

3.17 HABITUAL FELONY OFFENDER* FINDINGS

§ 775.084, Fla. Stat.

You have found (defendant) **guilty of** (name(s) of crime(s)). **You must now determine whether the State proved the following four elements beyond a reasonable doubt.**

- 1. The defendant was previously convicted of [any combination of] [at least two felonies in Florida] [or other] [qualified offenses].**

Give at least one of the following as applicable.

- 2. The** (name(s) of crime(s)) **for which you just rendered a verdict of guilty was committed**
 - a. while the defendant was serving a prison sentence [or other sentence] that was imposed as a result of a prior felony conviction [or other qualified offense].**
 - b. while the defendant was serving a [court-ordered] [or lawfully imposed supervision] that was imposed as a result of a prior felony conviction [or other qualified offense].**
 - c. within 5 years of the date of the conviction of the defendant's last prior felony [or other qualified offense].**
 - d. within 5 years of the defendant's release from [a prison sentence] [probation] [community control] [control release] [conditional release] [parole] [court-ordered or lawfully imposed supervision or other sentence] that was imposed as a result of a prior felony conviction [or other qualified offense].**
- 3. The** (name(s) of crime(s)) **for which you rendered a verdict of guilty and at least one of the two prior felony convictions in element #1 are not for Purchase of a Controlled Substance or Possession of a Controlled Substance, in violation of § 893.13, Florida Statutes.**
- 4. The convictions in element #1 were sentenced separately from each other and separately from the** (name(s) of crime(s)) **for which you just found the defendant guilty.**

Give if applicable.

The Court instructs you that (names of felonies) **are felonies.**

“Qualified offense” means any crime, substantially similar in elements and penalties to a crime in Florida, which is in violation of a law of any other jurisdiction, whether that of another state, the District of Columbia, the United States or any possession or territory thereof, or any foreign jurisdiction, that

was punishable under the law of such jurisdiction at the time of its commission by the defendant by death or imprisonment exceeding 1 year.

Give if applicable.

The placing of a person on probation or community control without an adjudication of guilt qualifies as a prior conviction.

Comments

As of January 2025, the effect of *Erlinger v. United States*, 602 U.S. 821 (2024) on Florida's enhanced sentencing schemes was not fully developed. In an abundance of caution, the Committee on Standard Jury Instructions in Criminal Cases assumed the State must prove all the relevant criteria in § 775.084, Fla. Stat. to the jury, except for pardons and postconviction set asides which are discussed below.

*If the phrase "Habitual Felony Offender" is deemed too prejudicial, the court could use another title such as "Further Findings."

It is an affirmative defense that the defendant was pardoned for a prior felony or other qualified offense or that a prior conviction had been set aside in a postconviction proceeding. *See State v. Rucker*, 613 So. 2d 460 (Fla. 1993). A special instruction will be required if the defendant satisfies his or her burden of production on an affirmative defense. As of January 2025, the courts had not determined which party had the burden of persuasion of proving or disproving the affirmative defense or what that burden of persuasion is (preponderance of the evidence, clear and convincing evidence, or beyond a reasonable doubt).

If the State proves to the jury that a defendant qualifies as a HFO, the judge can still find that sentencing under the habitual felony offender statute is not necessary for the protection of the public. *See* § 775.084, Fla. Stat.

This instruction was adopted on February 21, 2025.