

By Senator Garcia

38-01346-16

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

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

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

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

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

21           (c)1. A person who knowingly sells, purchases,  
22 manufactures, delivers, or brings into this state, or who is  
23 knowingly in actual or constructive possession of, 4 grams or  
24 more of any morphine, opium, hydromorphone, or any salt,  
25 derivative, isomer, or salt of an isomer thereof, including  
26 heroin, as described in s. 893.03(1)(b), (2)(a), (3)(c)3., or  
27 (3)(c)4., or 4 grams or more of any mixture containing any such  
28 substance, but less than 30 kilograms of such substance or  
29 mixture, commits a felony of the first degree, which felony  
30 shall be known as "trafficking in illegal drugs," punishable as  
31 provided in s. 775.082, s. 775.083, or s. 775.084. If the  
32 quantity involved:

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

36 b. Is 14 grams or more, but less than 28 grams, such person  
37 shall be sentenced to a mandatory minimum term of imprisonment  
38 of 15 years and shall be ordered to pay a fine of \$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 person  
53 shall be sentenced to a mandatory minimum term of imprisonment  
54 of 3 years and shall be ordered to pay a fine of \$50,000.

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

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

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

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

75 a. Is 7 grams or more, but less than 14 grams, such person  
76 shall be sentenced to a mandatory minimum term of imprisonment  
77 of 3 years and shall be ordered to pay a fine of \$50,000.

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

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

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

89 4. A person who knowingly sells, purchases, manufactures,  
90 delivers, or brings into this state, or who is knowingly in

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91 actual or constructive possession of, 30 kilograms or more of  
92 any morphine, opium, oxycodone, hydrocodone, hydromorphone, or  
93 any salt, derivative, isomer, or salt of an isomer thereof,  
94 including heroin, as described in s. 893.03(1)(b), (2)(a),  
95 (3)(c)3., or (3)(c)4., or 30 kilograms or more of any mixture  
96 containing any such substance, commits the first degree felony  
97 of trafficking in illegal drugs. A person who has been convicted  
98 of the first degree felony of trafficking in illegal drugs under  
99 this subparagraph shall be punished by life imprisonment and is  
100 ineligible for any form of discretionary early release except  
101 pardon or executive clemency or conditional medical release  
102 under s. 947.149. However, if the court determines that, in  
103 addition to committing any act specified in this paragraph:

104 a. The person intentionally killed an individual or  
105 counseled, commanded, induced, procured, or caused the  
106 intentional killing of an individual and such killing was the  
107 result; or

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

110  
111 such person commits the capital felony of trafficking in illegal  
112 drugs, punishable as provided in ss. 775.082 and 921.142. A  
113 person sentenced for a capital felony under this paragraph shall  
114 also be sentenced to pay the maximum fine provided under  
115 subparagraph 1.

116 5. A person who knowingly brings into this state 60  
117 kilograms or more of any morphine, opium, oxycodone,  
118 hydrocodone, hydromorphone, or any salt, derivative, isomer, or  
119 salt of an isomer thereof, including heroin, as described in s.

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120 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 60 kilograms or  
121 more of any mixture containing any such substance, and who knows  
122 that the probable result of such importation would be the death  
123 of a person, commits capital importation of illegal drugs, a  
124 capital felony punishable as provided in ss. 775.082 and  
125 921.142. A person sentenced for a capital felony under this  
126 paragraph shall also be sentenced to pay the maximum fine  
127 provided under subparagraph 1.

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

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

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

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

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

148 4. The defendant has not previously been convicted of any

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149 of the felonies listed in s. 775.084(1)(b)1.

150 (c) When departing from the mandatory minimum term of  
151 imprisonment, the sentencing court may consider any facts the  
152 court considers relevant, including the criteria listed in  
153 paragraph (b), the sentencing report and any evidence admitted  
154 in a previous sentencing proceeding, the defendant's record of  
155 arrests, any history or evidence of substance abuse or mental  
156 illness, the likelihood that an alternative sentence will  
157 produce the same deterrent effect, and the likelihood that an  
158 alternative sentence will rehabilitate the defendant to an equal  
159 or greater extent than the mandatory minimum term of  
160 imprisonment.

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

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