

By the Committee on Criminal Justice; and Senator Rouson

591-03562-21

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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; providing for the
4 retroactive applicability of s. 775.087, F.S.;
5 prohibiting certain persons from being sentenced to
6 mandatory minimum terms of imprisonment for aggravated
7 assault or attempted aggravated assault committed
8 before a specified date; requiring resentencing for
9 persons who committed such violations before a
10 specified date and are serving mandatory minimum terms
11 of imprisonment; specifying procedures for such
12 resentencing; providing eligibility for gain-time for
13 such sentenced or resentenced persons; creating s.
14 893.13501, F.S.; providing legislative intent;
15 providing for the retroactive applicability of s.
16 893.135, F.S.; requiring the initial sentencing and
17 the resentencing of certain persons who committed
18 certain violations before a specified date which
19 involved trafficking in hydrocodone or codeine;
20 providing criminal penalties for such violations that
21 are subject to an initial sentencing or a
22 resentencing; providing legislative intent; providing
23 for the retroactive applicability of s. 893.135, F.S.;
24 requiring the initial sentencing and the resentencing
25 of certain persons who committed certain violations
26 before a specified date which involved trafficking in
27 oxycodone; providing criminal penalties for such
28 violations that are subject to an initial sentencing
29 or a resentencing; specifying procedures for such

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30 resentencing; providing an effective date.

31
32 Be It Enacted by the Legislature of the State of Florida:

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34 Section 1. Section 775.08701, Florida Statutes, is created
35 to read:

36 775.08701 Retroactive application relating to s. 775.087;
37 legislative intent; prohibiting mandatory minimum sentencing for
38 certain offenses; resentencing procedures.-

39 (1) It is the intent of the Legislature to retroactively
40 apply chapter 2016-7, Laws of Florida, only as provided in this
41 section, to persons who committed aggravated assault or
42 attempted aggravated assault before July 1, 2016, the effective
43 date of chapter 2016-7, Laws of Florida, which amended s.
44 775.087 to remove aggravated assault and attempted aggravated
45 assault from the list of predicate offenses for mandatory
46 minimum terms of imprisonment under that section.

47 (2) As used in this section, a reference to "former s.
48 775.087" is a reference to s. 775.087 as it existed at any time
49 before its amendment by chapter 2016-7, Laws of Florida.

50 (3) (a) A person who committed aggravated assault or
51 attempted aggravated assault before July 1, 2016, but was not
52 sentenced under former s. 775.087 before October 1, 2021, may
53 not be sentenced for that violation to a mandatory minimum term
54 of imprisonment under former s. 775.087.

55 (b) A person who committed aggravated assault or attempted
56 aggravated assault before July 1, 2016, who was sentenced before
57 October 1, 2021, to a mandatory minimum term of imprisonment
58 pursuant to former s. 775.087, and who is serving such mandatory

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59 minimum term of imprisonment on or after October 1, 2021, must
60 be resentenced in accordance with paragraph (c) to a sentence
61 without such mandatory minimum term of imprisonment. The new
62 sentence must be as provided in s. 775.082, s. 775.083, or s.
63 775.084.

64 (c) Resentencing under this section must occur in the
65 following manner:

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

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

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

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

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88 resentencing under this section, the court must provide written
89 reasons why such person does not meet such criteria.

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

95 Section 2. Section 893.13501, Florida Statutes, is created
96 to read:

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

101 (1) It is the intent of the Legislature to retroactively
102 apply changes to gram-weight thresholds and ranges and to
103 penalties for trafficking in hydrocodone or codeine which are
104 applicable to offenders who committed these offenses on or after
105 October 1, 2019, the effective date of amendments to s. 893.135
106 by chapter 2019-167, Laws of Florida.

107 (a) If a violation of s. 893.135(1)(c) involving
108 trafficking in hydrocodone, as described in s. 893.03(2)(a)1.k.;
109 trafficking in codeine, as described in s. 893.03(2)(a)1.g.; or
110 trafficking in any salt of hydrocodone or of codeine, or any
111 mixture containing any such substance, as described in s.
112 893.03(2)(a)2., was committed before October 1, 2019, and was
113 punishable as a felony of the first degree at the time the
114 violation was committed, the changes must be retroactively
115 applied as provided in this subsection.

116 (b) A person who committed a trafficking violation

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117 described in paragraph (a) before October 1, 2019, but who was
118 not sentenced for such violation before October 1, 2021, must be
119 sentenced as provided in paragraph (d).

