

The Florida Senate

**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: SB 892

INTRODUCER: Senator Martin

SUBJECT: Habitual Felony Offenders, Habitual Violent Felony Offenders, Three-time Violent Felony Offenders, and Violent Career Criminals

DATE: January 16, 2025 REVISED: \_\_\_\_\_

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Vaughan	Stokes	CJ	<b>Favorable</b>
2. _____	_____	ACJ	_____
3. _____	_____	FP	_____

**I. Summary:**

SB 892 amends s. 775.084, F.S., to revise provisions governing enhanced sentencing for repeat offenders. The bill revises definitions for habitual felony offenders (HFO), habitual violent felony offenders (HVFO), three-time violent felony offenders (TTVFO), and violent career criminals (VCC) to remove language relating to evidentiary standards and appeals, and to revise time requirements and definitions.

The bill updates procedures that the courts must follow for HFO, HVFO, TTVFO and VCC hearings to:

- Revise notice requirements by specifying that written notice must be served to defendants prior to the commencement of a trial or entry of a plea.
- Remove the evidentiary standards that the findings required as the basis for the enhancement are found by a preponderance of the evidence and are appealable.

The definitions are revised to remove language that specified an offense for which the offender has been pardoned or was set aside in a postconviction proceeding may not act as a qualified offense for enhancement. However, the bill specifies that a conviction for which the offender has been pardoned or which has been set aside is not a conviction for purposes of the enhancement for HFO, HVFO, TTVFO, and VCC offenders.

The bill may have a negative indeterminate impact on the Department of Corrections. *See Section V. Fiscal Impact Statement.*

The bill takes effect July 1, 2026.

## II. Present Situation:

### Sentence Enhancements

Florida imposes sentence enhancements on defendants classified as habitual felony offenders, habitual violent felony offenders, three-time violent felony offenders, or violent career criminals, based on prior convictions and specific criteria. Courts have upheld these enhancements as constitutional when applied within statutory limits, as seen in *McDonald v State*,<sup>1</sup> where the court affirmed the application of habitual offender sentencing.

#### *Habitual Felony Offender*

The Habitual Felony Offender (HFO) statute targets repeat felony offenders who demonstrate a pattern of recidivism, allowing courts to impose longer sentences. Under current law, a HFO is a defendant for whom the court may impose an extended term of imprisonment. The court may classify a person as a Habitual Felony Offender if it finds that:<sup>2</sup>

- The defendant has two or more felony convictions (or other qualified offenses)<sup>3</sup> in this state.
- The felony for which the defendant is to be sentenced was committed:
  - While the defendant was serving a prison sentence or other sentence, or court-ordered or lawfully imposed supervision that is imposed as a result of a prior conviction for a felony or other qualified offense; or
  - Within 5 years of the date of the conviction of the defendant's last prior felony or other qualified offense, or within 5 years of the defendant's release from a prison sentence, probation, community control, control release, conditional release, parole or court-ordered or lawfully imposed supervision or other sentence that is imposed as a result of a prior conviction for a felony or other qualified offense, whichever is later.
- The felony for which the defendant is to be sentenced, and one of the two prior felony convictions, is not a violation of s. 893.13, F.S., relating to the purchase or the possession of a controlled substance.
- The defendant has not received a pardon for any felony or other qualified offense that is necessary for habitual felony offender designation.
- The conviction of a felony or other qualified offense necessary has not been set aside in any postconviction proceeding.<sup>4</sup>

If the State pursues the HFO designation and the court finds the criteria met, the court may impose an extended term of imprisonment and may sentence the habitual felony offender as follows:<sup>5</sup>

- A life felony or a felony of the first degree, for life.
- A felony of the second degree, for a term of years not exceeding 30.
- A felony of the third degree, for a term of years not exceeding 10.

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<sup>1</sup> *McDonald v. State*, 957 So. 2d 605 (Fla. 2007).

<sup>2</sup> Section 775.084(1)(a), F.S.

<sup>3</sup> Section 775.084(1)(a), F.S., provides that any felony offense qualifies except violations of s. 893.13, F.S., relating to the purchase or possession of a controlled substance, which are expressly excluded.

<sup>4</sup> Section 775.084, F.S.

<sup>5</sup> Section 775.084(4)(a), F.S.

