

IN THE SUPREME COURT OF FLORIDA

IN RE: STANDARD JURY  
INSTRUCTIONS IN CRIMINAL CASES  
REPORT 2017-12

CASE NO.: SC17-

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	FAILURE BY A SEXUAL OFFENDER TO COMPLY WITH REGISTRATION REQUIREMENTS (Initially Register, Report, or Provide Registration Items)
PROPOSAL 2	11.14(b)	FAILURE BY A SEXUAL OFFENDER TO COMPLY WITH REGISTRATION REQUIREMENTS (Failure to Comply with Registration [or] [a Change] of [Employment][Enrollment] [Volunteering] at an Institution of Higher Learning)
PROPOSAL 3	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 4	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 5	11.14(h)	SEXUAL OFFENDER DEFINITIONS
PROPOSAL 6	11.15(b)	FAILURE BY A SEXUAL PREDATOR TO COMPLY WITH REGISTRATION REQUIREMENTS (Failure to Provide Required Information)

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<b>PROPOSAL 7</b>	<b>11.15(c)</b>	<b>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)</b>
<b>PROPOSAL 8</b>	<b>11.15(d)</b>	<b>FAILURE BY A SEXUAL PREDATOR TO COMPLY WITH REGISTRATION REQUIREMENTS (Failure to Comply with Registration [or] [a Change]of [Enrollment] [Employment] [Volunteering] at an Institution of Higher Learning)</b>
<b>PROPOSAL 9</b>	<b>11.15(e)</b>	<b>FAILURE BY A SEXUAL PREDATOR TO COMPLY WITH REGISTRATION REQUIREMENTS (Failure to Report to Department of Highway Safety and Motor Vehicles)</b>
<b>PROPOSAL 10</b>	<b>11.15(h)</b>	<b>FAILURE BY A SEXUAL PREDATOR TO COMPLY WITH REGISTRATION REQUIREMENTS</b>
<b>PROPOSAL 11</b>	<b>11.15(i)</b>	<b>FAILURE BY A SEXUAL PREDATOR TO COMPLY WITH REGISTRATION REQUIREMENTS (Failure to Report Intent to Move to Another State, Jurisdiction, or Country)</b>
<b>PROPOSAL 12</b>	<b>11.15(l)</b>	<b>SEXUAL PREDATOR DEFINITIONS</b>

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. The proposals were published in the *Bar News* on October 1, 2017. No comments were received.

#### **INITIAL NOTE**

Changes made by the Legislature in Chapter 2016-104, Laws of Florida, and Chapter 2017-170, Laws of Florida, required a small number of amendments to the sexual offender and sexual predator failure to register instructions. The changes discussed below make the instructions consistent with the latest versions of the relevant statutes.

### **PROPOSAL #1**

Instruction 11.14 covers § 943.0435(2), Fla. Stat., which requires a sexual offender to initially register and to provide specified information at the sheriff's office. The instruction is designed to cover the initial registration process. However, § 943.0435(2)(a)2., Fla. Stat., pertains to changes in information that was initially provided. Therefore, the Committee added a note in the Comment section that informs everyone a special instruction may be needed if the sexual offender initially reported but then failed to report a change in certain of the information required to be provided. As mentioned above, no comments were received from publication. The final vote was unanimous to file the proposal with the Court.

### **PROPOSAL #2**

Instruction 11.14(b) covers § 943.0435(2)(b)2., Fla. Stat., which pertains to a sexual offender who is employed or enrolled at an institution of higher learning. In 2016, the Legislature deleted the option of "carrying on a vocation" within § 943.0435(2)(b)2., Fla. Stat., and also allowed the offender the option of reporting information through the Department of Law Enforcement's on-line system. Also, if the offender is in the custody of either the Department of Corrections ("DOC") or the Department of Juvenile Justice ("DJJ"), the offender can report changes directly to those agencies. These new options can be found in § 943.0435(4)(e)2., Fla. Stat., which is why the Committee added that statute number at the top of the instruction.

To make the instruction consistent with the statutes, the Committee deleted the words "Carrying on a Vocation" within the title. Also, because this instruction covers both failure to initially register and failure to report changes, the Committee added "[or] [a Change]" in the title of the instruction. In the elements section, the Committee made it clear that element 3a is designed for initial registration and element 3b is designed for changes to the initial information that was provided. Element 3a covers the situation when an offender who was enrolled or employed at an institution of higher learning did not register with the sheriff. Element 3b covers the situation when an offender who was enrolled or employed at an institution of higher learning did not report changes in required information to the appropriate agency (either FDLE, sheriff, DOC, or DJJ). Because it is possible that someone at DOC or DJJ misinformed a sexual offender, those two agencies are added to the affirmative defense section about misinformation. No comments were received from publication. Upon post-publication review, the Committee voted unanimously to send the proposal to the Court.

