

By Senator Rouson

19-00135-20

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1                   A bill to be entitled  
2       An act relating to sentencing; creating s. 775.08701,  
3       F.S.; providing legislative intent; prohibiting  
4       certain persons from being sentenced to mandatory  
5       minimum terms of imprisonment for aggravated assault  
6       or attempted aggravated assault committed before a  
7       specified date; requiring resentencing for persons who  
8       committed those violations before a specified date and  
9       are serving mandatory minimum terms of imprisonment;  
10      specifying the procedures for such resentencing;  
11      providing eligibility for gain-time for such  
12      resentenced persons; creating s. 893.13501, F.S.;  
13      providing legislative intent; providing for sentencing  
14      or resentencing for persons who committed certain  
15      violations before a specified date which involved  
16      trafficking in hydrocodone or codeine; requiring  
17      resentencing for persons who committed those  
18      violations before a specified date and are serving  
19      mandatory minimum terms of imprisonment; providing  
20      criminal penalties for such violations that are  
21      subject to resentencing; providing legislative intent;  
22      requiring sentencing or resentencing for persons who  
23      committed certain violations before a specified date  
24      which involved trafficking in oxycodone; providing  
25      criminal penalties for such violation that is subject  
26      to resentencing; specifying the procedures for such  
27      resentencing; providing an effective date.

28  
29   Be It Enacted by the Legislature of the State of Florida:

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30  
31 Section 1. Section 775.08701, Florida Statutes, is created  
32 to read:

33 775.08701 Retroactive application relating to s. 775.087;  
34 legislative intent; prohibiting mandatory minimum sentencing for  
35 certain offenses; resentencing procedures.-

36 (1) It is the intent of the Legislature to retroactively  
37 apply chapter 2016-7, Laws of Florida, only as provided in this  
38 section, to persons who committed aggravated assault or  
39 attempted aggravated assault before July 1, 2016, the effective  
40 date of chapter 2016-7, Laws of Florida, which amended s.  
41 775.087 to remove aggravated assault or attempted aggravated  
42 assault from the list of predicate offenses for mandatory  
43 minimum terms of imprisonment under that section.

44 (2) As used in this section, a reference to "former s.  
45 775.087" is a reference to s. 775.087 as it existed at any time  
46 before its amendment by chapter 2016-7, Laws of Florida.

47 (3) (a) A person who committed aggravated assault or  
48 attempted aggravated assault before July 1, 2016, but was not  
49 sentenced under former s. 775.087 before October 1, 2020, the  
50 effective date of this act, may not be sentenced for that  
51 violation to a mandatory minimum term of imprisonment under  
52 former s. 775.087.

53 (b) A person who committed aggravated assault or attempted  
54 aggravated assault before July 1, 2016, who was sentenced before  
55 October 1, 2019, to a mandatory minimum term of imprisonment  
56 pursuant to former s. 775.087, and who is serving such mandatory  
57 minimum term of imprisonment on or after October 1, 2020, must  
58 be resentenced in accordance with paragraph (c) to a sentence

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59 without such mandatory minimum term of imprisonment. The person  
60 must be resentenced to a sentence as provided in s. 775.082, s.  
61 775.083, or s. 775.084.

62 (c) Resentencing under this section must occur in the  
63 following manner:

64 1. The Department of Corrections shall notify the person  
65 described in paragraph (b) of his or her eligibility to request  
66 a sentence review hearing.

67 2. The person seeking sentence review under this section  
68 may submit an application to the court of original jurisdiction  
69 requesting that a sentence review hearing be held. The  
70 sentencing court shall retain original jurisdiction for the  
71 duration of the sentence for this purpose.

72 3. A person who is eligible for a sentence review hearing  
73 under this section is entitled to be represented by counsel, and  
74 the court shall appoint a public defender to represent the  
75 person if he or she cannot afford an attorney.

