

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Date: March 9, 1998 Revised: _____

Subject: Felony Offenders

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Barrow</u>	<u>Miller</u>	<u>CJ</u>	<u>Favorable</u>
2.	_____	_____	<u>WM</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

Senate Bill 780 clarifies that for purposes of sentencing under the habitual felony offender, habitual violent felony offender, and violent career criminal statutes, if an offender is placed on community control without an adjudication of guilt, such judicial status would be treated as a prior conviction if the subsequent offense for which the offender is being sentenced was committed while on community control.

This bill substantially amends the following section of the Florida Statutes: 775.084.

II. Present Situation:

Pursuant to s. 775.084 (1) (a), F.S., "habitual felony offender" means a defendant for whom the court may impose an extended term of imprisonment, as provided in paragraph (4)(a), if it finds that:

1. The defendant has previously been convicted of any combination of two or more felonies in this state or other qualified offenses.
2. The felony for which the defendant is to be sentenced was committed:
 - a. While the defendant was serving a prison sentence or other commitment imposed as a result of a prior conviction for a felony or other qualified offense; or
 - b. 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 or other commitment imposed as a result of a prior conviction for a felony or other qualified offense, whichever is later.

3. 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.
4. The defendant has not received a pardon for any felony or other qualified offense that is necessary for the operation of this paragraph.
5. A conviction of a felony or other qualified offense necessary to the operation of this paragraph has not been set aside in any postconviction proceeding.

Pursuant to s. 775.084 (1) (b), F.S., "habitual violent felony offender" means a defendant for whom the court may impose an extended term of imprisonment, as provided in paragraph (4) (b), if the court finds that:

1. 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:
 - a. Arson;
 - b. Sexual battery;
 - c. Robbery;
 - d. Kidnapping;
 - e. Aggravated child abuse;
 - f. Aggravated abuse of an elderly person or disabled adult;
 - g. Aggravated assault;
 - h. Murder;
 - I. Manslaughter;
 - j. Aggravated manslaughter of an elderly person or disabled adult;
 - k. Aggravated manslaughter of a child;
 - l. Unlawful throwing, placing, or discharging of a destructive device or bomb;

-
- m. Armed burglary;
 - n. Aggravated battery; or
 - o. Aggravated stalking.
2. The felony for which the defendant is to be sentenced was committed:
 - a. While the defendant was serving a prison sentence or other commitment imposed as a result of a prior conviction for an enumerated felony; or
 - b. 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 or other commitment imposed as a result of a prior conviction for an enumerated felony, whichever is later.
 3. The defendant has not received a pardon on the ground of innocence for any crime that is utilized in meeting the criteria for the habitual violent felony offender statute.
 4. Additionally, a conviction of a crime necessary to the operation of the violent felony offender statute has not been set aside in any postconviction proceeding.

The court is required to hold a separate proceeding to determine if the defendant is a habitual felony offender or a habitual violent felony offender. Paragraph (3) (a) of s. 775.084, F.S., sets out the procedure that must be followed in order for the court to determine that an offender is a habitual felony or violent felony offender and to sentence the offender as such.

Pursuant to s. 775.084 (4) (a), F.S., the court may sentence a habitual felony offender as follows:

1. In the case of a life felony or a felony of the first degree, for life.
2. In the case of a felony of the second degree, for a term of years not exceeding 30.
3. In the case of a felony of the third degree, for a term of years not exceeding 10.

Pursuant to s. 775.084 (4) (b), F.S., the court may sentence a habitual violent felony offender as follows:

1. In the case of a life felony or a felony of the first degree, for life, and such offender shall not be eligible for release for 15 years.
2. In the case of a felony of the second degree, for a term of years not exceeding 30, and such offender shall not be eligible for release for 10 years.

3. In the case of a felony of the third degree, for a term of years not exceeding 10, and such offender shall not be eligible for release for 5 years.

However, if the court finds that it is not necessary for the protection of the public to sentence a defendant who meets the criteria for sentencing as a habitual felony offender or a habitual violent felony offender with respect to an offense committed on or after October 1, 1995, a sentence can be imposed by the court without regard to the habitual felony offender or the habitual violent felony offender statute. *See*, s. 775.084 (4) (d), F.S.

