

By Senator Joyner

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1                   A bill to be entitled  
2           An act relating to possession or discharge of a  
3           firearm or destructive device during the commission of  
4           specified offenses; amending s. 775.087, F.S.;  
5           providing that a sentencing court may elect not to  
6           impose the minimum term of imprisonment for persons  
7           convicted of certain offenses during which the person  
8           actually possessed or discharged a firearm or  
9           destructive device if the court finds that certain  
10          specified criteria are met; requiring a sentencing  
11          court that elects not to impose the mandatory minimum  
12          sentence for the relevant offense to make specific  
13          findings to support its decision to impose a lesser  
14          term; making grammatical and technical changes;  
15          providing an effective date.

16  
17 Be It Enacted by the Legislature of the State of Florida:

18  
19           Section 1. Section 775.087, Florida Statutes, is amended to  
20 read:

21           775.087 Possession or use of weapon; aggravated battery;  
22 felony reclassification; minimum sentence.-

23           (1) Unless otherwise provided by law, whenever a person is  
24 charged with a felony, except a felony in which the use of a  
25 weapon or firearm is an essential element, and during the  
26 commission of such felony the defendant carries, displays, uses,  
27 threatens to use, or attempts to use a ~~any~~ weapon or firearm, or  
28 during the commission of such felony the defendant commits an  
29 aggravated battery, the felony for which the person is charged

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30 shall be reclassified as follows:

31 (a) In the case of a felony of the first degree, to a life  
32 felony.

33 (b) In the case of a felony of the second degree, to a  
34 felony of the first degree.

35 (c) In the case of a felony of the third degree, to a  
36 felony of the second degree.

37

38 For purposes of sentencing under chapter 921 and determining  
39 incentive gain-time eligibility under chapter 944, a felony  
40 offense that ~~which~~ is reclassified under this section is ranked  
41 one level above the ranking under s. 921.0022 or s. 921.0023 of  
42 the felony offense committed.

43 (2) (a) 1. Except as otherwise provided in subsection (4), a  
44 ~~any~~ person who is convicted of a felony or an attempt to commit  
45 a felony, regardless of whether the use of a weapon is an  
46 element of the felony, and the conviction was for:

47 a. Murder;

48 b. Sexual battery;

49 c. Robbery;

50 d. Burglary;

51 e. Arson;

52 f. Aggravated assault;

53 g. Aggravated battery;

54 h. Kidnapping;

55 i. Escape;

56 j. Aircraft piracy;

57 k. Aggravated child abuse;

58 l. Aggravated abuse of an elderly person or disabled adult;

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59 m. Unlawful throwing, placing, or discharging of a  
60 destructive device or bomb;

61 n. Carjacking;

62 o. Home-invasion robbery;

63 p. Aggravated stalking;

64 q. Trafficking in cannabis, trafficking in cocaine, capital  
65 importation of cocaine, trafficking in illegal drugs, capital  
66 importation of illegal drugs, trafficking in phencyclidine,  
67 capital importation of phencyclidine, trafficking in  
68 methaqualone, capital importation of methaqualone, trafficking  
69 in amphetamine, capital importation of amphetamine, trafficking  
70 in flunitrazepam, trafficking in gamma-hydroxybutyric acid  
71 (GHB), trafficking in 1,4-Butanediol, trafficking in  
72 Phenethylamines, or other violation of s. 893.135(1); or

73 r. Possession of a firearm by a felon

74

75 and during the commission of the offense, such person actually  
76 possessed a "firearm" or "destructive device" as those terms are  
77 defined in s. 790.001, shall be sentenced to a minimum term of  
78 imprisonment of 10 years, except that a person who is convicted  
79 for aggravated assault, possession of a firearm by a felon, or  
80 burglary of a conveyance shall be sentenced to a minimum term of  
81 imprisonment of 3 years if such person possessed a "firearm" or  
82 "destructive device" during the commission of the offense.  
83 However, if an offender who is convicted of the offense of  
84 possession of a firearm by a felon has a previous conviction of  
85 committing or attempting to commit a felony listed in s.  
86 775.084(1)(b)1. and actually possessed a firearm or destructive  
87 device during the commission of the prior felony, the offender

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88 shall be sentenced to a minimum term of imprisonment of 10  
89 years.

90 2. A ~~Any~~ person who is convicted of a felony or an attempt  
91 to commit a felony listed in sub-subparagraphs (a)1.a.-q.,  
92 regardless of whether the use of a weapon is an element of the  
93 felony, and during the course of the commission of the felony  
94 such person discharged a "firearm" or "destructive device" as  
95 defined in s. 790.001 shall be sentenced to a minimum term of  
96 imprisonment of 20 years.

