

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 a person
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

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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 a person ~~an offender~~ who is convicted of the offense
84 of possession of a firearm by a felon has a previous conviction
85 of 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 person

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88 ~~offender~~ shall be sentenced to a minimum term of imprisonment of
89 10 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 persons
134 ~~offenders~~ who actually possess, carry, display, use, threaten to
135 use, or attempt to use firearms or destructive devices be
136 punished to the fullest extent of the law, and the minimum terms
137 of 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 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 persons
224 ~~offenders~~ who possess, carry, display, use, threaten to use, or
225 attempt to use a semiautomatic firearm and its high-capacity
226 detachable box magazine or a machine gun as defined in s.
227 790.001 be punished to the fullest extent of the law, and the
228 minimum terms of imprisonment imposed pursuant to this
229 subsection shall be imposed for each qualifying felony count for
230 which the person is convicted. The court shall impose a ~~any~~ term
231 of imprisonment provided for in this subsection consecutively to
232 any other term of imprisonment imposed for another ~~any other~~

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233 felony offense.

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

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

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

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

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

252 (b) The person's actions were a response to exigent
253 circumstances.

254 (c) The person does not have a prior felony conviction
255 involving violence.

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

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

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262 defendant had the firearm within immediate physical reach with
263 ready access with the intent to use the firearm during the
264 commission of the offense, if proven beyond a reasonable doubt.

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

270 Section 2. This act shall take effect July 1, 2014.