The court retains discretion to decline enhanced sentencing if it determines such punishment is not necessary for the protection of the public. However, the courts must provide written reasons for doing so, and these reasons must be reported monthly to the Office of Economic and Demographic Research (EDR).<sup>6</sup>

### **Habitual Violent Felony Offender**

Under current law, a defendant qualifies as a habitual violent felony offender (HVCO) if the defendant has previously been convicted of a felony or an attempt or conspiracy to commit a felony and one or more of such convictions was for:<sup>7</sup>

- Arson;
- Sexual battery;
- Robbery;
- Kidnapping;
- Aggravated child abuse;
- Aggravated abuse of an elderly person or disabled adult;
- Aggravated assault with a deadly weapon;
- Murder;
- Manslaughter;
- Aggravated manslaughter of an elderly person or disabled adult;
- Aggravated manslaughter of a child;
- Unlawful throwing, placing, or discharging of a destructive device or bomb;
- Armed burglary;
- Aggravated battery; or
- Aggravated stalking.

To be sentenced as a HVCO the felony for which the defendant is to be sentenced must have been committed:<sup>8</sup>

- While the defendant was serving a prison sentence or other sentence, or court-ordered for a prior conviction for an enumerated felony; or
- Within 5 years of the date of the conviction of the last prior enumerated felony, or within 5 years of the defendant's release from a prison sentence, probation, community control, control release, conditional release, parole, or court-ordered or lawfully imposed supervision or other sentence that is imposed as a result of a prior conviction for an enumerated felony, whichever is later.<sup>9</sup>
- The defendant must not have received a pardon on the ground of innocence or have had a conviction set aside for any crime that is necessary to be convicted of a HVCO.<sup>10</sup>
- A conviction of a crime necessary has not been set aside in any postconviction proceeding.<sup>11</sup>

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<sup>6</sup> Section 775.084(3)(a), F.S.

<sup>7</sup> Section 775.084(1)(b), F.S.

<sup>8</sup> Section 775.084(1)(b), F.S.

<sup>9</sup> Section 775.084(1)(b), F.S.

<sup>10</sup>*Id.*

<sup>11</sup> Section 775.084(1)(b), F.S.

If the State pursues the HVFO designation and the court finds the criteria met, the court may impose an extended term of imprisonment as follows:<sup>12</sup>

- A life felony or a felony of the first degree, for life, and such offender is not be eligible for release for 15 years.
- A felony of the second degree, for a term of years not exceeding 30, and such offender is not be eligible for release for 10 years.
- A felony of the third degree, for a term of years not exceeding 10, and such offender is not be eligible for release for 5 years.

The court retains discretion to decline enhanced sentencing if it determines such punishment is not necessary for the protection of the public but must provide written reasons for doing so. These reasons must be reported monthly to the EDR.<sup>13</sup>

### **Three-time Violent Felony Offender**

A defendant qualifies as a three-time violent felony offender (TTVFO) if:

- The defendant has two or more prior adult convictions for committing or attempting to commit any of the following enumerated violent felonies:<sup>14</sup>
  - Arson;
  - Sexual battery;
  - Robbery;
  - Kidnapping;
  - Aggravated child abuse;
  - Aggravated abuse of an elderly person or disabled adult;
  - Aggravated assault with a deadly weapon;
  - Murder;
  - Manslaughter (including aggravated manslaughter of an elderly person, disabled adult, or child);
  - Unlawful throwing, placing, or discharging of a destructive device or bomb;
  - Armed burglary;
  - Aggravated battery;
  - Aggravated stalking;
  - Home invasion/robbery;
  - Carjacking; or
  - Comparable offenses from other jurisdictions (substantially similar elements).

To qualify, the felony for which the defendant is to be sentenced must also be one of the above enumerated violent felonies and it must be committed under the following circumstances:

- While the defendant was serving a prison sentence or another sentence imposed as a result of a prior conviction for any offense; or
- Within 5 years after the date of the conviction of the last prior offense enumerated in sub-subparagraphs; or

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<sup>12</sup> Section 775.084(4)(b), F.S.

<sup>13</sup> Section 775.084, F.S.

<sup>14</sup> Section 775.084(4)(c), F.S.

