

SB 276 – Sentencing (Identical HB 591)

This bill creates s. 775.08701, F.S., retroactively applying “chapter 2016-7, Laws of Florida, only as provided in this section, to persons who committed aggravated assault or attempted aggravated assault before July 1, 2016, the effective date of chapter 2016-7, Laws of Florida, which amended s. 775.087, F.S. to remove aggravated assault and attempted aggravated assault from the list of predicate offenses for mandatory minimum terms of imprisonment under that section.” This would apply to those who committed their offenses before July 1, 2016 and had not yet been sentenced, as well as someone sentenced before October 1, 2022, but who committed these offenses before July 1, 2016, and received a mandatory minimum term of imprisonment. The first group would be sentenced under current law and the group who have already been sentenced to a mandatory minimum term of imprisonment under prior law “must be resentenced...to a sentence without such mandatory minimum term of imprisonment” and will be “eligible to receive any gain-time pursuant to s. 944.275, F.S. which he or she was previously ineligible to receive because of the imposition of the mandatory minimum term of imprisonment.” However, ultimately it is up to the individual offender to seek a sentence review hearing once DOC informs the person of eligibility, and the court might determine that a person does not meet the criteria for resentencing.

Per DOC, there are currently 141 cases eligible under this criteria, though it is unknown how their new sentences would be structured. Furthermore, it is not known how many offenders committed their offenses prior to July 1, 2016 and have yet to be sentenced.

CONFERENCE ADOPTED ESTIMATE: Negative Indeterminate

This bill also creates s. 893.13501, F.S., establishing that someone who committed trafficking offenses involving hydrocodone/codeine and oxycodone must be resentenced if the offender was serving a mandatory minimum prison sentence under prior weight thresholds that were changed on July 1, 2014 for both of these drugs and changed once more on October 1, 2019 for hydrocodone. If the offense was committed before either one of these dates and the person had not been sentenced as of October 1, 2022, those offenders would also be subject to the new weight thresholds. However, ultimately it is up to the individual offender to seek a sentence review hearing once DOC informs the person of eligibility, and the court might determine that a person does not meet the criteria for resentencing.

Under prior law (before July 1, 2014), hydrocodone/codeine and oxycodone were included under trafficking in illegal drugs with the following thresholds:

- 4 grams or more, less than 14 grams – Level 7, 1st degree felony; 3 year mandatory minimum
- 14 grams or more, less than 28 grams – Level 8, 1st degree felony; 15 year mandatory minimum
- 28 grams or more, less than 30 kilograms – Level 9, 1st degree felony; 25 year mandatory minimum

Under current law for hydrocodone/codeine (thresholds most recently increased on October 1, 2019):

- 28 grams or more, less than 50 grams – Level 7, 1st degree felony; 3 year mandatory minimum
- 50 grams or more, less than 100 grams – Level 7, 1st degree felony; 7 year mandatory minimum
- 100 grams or more, less than 300 grams – Level 8, 1st degree felony; 15 year mandatory minimum
- 300 grams or more, less than 30 kilograms – Level 9, 1st degree felony; 25 year mandatory minimum

Under current law for oxycodone (thresholds most recently increased on July 1, 2014):

- 7 grams or more, less than 14 grams – Level 7, 1st degree felony; 3 year mandatory minimum
- 14 grams or more, less than 25 grams – Level 7, 1st degree felony; 7 year mandatory minimum
- 25 grams or more, less than 100 grams – Level 8, 1st degree felony; 15 year mandatory minimum
- 100 grams or more, less than 30 kilograms – Level 9, 1st degree felony; 25 year mandatory minimum

Per DOC, as of September 30, 2021, there were 666 offenders incarcerated for trafficking in illegal drugs with an offense committed before July 1, 2014. For the 4 or more, but less than 14 gram threshold group, of the 183 incarcerated, there were no offenders with sentence lengths less than 3 years, though this is likely the outcome of when the offenses were committed, since most offenders with smaller sentences would no longer be incarcerated over six years after committing an offense. For the 14 or more, but less than 28 gram threshold group, of the 220 incarcerated, there are some with sentence lengths less than 15 years (27, 12.27%), with 127 (57.73%) having sentences of exactly fifteen years. Finally, for the 28 or more, but less than 30 kilogram threshold group, of the 263 incarcerated, there is also a large number with sentence lengths less than 25 years (99, 37.64%), with 99 (37.64%) having sentences of exactly 25 years. Though it is possible that those offenders clustered around the mandatory minimum sentences could see an impact from this bill, it is not known how many of these offenders would be eligible for resentencing since DOC does not have information on how many were incarcerated for hydrocodone/codeine or oxycodone prior to July 1, 2014. It is also not known how many additional offenders have yet to be sentenced who committed their offenses prior to October 1, 2022.

There has been one commitment to prison since the change in hydrocodone/codeine thresholds on October 1, 2019. This was for an offense under the 28 or more, but less than 50 grams threshold, and this person received a sentence below the 3 year

mandatory minimum (13 months). Furthermore, there are currently 49 offenders incarcerated under the hydrocodone/codeine thresholds prior to that date. For the 14 or more, but less than 28 gram threshold group, of the 23 incarcerated, there is one with a sentence length less than 3 years (1, 4.35%), with 3 (13.04%) having sentences of exactly three years. Finally, for the 28 or more, but less than 50 grams threshold group, of the 16 incarcerated, there are also a few with sentence lengths less than 7 years (4, 25%), with 6 (37.50%) having sentences of exactly 7 years. There are only 10 incarcerated at higher thresholds, and only 2 are at or above the mandatory minimums for these thresholds. Given the new thresholds for hydrocodone/codeine removing the 3 year mandatory minimum for more than 14 and less than 28 grams, as well as reducing the mandatory minimum from 7 years to 3 years for more than 28 and less than 50 grams, these two incarcerated groups, especially the 9 offenders with sentence lengths that line up with mandatory minimums, could possibly be impacted by this language. However, it is also not known how many additional offenders have yet to be sentenced who committed their offenses prior to October 1, 2022.

Since hydrocodone and oxycodone were initially recorded under trafficking in illegal drugs, it is not known how many would be eligible for resentencing, nor is it known how offenders are currently sentenced when hydrocodone and oxycodone fall below their trafficking thresholds. However, both sentence length and incarceration rates are significantly lower for offenses under s. 893.13, F.S. when compared to the trafficking in illegal drugs threshold where these drug types initially were (4 grams or more, less than 14 grams), and could impact resentencing decisions for those who are eligible.

CONFERENCE ADOPTED ESTIMATE: Negative Indeterminate

CONFERENCE ADOPTED FOR ENTIRE BILL: Negative Indeterminate

Requested by: Senate