

1 A bill to be entitled
 2 An act relating to sentencing for controlled substance
 3 violations; amending s. 893.135, F.S.; providing for
 4 an exception to mandatory minimum sentencing
 5 requirements for certain violators of specified
 6 controlled substance provisions; specifying criteria
 7 to qualify for an exception; providing criteria that
 8 may be considered by a court in departing for the
 9 mandatory minimum term of imprisonment; requiring a
 10 court to make certain statements if it departs from
 11 the mandatory minimum term of imprisonment; requiring
 12 a sentencing court that departs from the mandatory
 13 minimum term of imprisonment to, as part of any
 14 sentence, require the defendant to successfully
 15 complete a postadjudicatory treatment-based drug court
 16 program or sentence the defendant to drug offender
 17 probation; providing an effective date.

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

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 21 Section 1. Subsection (8) is added to section 893.135,
 22 Florida Statutes, to read:

23 893.135 Trafficking; mandatory sentences; suspension or
 24 reduction of sentences; conspiracy to engage in trafficking.—

25 (8) (a) Notwithstanding any other provision of law, if a
 26 defendant has been convicted of a violation of paragraph (1) (c)
 27 that involves possession of a mixture that is a prescription
 28 drug as defined in s. 499.003, the state attorney, defendant, or

29 counsel representing the defendant may move the sentencing court
30 to depart from the mandatory minimum term of imprisonment
31 applicable to that violation.

32 (b) The sentencing court may grant a motion under this
33 subsection if the court finds that the following criteria are
34 met:

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

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

41 3. In the commission of the offense in violation of
42 paragraph (1)(c), the defendant was not armed with, did not
43 threaten to use or display, and did not represent by word or
44 conduct that he or she possessed a firearm, deadly weapon, or
45 dangerous instrument.

46 4. The defendant has not previously been convicted of a
47 felony or a misdemeanor involving violence.

48 5. The provisions of this subsection have not been
49 previously invoked.

50 6. There was no evidence of possession with intent to
51 distribute.

52 7. The quantity of prescription drugs involved in the
53 violation evidenced that the drugs were for personal use.

54 (c) When departing from the mandatory minimum term of
55 imprisonment, the sentencing court may consider any facts that
56 the court considers relevant, including, but not limited to:

57 | 1. The criteria listed in paragraph (b).

58 | 2. The sentencing report and any evidence admitted in a
59 | previous sentencing proceeding.

60 | 3. The defendant's record of arrests.

61 | 4. Any other evidence of allegations of unlawful conduct
62 | or the use of violence by the defendant.

63 | 5. The defendant's family ties, length of residence in the
64 | community, employment history, and mental condition.

65 | 6. The likelihood that an alternative sentence will
66 | produce the same deterrent effect, rehabilitate the defendant,
67 | and prevent or delay recidivism to an equal or greater extent
68 | than imposition of the mandatory minimum term of imprisonment.

69 | 7. Whether the defendant has a history of alcohol or
70 | substance abuse.

71 | (d) If a sentencing court departs from the mandatory
72 | minimum term of imprisonment for a defendant convicted of a
73 | violation of s. 893.135(1)(c)1.a., the court must, as part of
74 | any sentence, require the defendant to successfully complete a
75 | postadjudicatory treatment-based drug court program as described
76 | in s. 397.334. If the defendant intends to reside in a county
77 | that has not established a postadjudicatory treatment-based drug
78 | court program, the court must, as part of any sentence that the
79 | court imposes, sentence the defendant to drug offender probation
80 | as described in s. 948.20(2).

81 | (e) If the sentencing court grants the motion, the court
82 | shall state in open court at time of sentencing the specific
83 | reasons for imposing the sentence and for not imposing the
84 | mandatory minimum term of imprisonment.

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Section 2. This act shall take effect July 1, 2013.