

By Senator Powell

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

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

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17 Section 1. Present subsection (7) of section 893.135,
18 Florida Statutes, is redesignated as subsection (8), and a new
19 subsection (7) is added to that section, to read:

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

22 (7) (a) A person who is convicted of a violation of this
23 section which has a mandatory minimum term of imprisonment of 3
24 years and a mandatory fine may move the sentencing court to
25 depart from the sentence and the fine that would apply to the
26 conviction absent a departure. The state attorney may file an
27 objection to the motion.

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

31 1. The defendant has not previously benefited by a
32 departure from a mandatory minimum term of imprisonment of 3

30-00885-17

2017834__

33 years and a mandatory fine under this subsection.

34 2. The defendant's violation of this section is subject to
35 a mandatory minimum term of imprisonment of 3 years and a
36 mandatory fine absent a departure.

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

41 a. Not more than 34 grams of cocaine;

42 b. Not more than 17 grams of hydrocodone;

43 c. Not more than 8 grams of oxycodone;

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

46 e. Not more than 34 grams of phencyclidine;

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

49 g. Not more than 6 grams of flunitrazepam;

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

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

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

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

60 6. In committing the violation of this section, the
61 defendant did not possess or threaten to use a firearm or deadly

30-00885-17

2017834__

62 weapon, or use or threaten to use physical force against another
63 person.

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

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

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

79 a. Section 393.135(2);

80 b. Section 394.4593(2);

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

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

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

86 f. Section 794.05;

87 g. Former s. 796.03;

88 h. Former s. 796.035;

89 i. Section 800.04;

90 j. Section 810.145(8);

30-00885-17

2017834__

91 k. Section 825.1025;

92 l. Section 827.071;

93 m. Section 847.0133;

94 n. Section 847.0135, excluding s. 847.0135(6);

95 o. Section 847.0137;

96 p. Section 847.0138;

97 q. Section 847.0145;

98 r. Section 916.1075(2);

99 s. Section 985.701(1); or

100 t. Any offense similar to those listed in sub-subparagraphs
101 a.-s. which was committed in this state and which has been
102 redesignated from a former statute number to one of those listed
103 in this subparagraph.

104 10. The defendant is amenable to substance abuse treatment
105 if the court determines that he or she is in need of such
106 treatment.

107 Section 2. This act shall take effect July 1, 2017.