- Within 5 years after the defendant's release from a prison sentence, probation, community control, or other sentence imposed as a result of a prior conviction for any offense, whichever is later.
- The defendant has not received a pardon on the ground of innocence for any crime relevant to this section.
- No conviction of a crime relevant to this paragraph has been set aside in any postconviction proceeding.<sup>15</sup>

If the State pursues the TTVFO designation and the court finds the criteria met, the court must impose a mandatory minimum term of imprisonment is provided as follows:

- A felony punishable by life, to a term of imprisonment for life;
- A felony of the first degree, to a term of imprisonment of 30 years;
- A felony of the second degree, to a term of imprisonment of 15 years; or
- A felony of the third degree, to a term of imprisonment of 5 years.<sup>16</sup>

### **Violent Career Criminal**

Violent career criminal (VCC) designation targets offenders with a demonstrated pattern of violent criminal behavior and prior incarceration, aiming to incapacitate individuals deemed high-risk for recidivism.<sup>17</sup> A violent career criminal designation applies to defendants who meet all of the following criteria:

- Has three or more prior adult convictions for qualifying offenses, which include:
  - Any forcible felony<sup>18</sup>
  - Aggravated stalking<sup>19</sup>
  - Aggravated child abuse<sup>20</sup>
  - Aggravated abuse of an elderly person or disabled adult<sup>21</sup>
  - Lewd or lascivious battery, molestation, conduct, or exhibition<sup>22</sup>
  - Escape<sup>23</sup>
  - Any felony violation of ch. 790, F.S., involving the use or possession of a firearm.
- Has been incarcerated in a state or federal prison.
- The current felony offense must be one of the enumerated crimes and must be committed:
  - While serving a sentence or supervision for a prior enumerated felony, or
  - Within 5 years of the last prior conviction or release from incarceration/supervision for an enumerated felony.

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<sup>15</sup> Section 775.084(1)(c), F.S.

<sup>16</sup> Section 775.084(4)(c), F.S.

<sup>17</sup> Section 775.084(4)(d), F.S.

<sup>18</sup> Section 776.08, F.S., "Forcible felony" means treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual.

<sup>19</sup> Section 784.048(3) and (4), F.S.

<sup>20</sup> Section 827.03(2)(a), F.S.

<sup>21</sup> Section 825.102(2), F.S.

<sup>22</sup> Sections 800.04 or 847.0135(5), F.S.

<sup>23</sup> Section 944.40, F.S.

Convictions that have been pardoned or set aside do not count toward qualification.

Article IV, Section 8 of the Florida Constitution establishes the Governor's authority to grant executive clemency. Except in cases of treason and impeachment resulting in conviction, the Governor may, by executive order filed with the custodian of state records, suspend collection of fines and forfeitures, grant reprieves not exceeding 60 days, and, with the approval of two members of the Cabinet, grant full or conditional pardons, restore civil rights, commute punishment, and remit fines and forfeitures for offenses.<sup>24</sup>

### **III. Effect of Proposed Changes:**

The bill amends s. 775.084, F.S., to revise provisions governing enhanced sentencing for repeat offenders. The bill revises definitions for habitual felony offenders (HFO), habitual violent felony offenders (HVFO), three-time violent felony offenders (TTVFO), and violent career criminals (VCC) to remove language relating to evidentiary standards and appeals, and to revise time requirements and definitions.

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### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Article VII, s. 18, of the State Constitution.

#### **B. Public Records/Open Meetings Issues:**

None.

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<sup>24</sup> Section 940.01, F.S.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

None.

**V. Fiscal Impact Statement:**

**A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The Legislature's Office of Economic and Demographic Research (EDR) and the Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation, has determined that the bill may have a negative indeterminate impact on prison beds on the Department of Corrections (DOC). The EDR provides the following additional information regarding its estimate:

- Per DOC, in FY 24-25, there were 1,241 admissions to prison for these offender types, with 1,020 Habitual Felony Offenders, 237 Habitual Violent Felony Offenders, 23 Violent Career Criminals, and one Three-time Felony Offender. The magnitude of the impact on the prison population from the changes to the appeals process is not known, though it will likely have a negative effect on the population.<sup>25</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 775.084

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<sup>25</sup> Office of Economic and Demographic Research, *SB 892- Habitual Felony Offenders, Habitual Violent Felony Offenders, Three-time Violent Felony Offenders, and Violent Career Criminals*, (on file with the Senate Committee on Criminal Justice).

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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