

1 A bill to be entitled
 2 An act relating to sentencing; amending s. 893.135,
 3 F.S.; permitting persons convicted of a specified
 4 trafficking violation to receive a sentence that
 5 departs from the mandatory minimum in certain
 6 circumstances; specifying who may move for such a
 7 departure; specifying criteria that may be considered;
 8 requiring the court to state reasons for granting such
 9 motion; providing an effective date.

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11 Be It Enacted by the Legislature of the State of Florida:

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13 Section 1. Subsection (8) is added to section 893.135,
 14 Florida Statutes, and paragraph (c) of subsection (1) of that
 15 section is republished, to read:

16 893.135 Trafficking; mandatory sentences; suspension or
 17 reduction of sentences; conspiracy to engage in trafficking.—

18 (1) Except as authorized in this chapter or in chapter 499
 19 and notwithstanding the provisions of s. 893.13:

20 (c)1. A person who knowingly sells, purchases,
 21 manufactures, delivers, or brings into this state, or who is
 22 knowingly in actual or constructive possession of, 4 grams or
 23 more of any morphine, opium, hydromorphone, or any salt,
 24 derivative, isomer, or salt of an isomer thereof, including
 25 heroin, as described in s. 893.03(1)(b), (2)(a), (3)(c)3., or
 26 (3)(c)4., or 4 grams or more of any mixture containing any such

27 substance, but less than 30 kilograms of such substance or
 28 mixture, commits a felony of the first degree, which felony
 29 shall be known as "trafficking in illegal drugs," punishable as
 30 provided in s. 775.082, s. 775.083, or s. 775.084. If the
 31 quantity involved:

32 a. Is 4 grams or more, but less than 14 grams, such person
 33 shall be sentenced to a mandatory minimum term of imprisonment
 34 of 3 years and shall be ordered to pay a fine of \$50,000.

35 b. Is 14 grams or more, but less than 28 grams, such
 36 person shall be sentenced to a mandatory minimum term of
 37 imprisonment of 15 years and shall be ordered to pay a fine of
 38 \$100,000.

39 c. Is 28 grams or more, but less than 30 kilograms, such
 40 person shall be sentenced to a mandatory minimum term of
 41 imprisonment of 25 years and shall be ordered to pay a fine of
 42 \$500,000.

43 2. A person who knowingly sells, purchases, manufactures,
 44 delivers, or brings into this state, or who is knowingly in
 45 actual or constructive possession of, 14 grams or more of
 46 hydrocodone, or any salt, derivative, isomer, or salt of an
 47 isomer thereof, or 14 grams or more of any mixture containing
 48 any such substance, commits a felony of the first degree, which
 49 felony shall be known as "trafficking in hydrocodone,"
 50 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
 51 If the quantity involved:

52 a. Is 14 grams or more, but less than 28 grams, such

53 person shall be sentenced to a mandatory minimum term of
54 imprisonment of 3 years and shall be ordered to pay a fine of
55 \$50,000.

56 b. Is 28 grams or more, but less than 50 grams, such
57 person shall be sentenced to a mandatory minimum term of
58 imprisonment of 7 years and shall be ordered to pay a fine of
59 \$100,000.

60 c. Is 50 grams or more, but less than 200 grams, such
61 person shall be sentenced to a mandatory minimum term of
62 imprisonment of 15 years and shall be ordered to pay a fine of
63 \$500,000.

64 d. Is 200 grams or more, but less than 30 kilograms, such
65 person shall be sentenced to a mandatory minimum term of
66 imprisonment of 25 years and shall be ordered to pay a fine of
67 \$750,000.

68 3. A person who knowingly sells, purchases, manufactures,
69 delivers, or brings into this state, or who is knowingly in
70 actual or constructive possession of, 7 grams or more of
71 oxycodone, or any salt, derivative, isomer, or salt of an isomer
72 thereof, or 7 grams or more of any mixture containing any such
73 substance, commits a felony of the first degree, which felony
74 shall be known as "trafficking in oxycodone," punishable as
75 provided in s. 775.082, s. 775.083, or s. 775.084. If the
76 quantity involved:

77 a. Is 7 grams or more, but less than 14 grams, such person
78 shall be sentenced to a mandatory minimum term of imprisonment

79 of 3 years and shall be ordered to pay a fine of \$50,000.

80 b. Is 14 grams or more, but less than 25 grams, such
81 person shall be sentenced to a mandatory minimum term of
82 imprisonment of 7 years and shall be ordered to pay a fine of
83 \$100,000.

