

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 a person  
 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 a sentencing  
 11          court that elects not to impose the mandatory minimum  
 12          sentence for the relevant offense to make specific  
 13          findings to support its decision to impose a lesser  
 14          term; making grammatical and technical changes;  
 15          providing an effective date.

16  
 17 Be It Enacted by the Legislature of the State of Florida:

18  
 19           Section 1. Section 775.087, Florida Statutes, is amended  
 20           to read:

21           775.087 Possession or use of weapon; aggravated battery;  
 22           felony reclassification; minimum sentence.—

23           (1) Unless otherwise provided by law, whenever a person is  
 24           charged with a felony, except a felony in which the use of a  
 25           weapon or firearm is an essential element, and during the  
 26           commission of such felony the defendant carries, displays, uses,  
 27           threatens to use, or attempts to use a ~~any~~ weapon or firearm, or  
 28           during the commission of such felony the defendant commits an

29 | aggravated battery, the felony for which the person is charged  
 30 | shall be reclassified as follows:

31 |       (a) In the case of a felony of the first degree, to a life  
 32 | felony.

33 |       (b) In the case of a felony of the second degree, to a  
 34 | felony of the first degree.

35 |       (c) In the case of a felony of the third degree, to a  
 36 | felony of the second degree.

37 |  
 38 | For purposes of sentencing under chapter 921 and determining  
 39 | incentive gain-time eligibility under chapter 944, a felony  
 40 | offense that ~~which~~ is reclassified under this section is ranked  
 41 | one level above the ranking under s. 921.0022 or s. 921.0023 of  
 42 | the felony offense committed.

43 |       (2) (a) 1. Except as otherwise provided in subsection (4), a  
 44 | ~~any~~ person who is convicted of a felony or an attempt to commit  
 45 | a felony, regardless of whether the use of a weapon is an  
 46 | element of the felony, and the conviction was for:

- 47 |       a. Murder;
- 48 |       b. Sexual battery;
- 49 |       c. Robbery;
- 50 |       d. Burglary;
- 51 |       e. Arson;
- 52 |       f. Aggravated assault;
- 53 |       g. Aggravated battery;
- 54 |       h. Kidnapping;
- 55 |       i. Escape;
- 56 |       j. Aircraft piracy;

57 | k. Aggravated child abuse;  
 58 | l. Aggravated abuse of an elderly person or disabled  
 59 | adult;  
 60 | m. Unlawful throwing, placing, or discharging of a  
 61 | destructive device or bomb;  
 62 | n. Carjacking;  
 63 | o. Home-invasion robbery;  
 64 | p. Aggravated stalking;  
 65 | q. Trafficking in cannabis, trafficking in cocaine,  
 66 | capital importation of cocaine, trafficking in illegal drugs,  
 67 | capital importation of illegal drugs, trafficking in  
 68 | phencyclidine, capital importation of phencyclidine, trafficking  
 69 | in methaqualone, capital importation of methaqualone,  
 70 | trafficking in amphetamine, capital importation of amphetamine,  
 71 | trafficking in flunitrazepam, trafficking in gamma-  
 72 | hydroxybutyric acid (GHB), trafficking in 1,4-Butanediol,  
 73 | trafficking in Phenethylamines, or other violation of s.  
 74 | 893.135(1); or  
 75 | r. Possession of a firearm by a felon  
 76 |  
 77 | and during the commission of the offense, such person actually  
 78 | possessed a "firearm" or "destructive device" as those terms are  
 79 | defined in s. 790.001, shall be sentenced to a minimum term of  
 80 | imprisonment of 10 years, except that a person who is convicted  
 81 | for aggravated assault, possession of a firearm by a felon, or  
 82 | burglary of a conveyance shall be sentenced to a minimum term of  
 83 | imprisonment of 3 years if such person possessed a "firearm" or  
 84 | "destructive device" during the commission of the offense.

85 | However, if a person ~~an offender~~ who is convicted of the offense  
 86 | of possession of a firearm by a felon has a previous conviction  
 87 | of committing or attempting to commit a felony listed in s.  
 88 | 775.084(1)(b)1. and actually possessed a firearm or destructive  
 89 | device during the commission of the prior felony, the person  
 90 | ~~offender~~ shall be sentenced to a minimum term of imprisonment of  
 91 | 10 years.

92 |         2. A ~~Any~~ person who is convicted of a felony or an attempt  
 93 | to commit a felony listed in sub-subparagraphs (a)1.a.-q.,  
 94 | regardless of whether the use of a weapon is an element of the  
 95 | felony, and during the course of the commission of the felony  
 96 | such person discharged a "firearm" or "destructive device" as  
 97 | defined in s. 790.001 shall be sentenced to a minimum term of  
 98 | imprisonment of 20 years.