97 3. A ~~Any~~ person who is convicted of a felony or an attempt  
98 to commit a felony listed in sub-subparagraphs (a)1.a.-q.,  
99 regardless of whether the use of a weapon is an element of the  
100 felony, and during the course of the commission of the felony  
101 such person discharged a "firearm" or "destructive device" as  
102 defined in s. 790.001 and, as the result of the discharge, death  
103 or great bodily harm was inflicted upon a ~~any~~ person, the  
104 convicted person shall be sentenced to a minimum term of  
105 imprisonment of not less than 25 years and not more than a term  
106 of imprisonment of life in prison.

107 (b) Subparagraph (a)1., subparagraph (a)2., or subparagraph  
108 (a)3. does not prevent a court from imposing a longer sentence  
109 of incarceration as authorized by law in addition to the minimum  
110 mandatory sentence, or from imposing a sentence of death  
111 pursuant to other applicable law. Subparagraph (a)1.,  
112 subparagraph (a)2., or subparagraph (a)3. does not authorize a  
113 court to impose a lesser sentence than otherwise required by  
114 law.

115  
116 Notwithstanding s. 948.01, adjudication of guilt or imposition

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117 of sentence may ~~shall~~ not be suspended, deferred, or withheld,  
118 and the defendant is not eligible for statutory gain-time under  
119 s. 944.275 or any form of discretionary early release, other  
120 than pardon or executive clemency, or conditional medical  
121 release under s. 947.149, before ~~prior to~~ serving the minimum  
122 sentence.

123 (c) If the minimum mandatory terms of imprisonment imposed  
124 pursuant to this section exceed the maximum sentences authorized  
125 by s. 775.082, s. 775.084, or the Criminal Punishment Code under  
126 chapter 921, then the mandatory minimum sentence must be  
127 imposed. If the mandatory minimum terms of imprisonment pursuant  
128 to this section are less than the sentences that could be  
129 imposed as authorized by s. 775.082, s. 775.084, or the Criminal  
130 Punishment Code under chapter 921, then the sentence imposed by  
131 the court must include the mandatory minimum term of  
132 imprisonment as required in this section.

133 (d) It is the intent of the Legislature that offenders who  
134 actually possess, carry, display, use, threaten to use, or  
135 attempt to use firearms or destructive devices be punished to  
136 the fullest extent of the law, and the minimum terms of  
137 imprisonment imposed pursuant to this subsection shall be  
138 imposed for each qualifying felony count for which the person is  
139 convicted. The court shall impose a ~~any~~ term of imprisonment  
140 provided for in this subsection consecutively to any other term  
141 of imprisonment imposed for another ~~any other~~ felony offense.

142 (3) (a) 1. Except as otherwise provided in subsection (4), a  
143 ~~any~~ person who is convicted of a felony or an attempt to commit  
144 a felony, regardless of whether the use of a firearm is an  
145 element of the felony, and the conviction was for:

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- 146 a. Murder;
- 147 b. Sexual battery;
- 148 c. Robbery;
- 149 d. Burglary;
- 150 e. Arson;
- 151 f. Aggravated assault;
- 152 g. Aggravated battery;
- 153 h. Kidnapping;
- 154 i. Escape;
- 155 j. Sale, manufacture, delivery, or intent to sell,
- 156 manufacture, or deliver a ~~any~~ controlled substance;
- 157 k. Aircraft piracy;
- 158 l. Aggravated child abuse;
- 159 m. Aggravated abuse of an elderly person or disabled adult;
- 160 n. Unlawful throwing, placing, or discharging of a
- 161 destructive device or bomb;
- 162 o. Carjacking;
- 163 p. Home-invasion robbery;
- 164 q. Aggravated stalking; or
- 165 r. Trafficking in cannabis, trafficking in cocaine, capital
- 166 importation of cocaine, trafficking in illegal drugs, capital
- 167 importation of illegal drugs, trafficking in phencyclidine,
- 168 capital importation of phencyclidine, trafficking in
- 169 methaqualone, capital importation of methaqualone, trafficking
- 170 in amphetamine, capital importation of amphetamine, trafficking
- 171 in flunitrazepam, trafficking in gamma-hydroxybutyric acid
- 172 (GHB), trafficking in 1,4-Butanediol, trafficking in
- 173 Phenethylamines, or other violation of s. 893.135(1);
- 174

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175 and during the commission of the offense, such person possessed  
176 a semiautomatic firearm and its high-capacity detachable box  
177 magazine or a machine gun as defined in s. 790.001, shall be  
178 sentenced to a minimum term of imprisonment of 15 years.

179 2. A ~~Any~~ person who is convicted of a felony or an attempt  
180 to commit a felony listed in subparagraph (a)1., regardless of  
181 whether the use of a weapon is an element of the felony, and  
182 during the course of the commission of the felony such person  
183 discharged a semiautomatic firearm and its high-capacity box  
184 magazine or a "machine gun" as defined in s. 790.001 shall be  
185 sentenced to a minimum term of imprisonment of 20 years.