120 (c) A person who committed a trafficking violation
121 described in paragraph (a) before October 1, 2019, and who is
122 servicing a mandatory minimum term of imprisonment for such
123 violation on or after October 1, 2021, must be resentenced as
124 provided in paragraph (d) and in accordance with subsection (3).

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

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

133 a. Was 4 grams or more, but less than 28 grams, such person
134 must be sentenced or resentenced as provided in s. 775.082, s.
135 775.083, or s. 775.084.

136 b. Was 28 grams or more, but less than 50 grams, such
137 person must be sentenced or resentenced to a mandatory minimum
138 term of imprisonment of 3 years and ordered to pay a fine of
139 \$50,000.

140 c. Was 50 grams or more, but less than 100 grams, such
141 person must be sentenced or resentenced to a mandatory minimum
142 term of imprisonment of 7 years and ordered to pay a fine of
143 \$100,000.

144 d. Was 100 grams or more, but less than 300 grams, such
145 person must be sentenced or resentenced to a mandatory minimum

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146 term of imprisonment of 15 years and ordered to pay a fine of
147 \$500,000.

148 e. Was 300 grams or more, but less than 30 kilograms, such
149 person must be sentenced or resentenced to a mandatory minimum
150 term of imprisonment of 25 years and ordered to pay a fine of
151 \$500,000 if the trafficking involves hydrocodone, any salt
152 thereof, or any mixture containing hydrocodone; or to pay a fine
153 of \$750,000 if the trafficking involves codeine, or any salt
154 thereof, or any mixture containing codeine.

155 (2) It is the intent of the Legislature to retroactively
156 apply the changes to gram-weight thresholds and ranges and to
157 penalties for trafficking in oxycodone which are applicable to
158 offenders who committed this offense on or after July 1, 2014,
159 the effective date of amendments to s. 893.135 by chapter 2014-
160 176, Laws of Florida.

161 (a) If a violation of s. 893.135(1)(c) involving
162 trafficking in oxycodone, as described in s. 893.03(2)(a)1.g.,
163 any salt thereof, or any mixture containing any such substance
164 was committed before July 1, 2014, and was punishable as a
165 felony of the first degree at the time the violation was
166 committed, the changes must be retroactively applied as provided
167 in this subsection.

168 (b) A person who committed a trafficking violation
169 described in paragraph (a) before July 1, 2014, but who was not
170 sentenced for such violation before October 1, 2021, must be
171 sentenced as provided in paragraph (d).

172 (c) A person who committed a trafficking violation
173 described in paragraph (a) before July 1, 2014, and who is
174 servng a mandatory minimum term of imprisonment for such

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175 violation on or after October 1, 2021, must be resentenced as
176 provided in paragraph (d) and in accordance with subsection (3).

177 (d)1. A violation described in paragraph (a) for which the
178 person is to be sentenced or resentenced pursuant to this
179 subsection is a felony of the first degree, punishable as
180 provided in s. 775.082, s. 775.083, or s. 775.084.

181 2. If the quantity of oxycodone, as described in s.
182 893.03(2)(a)1.g., any salt thereof, or any mixture containing
183 any such substance involved in the violation of s. 893.135:

184 a. Was 4 grams or more, but less than 7 grams, such person
185 must be sentenced or resentenced as provided in s. 775.082, s.
186 775.083, or s. 775.084.

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

190 c. Was 14 grams or more, but less than 25 grams, such
191 person must be sentenced or resentenced to a mandatory minimum
192 term of imprisonment of 7 years and ordered to pay a fine of
193 \$100,000.

194 d. Was 25 grams or more, but less than 100 grams, such
195 person must be sentenced or resentenced to a mandatory minimum
196 term of imprisonment of 15 years and ordered to pay a fine of
197 \$500,000.

198 e. Was 100 grams or more, but less than 30 kilograms, such
199 person must be sentenced or resentenced to a mandatory minimum
200 term of imprisonment of 25 years and ordered to pay a fine of
201 \$500,000.

202 (3) Resentencing under this section must occur in the
203 following manner:

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

207 (b) The person seeking sentence review under this section
208 may submit an application to the court of original jurisdiction
209 requesting that a sentence review hearing be held. The
210 sentencing court retains original jurisdiction for the duration
211 of the sentence for this purpose.

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

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

228 Section 3. This act shall take effect October 1, 2021.