### **PROPOSAL #3**

Instruction 11.14(e) covers s. 943.0435(7), Fla. Stat., which pertains to failure to report a change of residence to another state or country. In 2016, the Legislature amended that part of the statute to require an offender to report his plans as soon as possible if he did not know of his travel 21 days before departure. The 2016 Legislature also added new information (dates of travel, flight number, airport or cruise port, means of travel) that had to be reported for international travel. To make the instruction consistent with the statute, the Committee reworded element #4.b. and added an element #4.d. for those moving out of the country. No comments were received from publication. Upon post-publication review, the Committee voted unanimously to send the proposal to the Court.

### **PROPOSAL #4**

Instruction 11.14(g) covers § 943.0435(14), Fla. Stat. The Committee proposes only two minor changes for this instruction. First, because the instruction covers both § 943.0435(14)(a), Fla. Stat., and § 943.0435(14)(b), Fla. Stat., the Committee added “(a)-(b)” to the statute number at the top of the instruction. Second, in 2016, the Legislature added a number 11 to the list in § 943.0435(14)(b), Fla. Stat. As a result, element #1.c. needed to be amended from “(14)(b)10.” to “(14)(b)11.” No comments were received from publication. Upon post-publication review, the Committee voted unanimously to send the proposal to the Court.

### **PROPOSAL #5**

Instruction 11.14(h) covers definitions that can be found in the sexual offender statute, § 943.0435(1), Fla. Stat. Most of the changes were made by the 2016 Legislature but the 2017 Legislature changed the term “internet identifier.” The proposed changes make this instruction consistent with the latest version of the statute. No comments were received from publication. Upon post-publication review, the Committee voted unanimously to send the proposal to the Court.

### **PROPOSAL #6**

Instruction 11.15(b) covers § 775.21(6)(a)1., Fla. Stat., which pertains to a) initial registration for sexual predators at the sheriff’s office and b) predators reporting to the sheriff’s office a change in vehicles owned. The Committee proposes only one minor change for this instruction. Specifically, in 2017, the Legislature changed the number of the section pertaining to reporting a change in vehicles owned from § 775.21(6)(a)1.c., Fla. Stat., to § 775.21(6)(a)1.d, Fla. Stat. Accordingly, the italicized heading above element #3.b. is amended to reflect the

correct citation. No comments were received from publication. Upon post-publication review, the Committee voted unanimously to send the proposal to the Court.

### **PROPOSAL #7**

Instruction 11.15(c) is for sexual predators who live in a motor vehicle, trailer, mobile home, or manufactured home. In 2017, the Legislature changed the number of this subsection from § 775.21(6)(a)1.a., Fla. Stat., to § 775.21(6)(a)1.b., Fla. Stat. Therefore, the only change proposed is to insert the correct statutory cite at the top of the instruction. No comments were received from publication. Upon post-publication review, the Committee voted unanimously to send the proposal to the Court.

### **PROPOSAL #8**

Instruction 11.15(d) covers sexual predators who are enrolled or employed at an institution of higher learning. In 2016, the Legislature deleted the option of “carrying on a vocation” within the relevant statute and also allowed the offender the option of reporting information through the Department of Law Enforcement’s on-line system. Also, if the offender is in the custody of either the Department of Corrections (“DOC”) or the Department of Juvenile Justice (“DJJ”), the offender can report changes directly to those agencies. These new options can be found in § 775.21(6)(g)5.b., Fla. Stat., which is why the Committee added that statute number at the top of the instruction.

To make the instruction consistent with the statutes, the Committee deleted the words “Carrying on a Vocation” within the title. Also, because this instruction covers both failure to initially register and failure to report changes, the Committee added “[or] [a Change]” in the title of the instruction. In 2017, the Legislature changed the numbering of this subsection from § 775.21(6)(a)1.b., Fla. Stat., to § 775.21(6)(a)1.c., Fla. Stat., which is why the Committee changed the statute number at the top of the page. In the elements section, the Committee made it clear that element #3.a. is designed for initial registration and element #3.b. is designed for changes to the initial information that was provided. Element #3.a. covers the situation when a predator who was enrolled or employed at an institution of higher learning did not register with the sheriff. Element #3.b. covers the situation when a predator who was enrolled or employed at an institution of higher learning did not report changes in required information to the appropriate agency (either FDLE, sheriff, DOC, or DJJ). Because it is possible that someone at DOC or DJJ misinformed a sexual offender, those agencies are added to the affirmative defense section about misinformation. No comments were received from publication. Upon