Pursuant to s. 775.084 (1) (c), F.S., "violent career criminal" means a defendant for whom the court must impose imprisonment pursuant to paragraph (4) (c), if the court finds that:

1. The defendant has previously been convicted as an adult three or more times for an offense in this state or other qualified offense that is:
 - a. Any forcible felony, as described in s. 776.08, F.S.;
 - b. Aggravated stalking, as described in s. 784.048 (3) and (4), F.S.;
 - c. Aggravated child abuse, as described in s. 827.03 (2), F.S.;
 - d. Aggravated abuse of an elderly person or disabled adult, as described in s. 825.102 (2), F.S.;
 - e. Lewd, lascivious, or indecent conduct, as described in s. 800.04, F.S.;
 - f. Escape, as described in s. 944.40, F.S.; or
 - g. A felony violation of chapter 790 involving the use or possession of a firearm.
2. The defendant has been incarcerated in a state prison or a federal prison.
3. The primary felony offense for which the defendant is to be sentenced is a felony enumerated in subparagraph 1. and was committed on or after October 1, 1995, and:
 - a. While the defendant was serving a prison sentence or other commitment imposed as a result of a prior conviction for an enumerated felony; or
 - b. Within 5 years after the conviction of the last prior enumerated felony, or within 5 years after the defendant's release from a prison sentence or other commitment imposed as a result of a prior conviction for an enumerated felony, whichever is later.

4. The defendant has not received a pardon for any felony or other qualified offense that is necessary for the operation of the violent career criminal statute.
5. Additionally, a conviction of a felony or other qualified offense necessary to the operation of the violent career criminal statute has not been set aside in any postconviction proceeding.

"Qualified offense" means any offense, substantially similar in elements and penalties to an offense in this state, 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. s. 775.084 (1) (d), F.S. The placing of a person on probation without an adjudication of guilt is treated as a prior conviction if the subsequent offense for which the person is to be sentenced was committed during such probationary period.

However, if the court finds that it is not necessary for the protection of the public to sentence a defendant who meets the criteria for sentencing as a violent career criminal, with respect to an offense committed on or after October 1, 1995, a sentence can be imposed by the court without regard to the violent career criminal statute. *See*, s.775.084 (4) (d), F.S.

Just as with habitual violent felony offenders, the court is required to hold a separate proceeding to determine if the defendant is a violent career criminal. Paragraph (3) (b) of s. 775.084, F.S., sets out the procedure that must be followed in order for the court to determine that an offender is a violent career criminal and to sentence the offender as such.

In accordance with s. 775.084 (4) (d), F.S., the court, in conformity with the procedure established in s. 775.084 (3) (b), F.S., must sentence the violent career criminal as follows:

1. In the case of a life felony or a felony of the first degree, for life.
2. In the case of a felony of the second degree, for a term of years not exceeding 40, with a mandatory minimum term of 30 years imprisonment.
3. In the case of a felony of the third degree, for a term of years not exceeding 15, with a mandatory minimum term of 10 years imprisonment.

Under subsection (2) of s. 775.084, F.S., the law currently reads:

For the purposes of this section, the placing of a person on *probation* without an adjudication of guilt shall be treated as a prior conviction if the subsequent offense for which the person is to be sentenced was committed during such *probationary* period. (emphasis added)

Florida courts have been strictly construing this statutory provision in a manner most favorable to the defendant and have not allowed the state to seek enhanced sentencing under s. 775.084, F.S., for offenders who have been placed on community control, which is a more “stringent” form of probation, rather than regular probation. *See generally, Overstreet v. State*, 629 So.2d 125 (Fla. 1993); *Perkins v. State*, 576 So.2d 1310 (Fla. 1991).

