Home, Vessel, or Houseboat)
PROPOSAL 3	11.14(b)	FAILURE BY A SEXUAL OFFENDER TO COMPLY WITH REGISTRATION REQUIREMENTS (Failure to Comply with Registration of [Employment] [Enrollment] [Volunteering] [Carrying on a Vocation] at an Institution of Higher Learning)
PROPOSAL 4	11.14(c)	FAILURE BY A SEXUAL OFFENDER TO COMPLY WITH REGISTRATION REQUIREMENTS (Failure to Report to Department of Highway Safety and Motor Vehicles)
PROPOSAL 5	11.14(d)	FAILURE BY A SEXUAL OFFENDER TO COMPLY WITH REGISTRATION REQUIREMENTS (Failure to Report

		Change of Name or Address within the State or Jurisdiction)
PROPOSAL 6	11.14(e)	FAILURE BY A SEXUAL OFFENDER TO COMPLY WITH REGISTRATION REQUIREMENTS (Failure to Report Change of Residence to Another State or Jurisdiction or Country
PROPOSAL 7	11.14(g)	FAILURE BY A SEXUAL OFFENDER TO COMPLY WITH REGISTRATION REQUIREMENTS (Failure to Report Twice a Year/Failure to Report Quarterly/Providing False Information)
PROPOSAL 8	11.14(h)	SEXUAL OFFENDER DEFINITIONS
PROPOSAL 9	11.14(i)	FAILURE BY A SEXUAL OFFENDER TO COMPLY WITH REGISTRATION REQUIREMENTS (Failure to Report Every 30 Days for Transient Residences)
PROPOSAL 10	11.15	FAILURE TO REGISTER AS A SEXUAL PREDATOR (Initially Register — In Custody, Control or under the Supervision of the Department of Corrections)
PROPOSAL 11	11.15(b)	FAILURE BY A SEXUAL PREDATOR TO COMPLY WITH REGISTRATION REQUIREMENTS (Failure to Provide Required Information)
PROPOSAL 12	11.15(c)	FAILURE BY A SEXUAL PREDATOR TO COMPLY WITH REGISTRATION REQUIREMENTS (failure to Comply with Registration of a Residence, Motor Vehicle, Trailer, Mobile Home, or Manufactured Home)
PROPOSAL 13	11.15(d)	FAILURE BY A SEXUAL PREDATOR TO COMPLY WITH REGISTRATION REQUIREMENTS (Failure to Comply with Registration of [Employment] [Enrollment] [Volunteering] [Carrying on a Vocation] at an Institution of Higher Learning)

PROPOSAL 14	11.15(e)	FAILURE BY A SEXUAL PREDATOR TO COMPLY WITH REGISTRATION REQUIREMENTS (Failure to Report to Department of Highway Safety and Motor Vehicles)
PROPOSAL 15	11.15(g)	FAILURE BY A SEXUAL PREDATOR TO COMPLY WITH REGISTRATION REQUIREMENTS (Failure to Report Change of Name or Address within the State or Jurisdiction)
PROPOSAL 16	11.15(h)	FAILURE BY A SEXUAL PREDATOR TO COMPLY WITH REGISTRATION REQUIREMENTS (Failure to Respond to Address Verification Correspondence)
PROPOSAL 17	11.15(i)	FAILURE BY A SEXUAL PREDATOR TO COMPLY WITH REGISTRATION REQUIREMENTS (Failure to Report Intent to Move to Another State, Jurisdiction, or Country)
PROPOSAL 18	11.15(l)	SEXUAL PREDATOR DEFINITIONS
PROPOSAL 19	11.15(m)	FAILURE BY A SEXUAL PREDATOR TO COMPLY WITH REGISTRATION REQUIREMENTS (Failure to Report Every 30 Days for Transient Residents)

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

Appendix B contains the one comment received by the Committee. The comment is from the Florida Association of Criminal Defense Lawyers (FACDL).

Appendix C contains the relevant statutes.

PROPOSAL #1:

The Committee amended some of the Failure to Register instructions because of changes made by the legislature in 2014. The Committee thought Instruction 11.14 could be used to cover s. 943.0435(2)(b)3, Fla. Stat., and s. 943.0435(2)(c), Fla. Stat. Accordingly, the statutory reference at the beginning of the instruction is amended to include “(2)(c)” and elements #3e and #3f are added. New element #3e covers s. 943.0435(2)(b)3, Fla. Stat., whereby a sexual offender must report in person to the sheriff’s office within 48 hours after any change in

vehicles owned to report that change. New element #3f covers 943.0435(2)(c), Fla. Stat., whereby the sexual offender must provide to the Department of Law Enforcement information deemed necessary by the department (such as criminal and corrections records, non-privileged treatment records, etc.). There were no other changes except for updating the comment section.

