

1                                   A bill to be entitled  
 2           An act relating to possession or discharge of a  
 3           firearm or destructive device during the commission of  
 4           specified offenses; amending s. 775.087, F.S.;  
 5           providing that a sentencing court may elect not to  
 6           impose the minimum term of imprisonment for persons  
 7           convicted of certain offenses during which the person  
 8           actually possessed or discharged a firearm or  
 9           destructive device if the court finds that certain  
 10          specified criteria are met; requiring that a  
 11          sentencing court that elects not to impose the  
 12          mandatory minimum sentence make specific findings to  
 13          support its decision; providing an effective date.

14  
 15   Be It Enacted by the Legislature of the State of Florida:

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 17           Section 1. Subsection (2) of section 775.087, Florida  
 18   Statutes, is amended to read:

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

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

- 24           a. Murder;
- 25           b. Sexual battery;
- 26           c. Robbery;
- 27           d. Burglary;
- 28           e. Arson;

- 29 | f. Aggravated assault;
- 30 | g. Aggravated battery;
- 31 | h. Kidnapping;
- 32 | i. Escape;
- 33 | j. Aircraft piracy;
- 34 | k. Aggravated child abuse;
- 35 | l. Aggravated abuse of an elderly person or disabled
- 36 | adult;
- 37 | m. Unlawful throwing, placing, or discharging of a
- 38 | destructive device or bomb;
- 39 | n. Carjacking;
- 40 | o. Home-invasion robbery;
- 41 | p. Aggravated stalking;
- 42 | q. Trafficking in cannabis, trafficking in cocaine,
- 43 | capital importation of cocaine, trafficking in illegal drugs,
- 44 | capital importation of illegal drugs, trafficking in
- 45 | phencyclidine, capital importation of phencyclidine, trafficking
- 46 | in methaqualone, capital importation of methaqualone,
- 47 | trafficking in amphetamine, capital importation of amphetamine,
- 48 | trafficking in flunitrazepam, trafficking in gamma-
- 49 | hydroxybutyric acid (GHB), trafficking in 1,4-Butanediol,
- 50 | trafficking in Phenethylamines, or other violation of s.
- 51 | 893.135(1); or
- 52 | r. Possession of a firearm by a felon
- 53 |
- 54 | and during the commission of the offense, such person actually
- 55 | possessed a "firearm" or "destructive device" as those terms are
- 56 | defined in s. 790.001, shall be sentenced to a minimum term of

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57 | imprisonment of 10 years, except that a person who is convicted  
58 | for aggravated assault, possession of a firearm by a felon, or  
59 | burglary of a conveyance shall be sentenced to a minimum term of  
60 | imprisonment of 3 years if such person possessed a "firearm" or  
61 | "destructive device" during the commission of the offense.  
62 | However, if an offender who is convicted of the offense of  
63 | possession of a firearm by a felon has a previous conviction of  
64 | committing or attempting to commit a felony listed in s.  
65 | 775.084(1)(b)1. and actually possessed a firearm or destructive  
66 | device during the commission of the prior felony, the offender  
67 | shall be sentenced to a minimum term of imprisonment of 10  
68 | years.

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

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

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85 of imprisonment of life in prison.

86 (b) Subparagraph (a)1., subparagraph (a)2., or  
87 subparagraph (a)3. does not prevent a court from imposing a  
88 longer sentence of incarceration as authorized by law in  
89 addition to the minimum mandatory sentence, or from imposing a  
90 sentence of death pursuant to other applicable law. Subparagraph  
91 (a)1., subparagraph (a)2., or subparagraph (a)3. does not  
92 authorize a court to impose a lesser sentence than otherwise  
93 required by law.

94  
95 Notwithstanding s. 948.01, adjudication of guilt or imposition  
96 of sentence shall not be suspended, deferred, or withheld, and  
97 the defendant is not eligible for statutory gain-time under s.  
98 944.275 or any form of discretionary early release, other than  
99 pardon or executive clemency, or conditional medical release  
100 under s. 947.149, prior to serving the minimum sentence.

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

111 (d) It is the intent of the Legislature that offenders who  
112 actually possess, carry, display, use, threaten to use, or

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113 attempt to use firearms or destructive devices be punished to  
114 the fullest extent of the law, and the minimum terms of  
115 imprisonment imposed pursuant to this subsection shall be  
116 imposed for each qualifying felony count for which the person is  
117 convicted. The court shall impose any term of imprisonment  
118 provided for in this subsection consecutively to any other term  
119 of imprisonment imposed for any other felony offense.

120 (e)1. Notwithstanding subparagraph (a)1. or subparagraph  
121 (a)2., the sentencing court may elect not to impose the  
122 specified mandatory minimum term if the court finds that:

123 a. The defendant has not previously been convicted of an  
124 offense listed in subparagraph (a)1.;

125 b. The defendant did not discharge a firearm, destructive  
126 device, semiautomatic firearm and its high-capacity box  
127 magazine, or machine gun during the commission of the offense,  
128 or if discharged, did not injure another person during the  
129 commission of the offense; and

130 c. Imposition of the mandatory minimum term of  
131 imprisonment is not warranted based on the circumstances of the  
132 case.

133 2. If the sentencing court elects not to impose the  
134 mandatory minimum term specified in subparagraph (a)1. or  
135 subparagraph (a)2., the court shall make written findings  
136 supporting its decision.

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