

By Senator Joyner

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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 3-year mandatory term of imprisonment
5 and from the mandatory fine for a drug trafficking
6 violation involving a specified quantity of a
7 specified controlled substance; authorizing the state
8 attorney to file an objection to the motion;
9 authorizing the sentencing court to grant the motion
10 if the court finds that the defendant has demonstrated
11 by a preponderance of the evidence that specified
12 criteria are met; providing an effective date.

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14 Be It Enacted by the Legislature of the State of Florida:
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16 Section 1. Present subsection (7) of section 893.135,
17 Florida Statutes, is redesignated as subsection (8), and a new
18 subsection (7) is added to that section, to read:

19 893.135 Trafficking; mandatory sentences; suspension or
20 reduction of sentences; conspiracy to engage in trafficking.—

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

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

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30 1. The defendant has not previously moved to depart from a
31 3-year mandatory minimum term and mandatory fine pursuant to
32 this subsection.

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

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

40 a. Not more than 34 grams of cocaine;

41 b. Not more than 17 grams of hydrocodone;

42 c. Not more than 8 grams of oxycodone;

43 d. Not more than 6 grams of any controlled substance as
44 described in paragraph (1) (c);

45 e. Not more than 34 grams of phencyclidine;

46 f. Not more than 17 grams of amphetamine or
47 methamphetamine;

48 g. Not more than 6 grams of flunitrazepam;

49 h. Not more than 20 grams of a Phenethylamine as described
50 in subparagraph (1) (k)1.; or

51 i. Not more than 2 grams of lysergic acid diethylamide
52 (LSD).

53 4. The defendant did not possess the controlled substance
54 or mixture containing the controlled substance with the intent
55 to sell, manufacture, or deliver the substance or mixture.

56 5. The defendant did not obtain the controlled substance or
57 mixture containing the controlled substance by using a minor to
58 obtain the substance or mixture.

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59 6. In committing the violation of this section, the
60 defendant did not possess or threaten to use a firearm or deadly
61 weapon, or threaten to use or use physical force against another
62 person.

63 7. The defendant does not have a previous conviction for,
64 does not have an adjudication of delinquency for, or has not had
65 adjudication withheld for a violation of this section.

66 8. The defendant does not have a previous conviction for,
67 does not have an adjudication of delinquency for, or has not had
68 adjudication withheld for a violation of s. 893.13 which
69 involved the sale, manufacture, or delivery of a controlled
70 substance or the possession with intent to sell, manufacture, or
71 deliver a controlled substance.

72 9. The defendant does not have a previous conviction for,
73 does not have an adjudication of delinquency for, or has not had
74 adjudication withheld for committing, or attempting, soliciting,
75 or conspiring to commit, any of the criminal offenses proscribed
76 in the following statutes in this state or similar offenses in
77 another jurisdiction:

78 a. Section 393.135(2);

79 b. Section 394.4593(2);

80 c. Section 787.01, s. 787.02, or s. 787.025(2)(c), if the
81 victim is a minor and the defendant is not the victim's parent
82 or guardian;

83 d. Section 787.06(3)(b), (d), (f), or (g);

84 e. Section 794.011, excluding s. 794.011(10);

85 f. Section 794.05;

86 g. Former s. 796.03;

87 h. Former s. 796.035;

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- 88 i. Section 800.04;
89 j. Section 810.145(8);
90 k. Section 825.1025;
91 l. Section 827.071;
92 m. Section 847.0133;
93 n. Section 847.0135, excluding s. 847.0135(6);
94 o. Section 847.0137;
95 p. Section 847.0138;
96 q. Section 847.0145;
97 r. Section 916.1075(2);
98 s. Section 985.701(1); or
99 t. Any offense similar to those listed in sub-subparagraphs
100 a.-s. which was committed in this state and which has been
101 redesignated from a former statute number to one of those listed
102 in this subparagraph.
- 103 10. The defendant is amenable to substance abuse treatment
104 if the court determines that he or she is in need of such
105 treatment.
- 106 Section 2. This act shall take effect July 1, 2015.