In *Smith v. Taylor*, the Second District Court of Appeal agreed with the Florida Supreme Court’s finding in *Overstreet* by finding that the plain language of s. 775.084 (2), F.S., includes only those offenses occurring while on probation, and that the court would decline to add words to a statute where the language is clear and unambiguous. 651 So.2d 1218, 1219 (Fla. 2d DCA 1995). Thus, the *Smith* Court found that the trial court should not have considered it to be a “prior conviction” in the instance in which the defendant committed an offense while serving a community control sentence, and *not* a probation sentence, with a withhold of adjudication. *Id.* The Third District Court of Appeal has also followed this reasoning in *Destra v. State*. 672 So.2d 822 (Fla. 3d DCA 1995). Likewise, the First District Court of Appeal has held the same. *See, Allen v. State*, 654 So.2d 1027 (Fla. 1st DCA 1995).

Community control is a court-imposed type of community supervision that is carried out by the Department of Corrections. State probation is also imposed by the court and carried out by the Department of Corrections. From 1983 to 1993, probation was not considered to be a “state sanction” for purposes of necessitating an adjudication of guilt upon its imposition by a court. Thus, a court could and still can withhold adjudication of guilt at sentencing. However, during most of that same time, community control, on the other hand, was basically considered to be a “state sanction” and, thus, necessitated an adjudication of guilt upon its imposition by the court at sentencing to be a valid sentence. Some courts, however, still allowed adjudication to be withheld when the defendant was being sentenced to community control. Furthermore, courts have held that a sentence of community control is not “other commitment” for purposes of the habitual offender statute. *See generally, Bacon v. State*, 620 So.2d 1084, 1085-6 (Fla. 1st DCA 1993).

Many changes have occurred in sentencing within the last several years. There have been major changes to the sentencing guidelines that were effective in 1994 and again new changes in 1995. The 1997 Legislature repealed the sentencing guidelines and have created a new sentencing structure, the Criminal Punishment Code, which will be effective October 1, 1998.

Simultaneously with the changes in the sentencing guidelines, community control has likewise evolved. It has become a sentence option or a legal status that is not really considered to be a “state sanction” that is imposed by the court which requires an adjudication of guilt. As a result, the trend of instances of withholding adjudication with the imposition of community control supervision has greatly increased and it seems more and more offenders are being sentenced to community control but adjudication of guilt on the offense is withheld.

Because the number of offenders that have been sentenced to community control with a withhold of adjudication has so greatly increased over the last few years, an anomaly has surfaced when such offenders have committed another felony offense while they are under community control

supervision. If such offenders would have otherwise qualified for enhanced penalties under s.775.084, F.S., because they were on probation and adjudication was withheld, courts have found that offenders have not been able to be subjected to enhanced penalties if such offenders were on community control and adjudication was withheld. This anomaly is ironic in the sense that offenders who were on community control rather than regular probation may more so justify enhance penalties because their offense that resulted in a community control sentence was probably more serious than if the court saw fit to place the offender only on regular probation.

III. Effect of Proposed Changes:

Senate Bill 780 makes two technical changes in s. 775.084, F.S. Such changes are effective July 1, 1998.

The habitual felony offender and the habitual violent felony offender provisions are amended to make the language consistent with the violent career criminal statute with regard to the provision relating to the timing of the last prior felony for being an element in imposing enhanced sentencing. The law currently states “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 or other commitment imposed as a result of a prior conviction for a felony or other qualified offense, whichever is later.” (emphasis added). The bill would strike the word “of” and replace it with the word “after” to clarify that the offender is eligible for enhanced sentencing if the newest qualifying offense was committed within 5 years after the defendant’s release from a commitment of the previous enumerated or qualifying offense.

The bill would also clarify that community control sentences are also to be included within the purview of enhanced sentencing under s. 775.084, F.S. It would explicitly provide community control sentences where the adjudication of guilt was withheld and the new offense is committed while the offender was on community control supervision at the time of the new qualifying offense. By making such a change, the Legislature would counter all case law that has found that community control would not be considered the same as probation for purposes of s. 775.084, F.S.

Although the statutes nowhere else explicitly permit the withhold of adjudication of guilt in cases where the court imposes community control supervision, the language created by this bill would codify this practice. The language in this bill would arguably provide authority for the withhold of adjudication where courts have previously found that such sentencing practice is not permissible or authorized by statutes.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

No fiscal impact upon the Department is anticipated, according to the Department of Corrections. The Criminal Justice Impact Conference has not yet determined whether there would be an impact upon the prison population.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.