

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: February 25, 1998 Revised: \_\_\_\_\_

Subject: Violent 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 668 would prohibit certain offenders from being eligible for work release programs or from being confined in a minimum security facility.

This bill substantially amends the following section of the Florida Statutes: 945.092.

**II. Present Situation:**

Pursuant to §775.084 (1) (b), Florida Statutes, "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 violent felony offender. Paragraph (3) (a) of §775.084, Florida Statutes, sets out the procedure that must be followed in order for the court to determine that an offender is a habitual violent felony offender and to sentence the offender as such.

Pursuant to §775.084 (4) (b), Florida Statutes, the court may sentence the 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 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 violent felony offender statute. *See*, §775.084 (4) (d), Florida Statutes.

Pursuant to §775.084 (1) (c), Florida Statutes, "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;
  - b. Aggravated stalking, as described in s. 784.048 (3) and (4);
  - c. Aggravated child abuse, as described in s. 827.03 (2);
  - d. Aggravated abuse of an elderly person or disabled adult, as described in s. 825.102 (2);
  - e. Lewd, lascivious, or indecent conduct, as described in s. 800.04;
  - f. Escape, as described in s. 944.40; 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

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- 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. §775.084 (1) (d), Florida Statutes. 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 habitual violent felony offender statute. *See*, §775.084 (4) (d), Florida Statutes.

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 §775.084, Florida Statutes, 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 §775.084 (4) (d), Florida Statutes, the court, in conformity with the procedure established in §775.084 (3) (b), Florida Statutes, 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.

Section 945.092, Florida Statutes, addresses the legislative limits that have been recently placed upon work-release and minimum security custody for persons who have committed the crime of escape. The statute reads:

a person who has ever been convicted, regardless of adjudication, of the offense of escape, as prohibited by §944.40 or its successor, or as prohibited by a similar law of another state, is not eligible for any work-release program under §945.091 or for confinement in minimum security conditions. *See*, Ch. 95-283, § 29, 1995 Laws of Fla. 2649, 2666.

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

Any offender who is determined by the Department of Corrections to be a habitual violent felony offender or a violent career criminal, as defined in §775.084, Florida Statutes, would not be eligible to be placed in work-release programs under §945.091 or any other law. Habitual violent felony offenders and violent career criminals would also be prohibited from being confined in a minimum security facility.

Thus, any offender who is determined to be a habitual violent felony offender or violent career criminal may not ever be placed in a community correctional center, probation and restitution center, or any other facility that relates to work release. Likewise, such offenders would be prohibited from working in chain gangs, public works detail, or any other work programs that would place such offenders outside the secure perimeter of the prison compound in which they are incarcerated.

The manner in which SB 668 reads, as “defined in §775.084,” puts the burden on the Department of Corrections to determine which offenders are deemed to be habitual violent felony offenders or violent career criminals and prohibit such offenders from being placed in work-release programs or in minimum security facilities. As stated in the present situation, although a court may determine that an offender is a habitual violent felony offender or a violent career criminal, the court may not sentence those offenders as such, if the court determines within its discretion that it is not necessary for the protection of the public to sentence an offender as a habitual violent felony offender or a violent career criminal. Therefore, the Department may not rely on the sentence that was imposed on the offender by the court to determine whether the restrictions within this bill apply. It appears that the Department would have to make an independent finding for each offender to know if the work-release and facility restrictions apply.

### **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:**

The impact upon the Department of Corrections is unknown at this time. There would be a negative fiscal impact upon the Department if the Department must determine, on an individual basis, whether an inmate is a habitual violent felony offender or violent career criminal as “defined” in §775.084, Florida Statutes. However, this fiscal impact is indeterminate.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The fiscal impact upon the Department of Corrections could be alleviated if the bill stated “as sentenced by the court” rather than “as defined in §775.084.”

**VIII. Amendments:**

None.