

By Senator Bean

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1 A bill to be entitled
2 An act relating to the Self-Defense Protection Act;
3 providing a short title; amending s. 775.087, F.S.;
4 extending an exception to certain mandatory minimum
5 sentences if a use or threatened use of force was
6 justifiable under specified provisions to other cases,
7 including those involving aggravated assault; revising
8 required written findings; providing an effective
9 date.

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

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13 Section 1. This act shall be cited as the "Self-Defense
14 Protection Act."

15 Section 2. Subsection (6) of section 775.087, Florida
16 Statutes, is amended, and subsections (2) and (3) of that
17 section are republished, to read:

18 775.087 Possession or use of weapon; aggravated battery;
19 felony reclassification; minimum sentence.—

20 (2)(a)1. Any person who is convicted of a felony or an
21 attempt to commit a felony, regardless of whether the use of a
22 weapon is an element of the felony, and the conviction was for:

- 23 a. Murder;
24 b. Sexual battery;
25 c. Robbery;
26 d. Burglary;
27 e. Arson;
28 f. Aggravated assault;
29 g. Aggravated battery;

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- 30 h. Kidnapping;
- 31 i. Escape;
- 32 j. Aircraft piracy;
- 33 k. Aggravated child abuse;
- 34 l. Aggravated abuse of an elderly person or disabled adult;
- 35 m. Unlawful throwing, placing, or discharging of a
- 36 destructive device or bomb;
- 37 n. Carjacking;
- 38 o. Home-invasion robbery;
- 39 p. Aggravated stalking;
- 40 q. Trafficking in cannabis, trafficking in cocaine, capital
- 41 importation of cocaine, trafficking in illegal drugs, capital
- 42 importation of illegal drugs, trafficking in phencyclidine,
- 43 capital importation of phencyclidine, trafficking in
- 44 methaqualone, capital importation of methaqualone, trafficking
- 45 in amphetamine, capital importation of amphetamine, trafficking
- 46 in flunitrazepam, trafficking in gamma-hydroxybutyric acid
- 47 (GHB), trafficking in 1,4-Butanediol, trafficking in
- 48 Phenethylamines, or other violation of s. 893.135(1); or
- 49 r. Possession of a firearm by a felon

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51 and during the commission of the offense, such person actually

52 possessed a "firearm" or "destructive device" as those terms are

53 defined in s. 790.001, shall be sentenced to a minimum term of

54 imprisonment of 10 years, except that a person who is convicted

55 for aggravated assault, possession of a firearm by a felon, or

56 burglary of a conveyance shall be sentenced to a minimum term of

57 imprisonment of 3 years if such person possessed a "firearm" or

58 "destructive device" during the commission of the offense.

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59 However, if an offender who is convicted of the offense of
60 possession of a firearm by a felon has a previous conviction of
61 committing or attempting to commit a felony listed in s.
62 775.084(1)(b)1. and actually possessed a firearm or destructive
63 device during the commission of the prior felony, the offender
64 shall be sentenced to a minimum term of imprisonment of 10
65 years.

66 2. Any person who is convicted of a felony or an attempt to
67 commit a felony listed in sub-subparagraphs (a)1.a.-q.,
68 regardless of whether the use of a weapon is an element of the
69 felony, and during the course of the commission of the felony
70 such person discharged a "firearm" or "destructive device" as
71 defined in s. 790.001 shall be sentenced to a minimum term of
72 imprisonment of 20 years.

73 3. Any person who is convicted of a felony or an attempt to
74 commit a felony listed in sub-subparagraphs (a)1.a.-q.,
75 regardless of whether the use of a weapon is an element of the
76 felony, and during the course of the commission of the felony
77 such person discharged a "firearm" or "destructive device" as
78 defined in s. 790.001 and, as the result of the discharge, death
79 or great bodily harm was inflicted upon any person, the
80 convicted person shall be sentenced to a minimum term of
81 imprisonment of not less than 25 years and not more than a term
82 of imprisonment of life in prison.

83 (b) Subparagraph (a)1., subparagraph (a)2., or subparagraph
84 (a)3. does not prevent a court from imposing a longer sentence
85 of incarceration as authorized by law in addition to the minimum
86 mandatory sentence, or from imposing a sentence of death
87 pursuant to other applicable law. Subparagraph (a)1.,

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88 subparagraph (a)2., or subparagraph (a)3. does not authorize a
89 court to impose a lesser sentence than otherwise required by
90 law.

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92 Notwithstanding s. 948.01, adjudication of guilt or imposition
93 of sentence shall not be suspended, deferred, or withheld, and
94 the defendant is not eligible for statutory gain-time under s.
95 944.275 or any form of discretionary early release, other than
96 pardon or executive clemency, or conditional medical release
97 under s. 947.149, prior to serving the minimum sentence.

98 (c) If the minimum mandatory terms of imprisonment imposed
99 pursuant to this section exceed the maximum sentences authorized
100 by s. 775.082, s. 775.084, or the Criminal Punishment Code under
101 chapter 921, then the mandatory minimum sentence must be
102 imposed. If the mandatory minimum terms of imprisonment pursuant
103 to this section are less than the sentences that could be
104 imposed as authorized by s. 775.082, s. 775.084, or the Criminal
105 Punishment Code under chapter 921, then the sentence imposed by
106 the court must include the mandatory minimum term of
107 imprisonment as required in this section.

108 (d) It is the intent of the Legislature that offenders who
109 actually possess, carry, display, use, threaten to use, or
110 attempt to use firearms or destructive devices be punished to
111 the fullest extent of the law, and the minimum terms of
112 imprisonment imposed pursuant to this subsection shall be
113 imposed for each qualifying felony count for which the person is
114 convicted. The court shall impose any term of imprisonment
115 provided for in this subsection consecutively to any other term
116 of imprisonment imposed for any other felony offense.