76 4. Upon receiving an application from the eligible person,  
77 the court of original sentencing jurisdiction shall hold a  
78 sentence review hearing to determine if the eligible person  
79 meets the criteria for resentencing under this section. If the  
80 court determines at the sentence review hearing that the  
81 eligible person meets the criteria in this section for  
82 resentencing, the court must resentence the person as provided  
83 in this section; however, the new sentence may not exceed the  
84 person's original sentence with credit for time served. If the  
85 court determines that such person does not meet the criteria for  
86 resentencing under this section, the court must provide written  
87 reasons why such person does not meet such criteria.

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88 (d) A person sentenced or resentenced pursuant to this  
89 section is eligible to receive any gain-time pursuant to s.  
90 944.275 which he or she was previously ineligible to receive  
91 because of the imposition of the mandatory minimum term of  
92 imprisonment pursuant to former s. 775.087.

93 Section 2. Section 893.13501, Florida Statutes, is created  
94 to read:

95 893.13501 Retroactive application relating to s. 893.135;  
96 legislative intent; sentencing or resentencing for trafficking  
97 in hydrocodone, codeine, or oxycodone; penalties; resentencing  
98 procedures.-

99 (1) (a) It is the intent of the Legislature to retroactively  
100 apply changes to gram-weight thresholds and ranges and to  
101 penalties for trafficking in hydrocodone or codeine which are  
102 applicable to offenders who committed these offenses on or after  
103 October 1, 2019, the effective date of amendments to s. 893.135  
104 by chapter 2019-167, Laws of Florida. These changes must be  
105 retroactively applied as provided in this subsection to a  
106 violation of s. 893.135(1)(c) involving trafficking in  
107 hydrocodone, as described in s. 893.03(2)(a)1.k.; trafficking in  
108 codeine, as described in s. 893.03(2)(a)1.g.; or trafficking in  
109 any salt of hydrocodone or of codeine, or any mixture containing  
110 any such substance, as described in s. 893.03(2)(a)2., if the  
111 violation was committed before October 1, 2019, and the  
112 violation was punishable as a felony of the first degree at the  
113 time the violation was committed.

114 (b) A person who committed a trafficking violation  
115 described in paragraph (a) before October 1, 2019, but who was  
116 not sentenced for such violation before October 1, 2020, the

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117 effective date of this act, must be sentenced as provided in  
118 paragraph (d).

119 (c) A person who committed a trafficking violation  
120 described in paragraph (a) before October 1, 2019, and who is  
121 -serving a mandatory minimum term of imprisonment for such  
122 violation on or after October 1, 2020, must be resentenced as  
123 provided in paragraph (d) and in accordance with subsection (3).

124 (d)1. The violation described in paragraph (a) for which  
125 the person is to be sentenced or resentenced pursuant to this  
126 subsection is a felony of the first degree, punishable as  
127 provided in s. 775.082, s. 775.083, or s. 775.084.

128 2. If the quantity of hydrocodone, as described in s.  
129 893.03(2)(a)1.k., codeine, as described in s. 893.03(2)(a)1.g.,  
130 any salt thereof, or any mixture containing any such substance  
131 involved in the violation of s. 893.135:

132 a. Was 4 grams or more, but less than 28 grams, such person  
133 must be sentenced or resentenced as provided in s. 775.082, s.  
134 775.083, or s. 775.084.

135 b. Was 28 grams or more, but less than 50 grams, such  
136 person must be sentenced or resentenced to a mandatory minimum  
137 term of imprisonment of 3 years and ordered to pay a fine of  
138 \$50,000.

139 c. Was 50 grams or more, but less than 100 grams, such  
140 person must be sentenced or resentenced to a mandatory minimum  
141 term of imprisonment of 7 years and ordered to pay a fine of  
142 \$100,000.

143 d. Was 100 grams or more, but less than 300 grams, such  
144 person must be sentenced or resentenced to a mandatory minimum  
145 term of imprisonment of 15 years and ordered to pay a fine of

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146 \$500,000.

147 e. Was 300 grams or more, but less than 30 kilograms, such  
148 person must be sentenced or resentenced to a mandatory minimum  
149 term of imprisonment of 25 years and ordered to pay a fine of  
150 \$500,000.