186 3. A ~~Any~~ person who is convicted of a felony or an attempt  
187 to commit a felony listed in subparagraph (a)1., regardless of  
188 whether the use of a weapon is an element of the felony, and  
189 during the course of the commission of the felony such person  
190 discharged a semiautomatic firearm and its high-capacity box  
191 magazine or a "machine gun" as defined in s. 790.001 and, as the  
192 result of the discharge, death or great bodily harm was  
193 inflicted upon a ~~any~~ person, the convicted person shall be  
194 sentenced to a minimum term of imprisonment of not less than 25  
195 years and not more than a term of imprisonment of life in  
196 prison.

197 (b) Subparagraph (a)1., subparagraph (a)2., or subparagraph  
198 (a)3. does not prevent a court from imposing a longer sentence  
199 of incarceration as authorized by law in addition to the minimum  
200 mandatory sentence, or from imposing a sentence of death  
201 pursuant to other applicable law. Subparagraph (a)1.,  
202 subparagraph (a)2., or subparagraph (a)3. does not authorize a  
203 court to impose a lesser sentence than otherwise required by

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204 law.

205  
206 Notwithstanding s. 948.01, adjudication of guilt or imposition  
207 of sentence may ~~shall~~ not be suspended, deferred, or withheld,  
208 and the defendant is not eligible for statutory gain-time under  
209 s. 944.275 or any form of discretionary early release, other  
210 than pardon or executive clemency, or conditional medical  
211 release under s. 947.149, before ~~prior to~~ serving the minimum  
212 sentence.

213 (c) If the minimum mandatory terms of imprisonment imposed  
214 pursuant to this section exceed the maximum sentences authorized  
215 by s. 775.082, s. 775.084, or the Criminal Punishment Code under  
216 chapter 921, then the mandatory minimum sentence must be  
217 imposed. If the mandatory minimum terms of imprisonment pursuant  
218 to this section are less than the sentences that could be  
219 imposed as authorized by s. 775.082, s. 775.084, or the Criminal  
220 Punishment Code under chapter 921, then the sentence imposed by  
221 the court must include the mandatory minimum term of  
222 imprisonment as required in this section.

223 (d) It is the intent of the Legislature that offenders who  
224 possess, carry, display, use, threaten to use, or attempt to use  
225 a semiautomatic firearm and its high-capacity detachable box  
226 magazine or a machine gun as defined in s. 790.001 be punished  
227 to the fullest extent of the law, and the minimum terms of  
228 imprisonment imposed pursuant to this subsection shall be  
229 imposed for each qualifying felony count for which the person is  
230 convicted. The court shall impose a a ~~any~~ term of imprisonment  
231 provided for in this subsection consecutively to any other term  
232 of imprisonment imposed for another ~~any other~~ felony offense.



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233 (e) As used in this subsection, the term:

234 1. "High-capacity detachable box magazine" means a ~~any~~  
235 detachable box magazine, for use in a semiautomatic firearm,  
236 which is capable of being loaded with more than 20 centerfire  
237 cartridges.

238 2. "Semiautomatic firearm" means a firearm that ~~which~~ is  
239 capable of firing a series of rounds by separate successive  
240 depressions of the trigger and ~~which~~ uses the energy of  
241 discharge to perform a portion of the operating cycle.

242 (4) The sentencing court may elect not to impose the  
243 mandatory term specified in subsection (2) or subsection (3), if  
244 applicable, if the court finds that the totality of the  
245 circumstances involved in the offense do not reasonably justify  
246 the imposition of a mandatory minimum term. Circumstances that  
247 may reasonably justify not imposing the mandatory minimum term  
248 include, but are not limited to, the following:

249 (a) The defendant's actions did not result in injury to  
250 another person.

251 (b) The defendant's actions were a response to exigent  
252 circumstances.

253 (c) The defendant does not have a prior felony conviction  
254 involving violence.

255 (d) The victim was an initiator, willing participant,  
256 aggressor, or provoker of the incident.

257 (5)~~(4)~~ For purposes of imposition of minimum mandatory  
258 sentencing provisions of this section, with respect to a  
259 firearm, the term "possession" is defined as carrying it on the  
260 person. Possession may also be proven by demonstrating that the  
261 defendant had the firearm within immediate physical reach with

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262 ready access with the intent to use the firearm during the  
263 commission of the offense, if proven beyond a reasonable doubt.

264 (6)~~(5)~~ This section does not apply to law enforcement  
265 officers or to United States military personnel who are  
266 performing their lawful duties or who are traveling to or from  
267 their places of employment or assignment to perform their lawful  
268 duties.

269 Section 2. This act shall take effect July 1, 2013.