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

### **PROPOSAL #9**

This instruction covers § 775.21(6)(f), Fla. Stat., which pertains to the failure of a non-incarcerated sexual predator to report or the failure to report certain information to the Department of Highway Safety and Motor Vehicles (“DHSMV”). There are a number of requirements within § 775.21(6)(f), Fla. Stat., for a sexual predator to comply with, and the Committee thought it would be clearer to separate each requirement within element #3. For example, element #3.a. covers the situation where the predator did not report to DHSMV within 48 hours to present proof that he had registered. Element #3.b. covers the situation where the predator did report to DHSMV, but he did not get or renew a driver’s license or identification card. Element #3.c. covers the situation where the predator reported to DHSMV, but he did not report that he was a sexual predator. Element #3.d. covers the situation where the predator did report to DHSMV, but he failed to report something that was required. Element #3.e. covers the situation where the predator reported to DHSMV, but he did not provide items necessary to confirm his identity. Element #3.f. covers the situation where the predator lived in a motor vehicle, trailer, mobile home, manufactured home, or vessel and did report to DHSMV, but did not report necessary information. In 2016, the Legislature added an exception for cases where the predator had a driver’s license or identification card that complied with § 322.141(3), Fla. Stat. or that had been updated under § 944.607, Fla. Stat. To alert everyone to that exception within the statute, the Committee added a new paragraph in the Comment section. No comments were received from publication. Upon post-publication review, the Committee voted unanimously to send the proposal to the Court.

### **PROPOSAL #10**

This instruction covers § 775.21(10)(a), Fla. Stat., which is labelled as the “Penalties” section of the sexual predator statute. Element #3 is proposed to contain three options: a) failing to respond to address verification correspondence from FDLE within 3 weeks; b) knowingly providing false registration information by act or omission; and a new catch-all provision of c) knowingly failing, by act or omission, to provide what is alleged and required. Because there would be three options within element #3 and because two of these options do not pertain to address verification correspondence, the Committee proposes to delete the “address verification correspondence” language from the title of the instruction. Because of the new catch-all provision, the Committee also deleted the sentence in the Comment section about other penalties that may require a special instruction.

No comments were received from publication. Upon post-publication review, the Committee voted unanimously to send the proposal to the Court.

### **PROPOSAL #11**

Instruction 11.15(i) covers s. 775.21(6)(i), Fla. Stat., which pertains to a sexual predator's failure to report an intent to move to another state or country. In 2016, the Legislature amended that part of the statute to require an offender to report his plans as soon as possible if he did not know of his travel 21 days before departure. The 2016 Legislature also added new information (dates of travel, flight number, airport or cruise port, means of travel) that had to be reported for international travel. To make the instruction consistent with the statute, the Committee reworded element #3.a.2. and also added an element #3.c. for those intending to travel internationally. No comments were received from publication. Upon post-publication review, the Committee voted unanimously to send the proposal to the Court.

### **PROPOSAL #12**

Instruction 11.15(l) covers the definitions in the sexual predator statute. Most of the changes were made by the 2016 Legislature, but the term "internet identifier" was changed by the 2017 Legislature. The proposed changes make this instruction consistent with the latest version of the statute (definitions are in § 775.21(2), Fla. Stat., and criteria to be a sexual predator are in § 775.21(4), Fla. Stat.). No comments were received from publication. 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 in Appendix A.

Respectfully submitted this 27th day of  
December, 2017.

s/ Judge F. Rand Wallis  
The Honorable F. Rand Wallis  
Chair, Supreme Court Committee on  
Standard Jury Instructions in Criminal Cases  
Fifth District Court of Appeal  
300 South Beach Street  
Daytona Beach, Florida 32114  
Florida Bar Number: 980821

WallisR@flcourts.org

**CERTIFICATE OF FONT COMPLIANCE**

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/ Judge F. Rand Wallis  
The Honorable F. Rand Wallis  
Chair, Supreme Court Committee on  
Standard Jury Instructions in Criminal Cases  
Fifth District Court of Appeal  
300 South Beach Street  
Daytona Beach, Florida 32114  
Florida Bar Number: 980821  
WallisR@flcourts.org