151 (2) (a) It is the intent of the Legislature to retroactively  
152 apply the changes to gram-weight thresholds and ranges and to  
153 penalties for trafficking in oxycodone which are applicable to  
154 offenders who committed this offense on or after July 1, 2014,  
155 the effective date of amendments to s. 893.135 by chapter 2014-  
156 176, Laws of Florida. These changes must be retroactively  
157 applied as provided in this subsection to a violation of s.  
158 893.135(1) (c) involving trafficking in oxycodone, as described  
159 in s. 893.03(2) (a)1.q., any salt thereof, or any mixture  
160 containing any such substance if the violation was committed  
161 before July 1, 2014, and the violation was punishable as a  
162 felony of the first degree at the time the violation was  
163 committed.

164 (b) A person who committed a trafficking violation  
165 described in paragraph (a) before July 1, 2014, but who was not  
166 sentenced for such violation before October 1, 2020, must be  
167 sentenced as provided in paragraph (d).

168 (c) A person who committed a trafficking violation  
169 described in paragraph (a) before July 1, 2014, and who is  
170 servng a mandatory minimum term of imprisonment for such  
171 violation on or after October 1, 2020, must be resentenced as  
172 provided in paragraph (d) and in accordance with subsection (3).

173 (d)1. The violation described in paragraph (a) for which  
174 the person is to be sentenced or resentenced pursuant to this

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175 subsection is a felony of the first degree, punishable as  
176 provided in s. 775.082, s. 775.083, or s. 775.084.

177 2. If the quantity of oxycodone, as described in s.  
178 893.03(2)(a)1.g., any salt thereof, or any mixture containing  
179 any such substance involved in the violation of s. 893.135:

180 a. Was 4 grams or more, but less than 7 grams, such person  
181 must be sentenced or resentenced as provided in s. 775.082, s.  
182 775.083, or s. 775.084.

183 b. Was 7 grams or more, but less than 14 grams, such person  
184 must be sentenced or resentenced to a mandatory minimum term of  
185 imprisonment of 3 years and ordered to pay a fine of \$50,000.

186 c. Was 14 grams or more, but less than 25 grams, such  
187 person must be sentenced or resentenced to a mandatory minimum  
188 term of imprisonment of 7 years and ordered to pay a fine of  
189 \$100,000.

190 d. Was 25 grams or more, but less than 100 grams, such  
191 person must be sentenced or resentenced to a mandatory minimum  
192 term of imprisonment of 15 years and ordered to pay a fine of  
193 \$500,000.

194 e. Was 100 grams or more, but less than 30 kilograms, such  
195 person must be sentenced or resentenced to a mandatory minimum  
196 term of imprisonment of 25 years and ordered to pay a fine of  
197 \$500,000.

198 (3) Resentencing under this section must occur in the  
199 following manner:

200 (a) The Department of Corrections shall notify the person  
201 described in paragraph (1)(c) or paragraph (2)(c) of his or her  
202 eligibility to request a sentence review hearing.

203 (b) The person seeking sentence review under this section

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204 may submit an application to the court of original jurisdiction  
205 requesting that a sentence review hearing be held. The  
206 sentencing court shall retain original jurisdiction for the  
207 duration of the sentence for this purpose.

208 (c) A person who is eligible for a sentence review hearing  
209 under this section is entitled to be represented by counsel, and  
210 the court shall appoint a public defender to represent the  
211 person if he or she cannot afford an attorney.

212 (d) Upon receiving an application from the eligible person,  
213 the court of original sentencing jurisdiction shall hold a  
214 sentence review hearing to determine if the eligible person  
215 meets the criteria for resentencing under this section. If the  
216 court determines at the sentence review hearing that the  
217 eligible person meets the criteria in this section for  
218 resentencing, the court must resentence the person as provided  
219 in this section; however, the new sentence may not exceed the  
220 person's original sentence with credit for time served. If the  
221 court determines that such person does not meet the criteria for  
222 resentencing under this section, the court must provide written  
223 reasons why such person does not meet such criteria.

224 Section 3. This act shall take effect October 1, 2020.