**F.S. 775.0837 HABITUAL MISDEMEANOR OFFENDERS**

Applies to any defendant who is before the court for sentencing for a specified misdemeanor offense AND who has previously been convicted (this definition includes withholds), as an adult, of four or more specified misdemeanor offenses which meet the following criteria:

1. The priors and offense before the court are separate offenses (so can’t count convictions for offenses which occurred on the same date).
2. All 4 prior offenses were **committed** within 1 year of the date of incident for the crime which is before the court for sentencing.

“Specified misdemeanor offense” means those misdemeanor offenses described in chapters:

* 741 DOMESTIC VIOLENCE
* 784 ASSAULT/BATTERY, STALKING, VIOLATION OF INJUNCTION, CULPABLE NEGLIGENCE
* 790 WEAPONS CHARGES
* 796 PROSTITUTION
* 800 INDECENT EXPOSURE
* 806 CRIMINAL MISCHIEF
* 810 TRESPASS
* 812 THEFT
* 817 CREDIT CARD CRIMES
* 831 FORGERY
* 832 CHECKS
* 843 RWOV
* 856 DOC/DOI, L & P, HOUSE PARTIES
* 893 DRUGS
* 901 FALSE NAME TO LEO

REMEMBER: THE PRIORS AND THE NEW OFFENSE ALL HAVE TO BE SPECIFIED MISDEMEANOR OFFENSES!

PENALTIES:

If the court finds the defendant is a habitual misdemeanor offender, the court SHALL impose one of the following sentences unless the court makes a finding that an alternative disposition is in the best interests of the community and defendant.

1. A term of imprisonment of NOT LESS than 6 months, but not to exceed 364 days
2. Commitment to a residential treatment program for not less than 6 months, but not to exceed 364 days (read statute for details)
3. Detention for not less than 6 months, but not to exceed 364 days, to a designated residence if the detention is supervised by the county or contracted private designee

This is an enhancement statute and not a reclassification like felony petit theft.

We will still pursue reclassification if the case can be upfiled (such as felony battery or felony p. theft) so this is not a substitute for that.

Prosecutors will need do the following for every case where a specified misdemeanor offense has been charged:

1. Order the NCIC right away if the case filer has not done so and review to see if the defendant qualifies as a habitual misdemeanor offender.
2. Make a note in SAFES indicating that you have reviewed the NCIC for this designation.
3. Order certified copies of convictions for the qualifying priors.
4. File a motion to roll the defendant’s prints so that you can compare them against the certified convictions (there are other ways to prove the priors as well so see a supervisor).
5. Speak with ASAIC or Senior Supervising ASA to discuss prior to as soon as you determine the defendant qualifies.
6. Ask the judge sentence to the defendant as a habit misdemeanor offender if a plea or sentencing. (Remember that the statute says the judge SHALL sentence the defendant as a habitual misdemeanor offender if they meet the criteria).
7. If the judge refuses to sentence a defendant as an HMO, make sure to ask them to make the requisite finding on the record (preferably in a written order).