The proposal was published in the *Bar News* on March 1, 2015.

One comment was received from FACDL suggesting new element #3f should not be promulgated because the statute is unconstitutional. (see Appendix B.) The Committee did not think it should decide whether the underlying statute was constitutional and voted unanimously to send the proposal to the Court.

PROPOSAL #2:

Instruction 11.14(a) is designed to cover s. 943.0435(2)(b)1, Fla. Stat. Other than updating of the Comment section, the only changes proposed are: 1) to add an italicized note to the judge that definitions for some of the terms in the instruction can be found in either s. 320.01, Fla. Stat., or s. 327.02, Fla. Stat.; and 2) adding the word “other” to the existing instruction that informs the judge to look at Instruction 11.14(h) for definitions. The proposal was published in the *Bar News* on March 1, 2015. No comments were received. Upon post-publication review, the Committee voted unanimously to send the proposal as published to the Court.

PROPOSAL #3:

Instruction 11.14(b) covers s. 943.0435(2)(b)2, Fla. Stat. In 2014, the legislature made a change to that statute which required a change to the instruction. Specifically, the legislature added the word “volunteering” as an option within the phrase “enrolled, employed, or carrying on a vocation at an institution of higher education....Accordingly, the Committee added the word “volunteering” in the title and in elements 3a and 3b. The Committee also took the opportunity to add the option of “Carrying on a Vocation” in the title. No other changes were made other than updating the Comment section. The proposal was published in the *Bar News* on March 1, 2015. No comments were received. Upon post-publication review, the Committee voted unanimously to send the proposal to the Court.

PROPOSAL #4:

Instruction 11.14(c) covers s. 943.0435(3), Fla. Stat. The Committee is proposing changes to make the instruction consistent with the latest version of that statute. Specifically, the phrase “driver’s license” is changed to “driver license” in elements 3a and 3b. Also, the Committee added a note in the Comment section that informs everyone that a special instruction would be needed under the circumstance in s. 943.0435(3), Fla. Stat. that a certain driver license or

identification card was previously secured or updated under s. 944.607, Fla. Stat., (which pertains to sexual offenders and their driver's licenses). The proposal was published in the *Bar News* on March 1, 2015. No comments were received. Upon post-publication review, the Committee voted unanimously to send the proposal to the Court.

PROPOSAL #5:

Instruction 11.14(d) covers s. 943.0435(4), Fla. Stat. In addition to a minor stylistic change to an italicized note, the only substantive change to this instruction was that the Committee added a note in the Comment section that informs everyone that a special instruction is necessary if the allegation involves the offender not reporting certain things to the sheriff's office within 48 hours of the change, even if he or she was unable to secure or update a driver license or identification card.

The proposal was published in the *Bar News* on March 1, 2015.

One comment was received from FACDL suggesting that the Committee add a cite in the Comment section to *Eveland v. State*. (see Appendix B.) Upon post-publication review, the Committee voted unanimously not to cite to the *Eveland* case. The Committee's comment was not added as a result of the *Eveland* case. Instead the new comment was added to point out that s. 943.0435(4)(a), Fla. Stat., has a provision pertaining to those who were unable to obtain a driver's license or identification card, for whatever reason.

PROPOSAL #6:

Instruction 11.14(e) covers s. 943.0435(7), Fla. Stat. The Committee is proposing changes to make the instruction consistent with the latest version of that statute. Specifically, in the title and in element #3, the word "country" is added as an option. In element #4a, the words "within the United States" are added. Next, the Committee proposes to delete element #5 and to instead have three options within element #4. The first option, element #4a, would be for a timing violation (the statute requires the offender to report to the sheriff his or her intended address within 48 hours before the intended move date). The second option, element #4b, would also cover a timing violation for an offender who did not report to the sheriff his or her intended address within 21 days before the intended move date outside of the country. The third option, element #4c, would not cover a timing violation, but would instead cover a violation for failing to report to the sheriff the intended address (either within or outside of the country). If this change is approved, there would only be four elements for this crime. The proposal was published in the *Bar News* on March 1, 2015. No comments were received. Upon

post-publication review, the Committee voted unanimously to send the proposal to the Court.

