

By the Committee on Criminal Justice; and Senators Joyner and Clemens

591-02080-14

2014328c1

1 A bill to be entitled
 2 An act relating to controlled substances; amending s.
 3 893.135, F.S.; authorizing a defendant to move to
 4 depart from the mandatory term of imprisonment for a
 5 drug trafficking violation; authorizing the state
 6 attorney to file an objection to the motion;
 7 authorizing the sentencing court to grant the motion
 8 if the court finds that the defendant has demonstrated
 9 by a preponderance of the evidence that specified
 10 criteria are met; providing an effective date.

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

13
 14 Section 1. Present subsection (7) of section 893.135,
 15 Florida Statutes, is redesignated as subsection (8), and a new
 16 subsection (7) is added to that section, to read:

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

19 (7) (a) If a defendant is convicted of a violation of this
 20 section, the defendant may move the sentencing court to depart
 21 from the 3-year mandatory minimum term of imprisonment and the
 22 mandatory fine that would apply to the conviction absent a
 23 departure. The state attorney may file an objection to the
 24 motion.

25 (b) The court may grant the motion if the court finds that
 26 the defendant has demonstrated by a preponderance of the
 27 evidence that all of the following criteria are met:

28 1. The defendant has not previously moved to depart from a
 29 3-year mandatory minimum term and mandatory fine pursuant to

591-02080-14

2014328c1

30 this subsection.

31 2. The defendant's violation of this section would be
32 subject to a 3-year mandatory minimum term and mandatory fine
33 absent a departure.

34 3. The defendant's violation of this section involves
35 possession of one of the following controlled substances or a
36 mixture that contains the controlled substance:

37 a. Cocaine;

38 b. Hydrocodone;

39 c. Oxycodone;

40 d. Any controlled substance as described in paragraph
41 (1) (c);

42 e. Phencyclidine;

43 f. Amphetamine or Methamphetamine;

44 g. Flunitrazepam;

45 h. A phenethylamine as described in subparagraph (1) (k) 1.;
46 or

47 i. Lysergic acid diethylamide (LSD).

48 4. The defendant did not possess the controlled substance
49 or mixture containing the controlled substance with the intent
50 to sell, manufacture, or deliver the substance or mixture.

51 5. The defendant did not obtain the controlled substance or
52 mixture containing the controlled substance by using a minor to
53 obtain the substance or mixture.

54 6. In committing the violation of this section, the
55 defendant did not possess or threaten to use a firearm or deadly
56 weapon, or threaten to use or use physical force against another
57 person.

58 7. The defendant does not have a previous conviction,

591-02080-14

2014328c1

59 adjudication of delinquency, or withhold of adjudication of
60 guilt for a violation this section.

61 8. The defendant does not have a previous conviction,
62 adjudication of delinquency, or withhold of adjudication of
63 guilt for a violation of s. 893.13 which involved the sale,
64 manufacture, or delivery of a controlled substance, or the
65 possession with intent to sell, manufacture, or deliver a
66 controlled substance.

67 9. The defendant is amenable to substance abuse treatment
68 if the court determines that he or she is in need of such
69 treatment.

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