99 |         3. A ~~Any~~ person who is convicted of a felony or an attempt  
 100 | to commit a felony listed in sub-subparagraphs (a)1.a.-q.,  
 101 | regardless of whether the use of a weapon is an element of the  
 102 | felony, and during the course of the commission of the felony  
 103 | such person discharged a "firearm" or "destructive device" as  
 104 | defined in s. 790.001 and, as the result of the discharge, death  
 105 | or great bodily harm was inflicted upon a ~~any~~ person, the  
 106 | convicted person shall be sentenced to a minimum term of  
 107 | imprisonment of not less than 25 years and not more than a term  
 108 | of imprisonment of life in prison.

109 |         (b) Subparagraph (a)1., subparagraph (a)2., or  
 110 | subparagraph (a)3. does not prevent a court from imposing a  
 111 | longer sentence of incarceration as authorized by law in  
 112 | addition to the minimum mandatory sentence, or from imposing a

HB 103

2014

113 sentence of death pursuant to other applicable law. Subparagraph  
114 (a)1., subparagraph (a)2., or subparagraph (a)3. does not  
115 authorize a court to impose a lesser sentence than otherwise  
116 required by law.

117

118 Notwithstanding s. 948.01, adjudication of guilt or imposition  
119 of sentence may ~~shall~~ not be suspended, deferred, or withheld,  
120 and the defendant is not eligible for statutory gain-time under  
121 s. 944.275 or any form of discretionary early release, other  
122 than pardon or executive clemency, or conditional medical  
123 release under s. 947.149, before ~~prior to~~ serving the minimum  
124 sentence.

125 (c) If the minimum mandatory terms of imprisonment imposed  
126 pursuant to this section exceed the maximum sentences authorized  
127 by s. 775.082, s. 775.084, or the Criminal Punishment Code under  
128 chapter 921, then the mandatory minimum sentence must be  
129 imposed. If the mandatory minimum terms of imprisonment pursuant  
130 to this section are less than the sentences that could be  
131 imposed as authorized by s. 775.082, s. 775.084, or the Criminal  
132 Punishment Code under chapter 921, then the sentence imposed by  
133 the court must include the mandatory minimum term of  
134 imprisonment as required in this section.

135 (d) It is the intent of the Legislature that persons  
136 ~~offenders~~ who actually possess, carry, display, use, threaten to  
137 use, or attempt to use firearms or destructive devices be  
138 punished to the fullest extent of the law, and the minimum terms  
139 of imprisonment imposed pursuant to this subsection shall be  
140 imposed for each qualifying felony count for which the person is

141 convicted. The court shall impose a any term of imprisonment  
 142 provided for in this subsection consecutively to any other term  
 143 of imprisonment imposed for another ~~any other~~ felony offense.

144 (3) (a) 1. Except as otherwise provided in subsection (4), a  
 145 ~~any~~ person who is convicted of a felony or an attempt to commit  
 146 a felony, regardless of whether the use of a firearm is an  
 147 element of the felony, and the conviction was for:

- 148 a. Murder;
- 149 b. Sexual battery;
- 150 c. Robbery;
- 151 d. Burglary;
- 152 e. Arson;
- 153 f. Aggravated assault;
- 154 g. Aggravated battery;
- 155 h. Kidnapping;
- 156 i. Escape;
- 157 j. Sale, manufacture, delivery, or intent to sell,  
 158 manufacture, or deliver a any controlled substance;
- 159 k. Aircraft piracy;
- 160 l. Aggravated child abuse;
- 161 m. Aggravated abuse of an elderly person or disabled  
 162 adult;
- 163 n. Unlawful throwing, placing, or discharging of a  
 164 destructive device or bomb;
- 165 o. Carjacking;
- 166 p. Home-invasion robbery;
- 167 q. Aggravated stalking; or
- 168 r. Trafficking in cannabis, trafficking in cocaine,

169 capital importation of cocaine, trafficking in illegal drugs,  
 170 capital importation of illegal drugs, trafficking in  
 171 phencyclidine, capital importation of phencyclidine, trafficking  
 172 in methaqualone, capital importation of methaqualone,  
 173 trafficking in amphetamine, capital importation of amphetamine,  
 174 trafficking in flunitrazepam, trafficking in gamma-  
 175 hydroxybutyric acid (GHB), trafficking in 1,4-Butanediol,  
 176 trafficking in Phenethylamines, or other violation of s.  
 177 893.135(1);

178  
 179 and during the commission of the offense, such person possessed  
 180 a semiautomatic firearm and its high-capacity detachable box  
 181 magazine or a machine gun as defined in s. 790.001, shall be  
 182 sentenced to a minimum term of imprisonment of 15 years.

183 2. A ~~Any~~ person who is convicted of a felony or an attempt  
 184 to commit a felony listed in subparagraph (a)1., regardless of  
 185 whether the use of a weapon is an element of the felony, and  
 186 during the course of the commission of the felony such person  
 187 discharged a semiautomatic firearm and its high-capacity box  
 188 magazine or a "machine gun" as defined in s. 790.001 shall be  
 189 sentenced to a minimum term of imprisonment of 20 years.