PROPOSAL #7:

Instruction 11.14(g) covers s. 943.0435(14), Fla. Stat. The Committee is once again proposing changes to make the instruction consistent with the latest version of that statute. Specifically, a sexual offender is generally required to report on his or her birthday month and every six months thereafter. But if the reason for registering was a conviction for certain enumerated crimes, the offender must register in his or her birthday month and every three months thereafter. Accordingly, elements #1a and #1b cover the six month registration. And new elements #1c and #1d cover the three month registration. (Note: Elements #1b and #1d are for those defendants who stipulate that they are sexual offenders.) The Committee also thought this instruction could be used to cover the crimes set forth in s. 943.0435(14)(c)4, Fla. Stat., which requires an offender to report all electronic mail addresses and all internet identifiers and also criminalizes “knowingly providing false registration information by act or omission.” Accordingly, the Committee added options for those crimes in new elements #3f and #3g. Finally, the Committee recognized that there are other possible crimes covered in s. 943.0435(14), Fla. Stat. and thereby added a note in the comment section that informs everyone that a special instruction would be needed in those instances. Other than updating the Comment section, no other changes were made. The proposal was published in the *Bar News* on March 1, 2015. No comments were received. Upon post-publication review, the Committee voted unanimously to send the proposal to the Court.

PROPOSAL #8:

Instruction 11.14(h) covers definitions in the sexual offender statute. The proposed changes would make this instruction consistent with the latest version of the statute. Specifically, the phrase “instant message name” has been deleted because it was taken out of the statute and the terms “internet identifier” and “vehicles owned” were added consistent with the statutes. The proposal was published in the *Bar News* on March 1, 2015. No comments were received. Upon post-publication review, the Committee voted unanimously to send the proposal to the Court.

PROPOSAL #9

In 2014, the legislature created a new provision in s. 943.0435(4), Fla. Stat., for sexual offenders who are transient residents to report to the sheriff every 30 days. There is no existing standard instruction for this new possibility and so the committee created a new instruction labelled as Instruction 11.14(i). The

Committee concluded the crime had three elements. Element #1 was that the defendant was a sexual offender (either by proof of the requisite conviction or by stipulation). Element #2 is that the defendant established a transient residence in a certain county. And element #3 covers the knowing failure to report to the appropriate sheriff every 30 days. The rest of the proposed instruction having to do with failing to report a physical address and the affirmative defense of misinformation by the sheriff's office is copied from the other sexual offender instructions. No lesser-included offenses were identified. The proposal was published in the *Bar News* on March 1, 2015. No comments were received. Upon post-publication review, the Committee voted unanimously to send the proposal to the Court.

PROPOSAL #10

This instruction covers s. 775.21(6)(b), Fla. Stat., which requires a sexual predator to register with the Department of Corrections. One of the provisions in the statute requires the predator to register within 3 business days of having been classified by a judge to be a sexual predator. Therefore, the Committee amended element #3 to make it consistent with the statute. No additional changes were required other than updating the comment section. The proposal was published in the *Bar News* on March 1, 2015. No comments were received. Upon post-publication review, the Committee voted unanimously to send the proposal to the Court as published.

PROPOSAL #11

Instruction 11.15(b) currently covers s.775.21(6)(a)1, Fla. Stat. The Committee needed to update the instruction to reflect recent statutory changes. To do so, the Committee created two additional options within element #3. Accordingly, current element #3 would be labelled as element #3a and would continue to cover s. 775.21(6)(a)1, Fla. Stat. (failing to provide the sheriff's office with some registration item). The Committee then created an element #3b to cover s. 775.21(6)(a)1.c., Fla. Stat., which is a new provision for failing to provide the sheriff with a change in vehicles owned. No additional changes were required other than updating the comment section. The proposal was published in the *Bar News* on March 1, 2015. No comments were received. Upon post-publication review, the Committee voted unanimously to send the proposal to the Court.

PROPOSAL #12

This instruction covers s. 775.21(6)(a)1.a., Fla. Stat. Other than updating of the comment section, the only change proposed is to add an italicized note to the judge that definitions for some of the terms in the instruction can be found in either

s. 320.01, Fla. Stat., or s. 327.02, Fla. Stat. The proposal was published in the *Bar News* on March 1, 2015. No comments were received. Upon post-publication review, the Committee voted unanimously to send the proposal to the Court.

PROPOSAL #13

Instruction 11.15(d) covers s. 775.21(6)(a)1.b., Fla. Stat. In 2014, the legislature made a change to that statute which required a change to the instruction. Specifically, the legislature added the word “volunteering” as an option within the phrase “enrolled, employed, or carrying on a vocation at an institution of higher education....Accordingly, the Committee added the word “volunteering” in the title and in elements 3a, 3b, and 3c. The Committee also took the opportunity to add the option of “Carrying on a Vocation” in the title. No other changes were made other than updating the comment section. The proposal was published in the *Bar News* on March 1, 2015. No comments were received. Upon post-publication review, the Committee voted unanimously to send the proposal to the Court.