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117 (3) (a) 1. Any person who is convicted of a felony or an
118 attempt to commit a felony, regardless of whether the use of a
119 firearm is an element of the felony, and the conviction was for:

- 120 a. Murder;
- 121 b. Sexual battery;
- 122 c. Robbery;
- 123 d. Burglary;
- 124 e. Arson;
- 125 f. Aggravated assault;
- 126 g. Aggravated battery;
- 127 h. Kidnapping;
- 128 i. Escape;
- 129 j. Sale, manufacture, delivery, or intent to sell,
130 manufacture, or deliver any controlled substance;
- 131 k. Aircraft piracy;
- 132 l. Aggravated child abuse;
- 133 m. Aggravated abuse of an elderly person or disabled adult;
- 134 n. Unlawful throwing, placing, or discharging of a
135 destructive device or bomb;
- 136 o. Carjacking;
- 137 p. Home-invasion robbery;
- 138 q. Aggravated stalking; or
- 139 r. Trafficking in cannabis, trafficking in cocaine, capital
140 importation of cocaine, trafficking in illegal drugs, capital
141 importation of illegal drugs, trafficking in phencyclidine,
142 capital importation of phencyclidine, trafficking in
143 methaqualone, capital importation of methaqualone, trafficking
144 in amphetamine, capital importation of amphetamine, trafficking
145 in flunitrazepam, trafficking in gamma-hydroxybutyric acid

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146 (GHB), trafficking in 1,4-Butanediol, trafficking in
147 Phenethylamines, or other violation of s. 893.135(1);

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

153 2. Any person who is convicted of a felony or an attempt to
154 commit a felony listed in subparagraph (a)1., regardless of
155 whether the use of a weapon is an element of the felony, and
156 during the course of the commission of the felony such person
157 discharged a semiautomatic firearm and its high-capacity box
158 magazine or a "machine gun" as defined in s. 790.001 shall be
159 sentenced to a minimum term of imprisonment of 20 years.

160 3. Any person who is convicted of a felony or an attempt to
161 commit a felony listed in subparagraph (a)1., regardless of
162 whether the use of a weapon is an element of the felony, and
163 during the course of the commission of the felony such person
164 discharged a semiautomatic firearm and its high-capacity box
165 magazine or a "machine gun" as defined in s. 790.001 and, as the
166 result of the discharge, death or great bodily harm was
167 inflicted upon any person, the convicted person shall be
168 sentenced to a minimum term of imprisonment of not less than 25
169 years and not more than a term of imprisonment of life in
170 prison.

171 (b) Subparagraph (a)1., subparagraph (a)2., or subparagraph
172 (a)3. does not prevent a court from imposing a longer sentence
173 of incarceration as authorized by law in addition to the minimum
174 mandatory sentence, or from imposing a sentence of death

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175 pursuant to other applicable law. Subparagraph (a)1.,
176 subparagraph (a)2., or subparagraph (a)3. does not authorize a
177 court to impose a lesser sentence than otherwise required by
178 law.

179

180 Notwithstanding s. 948.01, adjudication of guilt or imposition
181 of sentence shall not be suspended, deferred, or withheld, and
182 the defendant is not eligible for statutory gain-time under s.
183 944.275 or any form of discretionary early release, other than
184 pardon or executive clemency, or conditional medical release
185 under s. 947.149, prior to serving the minimum sentence.

186 (c) If the minimum mandatory terms of imprisonment imposed
187 pursuant to this section exceed the maximum sentences authorized
188 by s. 775.082, s. 775.084, or the Criminal Punishment Code under
189 chapter 921, then the mandatory minimum sentence must be
190 imposed. If the mandatory minimum terms of imprisonment pursuant
191 to this section are less than the sentences that could be
192 imposed as authorized by s. 775.082, s. 775.084, or the Criminal
193 Punishment Code under chapter 921, then the sentence imposed by
194 the court must include the mandatory minimum term of
195 imprisonment as required in this section.

196 (d) It is the intent of the Legislature that offenders who
197 possess, carry, display, use, threaten to use, or attempt to use
198 a semiautomatic firearm and its high-capacity detachable box
199 magazine or a machine gun as defined in s. 790.001 be punished
200 to the fullest extent of the law, and the minimum terms of
201 imprisonment imposed pursuant to this subsection shall be
202 imposed for each qualifying felony count for which the person is
203 convicted. The court shall impose any term of imprisonment

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204 provided for in this subsection consecutively to any other term
205 of imprisonment imposed for any other felony offense.

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

207 1. "High-capacity detachable box magazine" means any
208 detachable box magazine, for use in a semiautomatic firearm,
209 which is capable of being loaded with more than 20 centerfire
210 cartridges.

211 2. "Semiautomatic firearm" means a firearm which is capable
212 of firing a series of rounds by separate successive depressions
213 of the trigger and which uses the energy of discharge to perform
214 a portion of the operating cycle.

215 (6) Notwithstanding s. 27.366, the sentencing court shall
216 not impose the mandatory minimum sentence required by subsection
217 (2) or subsection (3) ~~for a conviction for aggravated assault~~ if
218 the court makes written findings that:

219 (a) The defendant had a good faith belief that the use or
220 threatened use of force ~~aggravated assault~~ was justifiable
221 pursuant to chapter 776.

222 ~~(b) The aggravated assault was not committed in the course~~
223 ~~of committing another criminal offense.~~

224 (b)(e) The defendant does not pose a threat to public
225 safety.

226 (c)(d) The totality of the circumstances involved in the
227 offense does ~~do~~ not justify the imposition of such sentence.

228 Section 3. This act shall take effect July 1, 2016.