84 c. Is 25 grams or more, but less than 100 grams, such
85 person shall be sentenced to a mandatory minimum term of
86 imprisonment of 15 years and shall be ordered to pay a fine of
87 \$500,000.

88 d. Is 100 grams or more, but less than 30 kilograms, such
89 person shall be sentenced to a mandatory minimum term of
90 imprisonment of 25 years and shall be ordered to pay a fine of
91 \$750,000.

92 4. A person who knowingly sells, purchases, manufactures,
93 delivers, or brings into this state, or who is knowingly in
94 actual or constructive possession of, 30 kilograms or more of
95 any morphine, opium, oxycodone, hydrocodone, hydromorphone, or
96 any salt, derivative, isomer, or salt of an isomer thereof,
97 including heroin, as described in s. 893.03(1)(b), (2)(a),
98 (3)(c)3., or (3)(c)4., or 30 kilograms or more of any mixture
99 containing any such substance, commits the first degree felony
100 of trafficking in illegal drugs. A person who has been convicted
101 of the first degree felony of trafficking in illegal drugs under
102 this subparagraph shall be punished by life imprisonment and is
103 ineligible for any form of discretionary early release except
104 pardon or executive clemency or conditional medical release

105 | under s. 947.149. However, if the court determines that, in
106 | addition to committing any act specified in this paragraph:

107 | a. The person intentionally killed an individual or
108 | counseled, commanded, induced, procured, or caused the
109 | intentional killing of an individual and such killing was the
110 | result; or

111 | b. The person's conduct in committing that act led to a
112 | natural, though not inevitable, lethal result,

113 |
114 | such person commits the capital felony of trafficking in illegal
115 | drugs, punishable as provided in ss. 775.082 and 921.142. A
116 | person sentenced for a capital felony under this paragraph shall
117 | also be sentenced to pay the maximum fine provided under
118 | subparagraph 1.

119 | 5. A person who knowingly brings into this state 60
120 | kilograms or more of any morphine, opium, oxycodone,
121 | hydrocodone, hydromorphone, or any salt, derivative, isomer, or
122 | salt of an isomer thereof, including heroin, as described in s.
123 | 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 60 kilograms or
124 | more of any mixture containing any such substance, and who knows
125 | that the probable result of such importation would be the death
126 | of a person, commits capital importation of illegal drugs, a
127 | capital felony punishable as provided in ss. 775.082 and
128 | 921.142. A person sentenced for a capital felony under this
129 | paragraph shall also be sentenced to pay the maximum fine
130 | provided under subparagraph 1.

131 (8) (a) Notwithstanding any other provision of law, if a
132 defendant has been convicted of a violation of paragraph (1) (c)
133 that involves possession of a mixture that is a prescription
134 drug, as defined in s. 499.003, the prosecuting attorney,
135 defendant, or counsel representing the defendant may move the
136 sentencing court to depart from the mandatory minimum term of
137 imprisonment applicable to that violation.

138 (b) The sentencing court may grant the motion if the court
139 finds that all of the following criteria are met:

140 1. The defendant's violation of paragraph (1) (c) did not
141 involve the use, attempted use, or threatened use of physical
142 force against another person.

143 2. The defendant's violation of paragraph (1) (c) did not
144 result in serious bodily injury to another person or the
145 disfigurement or death of another person.

146 3. In the commission of the offense in violation of
147 paragraph (1) (c), the defendant was not armed with, did not
148 threaten to use or display, and did not represent by word or
149 conduct that he or she possessed any firearm, deadly weapon, or
150 dangerous instrument.

151 4. The defendant has not previously been convicted of any
152 of the felonies listed in s. 775.084(1) (b)1.

153 (c) When departing from the mandatory minimum term of
154 imprisonment, the sentencing court may consider any facts the
155 court considers relevant, including the criteria listed in
156 paragraph (b), the sentencing report and any evidence admitted

157 | in a previous sentencing proceeding, the defendant's record of
158 | arrests, any history or evidence of substance abuse or mental
159 | illness, the likelihood that an alternative sentence will
160 | produce the same deterrent effect, and the likelihood that an
161 | alternative sentence will rehabilitate the defendant to an equal
162 | or greater extent than the mandatory minimum term of
163 | imprisonment.

164 | (d) If the sentencing court grants the motion, the court
165 | shall state in open court at the time of sentencing the specific
166 | reasons for imposing the sentence and for not imposing the
167 | mandatory minimum term of imprisonment.

168 | Section 2. This act shall take effect July 1, 2016.