

3.18 HABITUAL VIOLENT 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 three elements beyond a reasonable doubt.**

- 1. The defendant was previously convicted of [an attempt to commit] [a conspiracy to commit] (insert the appropriate felony listed in § 775.084(1)(b)1., Fla. Stat.).**

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 the conviction for the crime in element #1.**
 - b. while the defendant was serving a [court-ordered] [or lawfully imposed supervision] that was imposed as a result of the conviction for the crime in element #1.**
 - c. within 5 years of the date of the conviction for the crime in element #1.**
 - 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 the conviction for the crime in element #1.**
- 3. The conviction for the crime in element #1 was sentenced separately from the (name(s) of crime(s)) for which you just found the defendant guilty.**

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.

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 phrase “Habitual Violent Felony Offender” is deemed too prejudicial, the court could use another title.

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

This instruction was adopted on February 21, 2025.