PROPOSAL #14

This instruction covers s. 775.21(6)(f), Fla. Stat., which is failure of a predator to report to the Department of Highway Safety and Motor Vehicles. Other than an update to the Comment section, the only change is for consistency with the statute and involves changing “driver’s license” to “driver license” in element 3a. The proposal was published in the *Bar News* on March 1, 2015. No comments were received. Upon post-publication review, the Committee voted unanimously to send the proposal to the Court.

PROPOSAL #15

This instruction covers s. 775.21(6)(g), Fla. Stat., which is failure of predators to report name and address changes. The only amendment the Committee thought necessary was to add a note in the Comment section that informs everyone that a special instruction is necessary if the allegation involves the predator not reporting certain things to the sheriff’s office within 48 hours of the change, even if the predator was unable to secure or update a driver license or identification card. The proposal was published in the *Bar News* on March 1, 2015. One comment was received from FACDL suggesting that the Committee add a cite in the Comment section to *Eveland v. State*. (see Appendix B.) Upon post-publication review, the Committee voted unanimously not to cite to the *Eveland* case. The Committee’s comment was not added as a result of the *Eveland* case. Instead the new comment was added to point out that s. 775.21(6)(g), Fla. Stat., has a provision pertaining to those who were unable to obtain a driver’s license or identification card, for whatever reason.

PROPOSAL #16

This instruction covers s. 775.21(10)(a), Fla. Stat. The only change proposed, which was required by new legislation, is to create two options within element #3. Newly-labelled element #3a would cover knowingly failing to respond to address verification correspondence. Newly-created element #3b would cover a predator who knowingly provided false registration information by act or omission. The Committee also added a note in the comment section stating that there are other penalties within s. 775.021(10)(a), Fla. Stat., that would require a special instruction. The proposal was published in the *Bar News* on March 1, 2015. No comments were received. Upon post-publication review, the Committee voted unanimously to send the proposal to the Court.

PROPOSAL #17

Instruction 11.15(i) covers s. 775.21(6)(i), Fla. Stat. The Committee is proposing changes to make the instruction consistent with the latest version of that statute. Specifically, in the title and in elements #3a and #3b, the word “country” is added as an option. Then, element #3a has two subsections: Element #3.a.1. covers a predator’s failure to timely report to the sheriff a planned move within the country. Newly-created element #3.a.2. covers a predator’s failure to timely report to the sheriff a planned moved outside of the United States. No other changes were necessary other than updating the Comment section. The proposal was published in the *Bar News* on March 1, 2015. No comments were received. Upon post-publication review, the Committee voted unanimously to send the proposal to the Court.

PROPOSAL #18

Instruction 11.15(l) covers definitions in the sexual predator statute. The proposed changes would make this instruction consistent with the latest version of the statute. Specifically, the terms “internet identifier” and “vehicles owned” were added consistent with the statutes. The proposal was published in the *Bar News* on March 1, 2015. No comments were received. Upon post-publication review, the Committee voted unanimously to send the proposal to the Court.

PROPOSAL #19

In 2014, the legislature created a new provision in s. 775.21(6)(g), Fla. Stat., for predators who are transient residents to report to the sheriff every 30 days. There is no existing standard instruction for this new possibility and so the committee created a new instruction labelled as Instruction 11.15(m). The Committee concluded the crime had three elements. Element #1 was that the defendant was a sexual predator (either by proof of the requisite conviction or by

stipulation). Element #2 is that the defendant established a transient residence in a certain county. And element #3 covers the knowing failure to report to the appropriate sheriff every 30 days. The rest of the proposed instruction having to do with failing to report a physical address and the affirmative defense of misinformation by the sheriff's office is copied from the other failure to register instructions. No lesser-included offenses were identified. The proposal was published in the *Bar News* on March 1, 2015. No comments were received. Upon post-publication review, the Committee voted unanimously to send the proposal to the Court.

CONCLUSION

The Standard Jury Instructions in Criminal Cases Committee respectfully requests the Court authorize for use the proposals for the jury instructions in Appendix A.

Respectfully submitted this 23rd day of
June, 2015.

s/ Jerri L. Collins

The Honorable Jerri L. Collins
Chair, Supreme Court Committee on
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CERTIFICATE OF SERVICE AND FONT COMPLIANCE

I hereby certify that a copy of this report and the appendices has been sent by e-mail to Attorney Luke Newman at luke@lukenewmanlaw.com and to Attorney William R. Ponall at ponallb@criminaldefenselaw.com this 23rd day of June, 2015.

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).

s/ Jerri L. Collins
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