

By Senator Sachs

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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; providing  
12          an effective date.

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

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

18           893.135 Trafficking; mandatory sentences; suspension or  
19 reduction of sentences; conspiracy to engage in trafficking.—

20           (8) (a) Notwithstanding any other provision of law, if a  
21 defendant has been convicted of a violation of paragraph (1) (c)  
22 which involves possession of a mixture that is a prescription  
23 drug as defined in s. 499.003, the state attorney, defendant, or  
24 counsel representing the defendant may move the sentencing court  
25 to depart from the mandatory minimum term of imprisonment  
26 applicable to that violation.

27           (b) The sentencing court may grant a motion under this  
28 subsection if the court finds that the following criteria are  
29 met:

34-00771-13

2013420

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

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

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

41 4. The defendant has not previously been convicted of a  
42 felony.

43 5. The provisions of this subsection have not been  
44 previously invoked.

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

48 1. The criteria listed in paragraph (b).

49 2. The sentencing report and any evidence admitted in a  
50 previous sentencing proceeding.

51 3. The defendant's record of arrests.

52 4. Any other evidence of allegations of unlawful conduct or  
53 the use of violence by the defendant.

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

56 6. The likelihood that an alternative sentence will produce  
57 the same deterrent effect, rehabilitate the defendant, and  
58 prevent or delay recidivism to an equal or greater extent than

34-00771-13

2013420\_\_

59 imposition of the mandatory minimum term of imprisonment.

60 7. The likelihood that the defendant will engage again in a  
61 criminal course of conduct.

62 (d) If the sentencing court grants the motion, the court  
63 shall state in open court at the time of sentencing the specific  
64 reasons for imposing the sentence and for not imposing the  
65 mandatory minimum term of imprisonment.

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