190 3. A ~~Any~~ person who is convicted of a felony or an attempt  
 191 to commit a felony listed in subparagraph (a)1., regardless of  
 192 whether the use of a weapon is an element of the felony, and  
 193 during the course of the commission of the felony such person  
 194 discharged a semiautomatic firearm and its high-capacity box  
 195 magazine or a "machine gun" as defined in s. 790.001 and, as the  
 196 result of the discharge, death or great bodily harm was

HB 103

2014

197 | inflicted upon a ~~any~~ person, the convicted person shall be  
198 | sentenced to a minimum term of imprisonment of not less than 25  
199 | years and not more than a term of imprisonment of life in  
200 | prison.

201 |       (b) Subparagraph (a)1., subparagraph (a)2., or  
202 | subparagraph (a)3. does not prevent a court from imposing a  
203 | longer sentence of incarceration as authorized by law in  
204 | addition to the minimum mandatory sentence, or from imposing a  
205 | sentence of death pursuant to other applicable law. Subparagraph  
206 | (a)1., subparagraph (a)2., or subparagraph (a)3. does not  
207 | authorize a court to impose a lesser sentence than otherwise  
208 | required by law.

209 |  
210 | Notwithstanding s. 948.01, adjudication of guilt or imposition  
211 | of sentence may ~~shall~~ not be suspended, deferred, or withheld,  
212 | and the defendant is not eligible for statutory gain-time under  
213 | s. 944.275 or any form of discretionary early release, other  
214 | than pardon or executive clemency, or conditional medical  
215 | release under s. 947.149, before ~~prior to~~ serving the minimum  
216 | sentence.

217 |       (c) If the minimum mandatory terms of imprisonment imposed  
218 | pursuant to this section exceed the maximum sentences authorized  
219 | by s. 775.082, s. 775.084, or the Criminal Punishment Code under  
220 | chapter 921, then the mandatory minimum sentence must be  
221 | imposed. If the mandatory minimum terms of imprisonment pursuant  
222 | to this section are less than the sentences that could be  
223 | imposed as authorized by s. 775.082, s. 775.084, or the Criminal  
224 | Punishment Code under chapter 921, then the sentence imposed by



HB 103

2014

225 the court must include the mandatory minimum term of  
226 imprisonment as required in this section.

227 (d) It is the intent of the Legislature that persons  
228 ~~offenders~~ who possess, carry, display, use, threaten to use, or  
229 attempt to use a semiautomatic firearm and its high-capacity  
230 detachable box magazine or a machine gun as defined in s.  
231 790.001 be punished to the fullest extent of the law, and the  
232 minimum terms of imprisonment imposed pursuant to this  
233 subsection shall be imposed for each qualifying felony count for  
234 which the person is convicted. The court shall impose a any term  
235 of imprisonment provided for in this subsection consecutively to  
236 any other term of imprisonment imposed for another ~~any other~~  
237 felony offense.

238 (e) As used in this subsection, the term:

239 1. "High-capacity detachable box magazine" means a any  
240 detachable box magazine, for use in a semiautomatic firearm,  
241 which is capable of being loaded with more than 20 centerfire  
242 cartridges.

243 2. "Semiautomatic firearm" means a firearm that ~~which~~ is  
244 capable of firing a series of rounds by separate successive  
245 depressions of the trigger and ~~which~~ uses the energy of  
246 discharge to perform a portion of the operating cycle.

247 (4) The sentencing court may elect not to impose the  
248 mandatory term specified in subsection (2) or subsection (3), if  
249 applicable, if the court finds that the totality of the  
250 circumstances involved in the offense do not reasonably justify  
251 the imposition of a mandatory minimum term. Circumstances that  
252 may reasonably justify not imposing the mandatory minimum term

HB 103

2014

253 | include, but are not limited to, the following:

254 |       (a) The person's actions did not result in injury to  
255 | another person.

256 |       (b) The person's actions were a response to exigent  
257 | circumstances.

258 |       (c) The person does not have a prior felony conviction  
259 | involving violence.

260 |       (d) The victim was an initiator, willing participant,  
261 | aggressor, or provoker of the incident.

262 |       (5)(4) For purposes of imposition of minimum mandatory  
263 | sentencing provisions of this section, with respect to a  
264 | firearm, the term "possession" is defined as carrying it on the  
265 | person. Possession may also be proven by demonstrating that the  
266 | defendant had the firearm within immediate physical reach with  
267 | ready access with the intent to use the firearm during the  
268 | commission of the offense, if proven beyond a reasonable doubt.

269 |       (6)(5) This section does not apply to law enforcement  
270 | officers or to United States military personnel who are  
271 | performing their lawful duties or who are traveling to or from  
272 | their places of employment or assignment to perform their lawful  
273 | duties.

274 |       Section 2. This act shall take effect July 1, 2014.