

CS/SB 1334 – Criminal Justice

This bill creates s. 562.112, F.S., stating that “a person who gives alcohol to an individual under 21 years of age and who, acting in good faith, seeks medical assistance for the individual experiencing, or believed to be experiencing, an alcohol-related overdose may not be arrested, charged, prosecuted, or penalized for a violation of s. 562.11, F.S. or s. 562.111, F.S. if the evidence for such offense was obtained as a result of that person seeking medical assistance.” Furthermore, “a person who experiences, or has a good faith belief that he or she is experiencing, an alcohol-related overdose and is in need of medical assistance may not be arrested, charged, prosecuted, or penalized for a violation of s. 562.111, F.S. if the evidence for such offense was obtained as a result of that person seeking medical assistance.”

This bill also amends s. 893.21, F.S., adding the following (in bold): “a person acting in good faith who seeks medical assistance for an individual experiencing, **or believed to be experiencing**, a drug-related overdose may not be **arrested**, charged, prosecuted, or penalized for **a violation of s. 782.04(1)(a)3, F.S., s. 893.13, F.S., s. 893.135, F.S., or s. 893.147, F.S.** if the evidence for **such offense** was obtained as a result of the person’s seeking medical assistance.” Furthermore, similar language is added for “a person who experiences, **or has a good faith belief that he or she is experiencing**, a drug-related overdose and is in need of medical assistance,” though s. 782.04(1)(a)3., F.S. is not included. Lastly, for both scenarios, a person acting in good faith for another individual believed to be experiencing a drug-related overdose and a person having a good faith belief that he or she is experiencing a drug-related overdose, this bill adds that the person “may not be penalized for a violation of a condition of pretrial release, probation, or parole if the evidence for such violation was obtained as a result of that person seeking medical assistance.” Therefore, this bill expands the types of offenses where immunity would apply to an individual, including the unlawful killing of a human being which resulted from the unlawful distribution by a person 18 years of age or older of a list of controlled substances, drug sale/manufacture/delivery, drug trafficking, and drug paraphernalia.

While the statutes referenced under s. 562.112, F.S. are misdemeanors, s. 562.11, F.S. provides a court with the option to order the suspension or revocation of a driver license for selling, giving, or serving alcoholic beverages to a person under age 21, and s. 562.111, F.S. requires that a court suspend or revoke the license of someone charged with the possession of alcohol under 21 years old.

Per DOC, in FY 17-18, 4,462 (adj.) offenders were sentenced for driving with a suspended, revoked, cancelled, or disqualified license, with 286 (adj.) sentenced to prison (mean sentence length=23.6 m, incarceration rate: 6.2% adj.-6.2% unadj.). There were 38 (adj.) offenders sentenced for careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury, with 16 (adj.) sentenced to prison (mean sentence length=23.6 m, incarceration rate: 42.1% adj.-42.9% unadj.). It is not known how many of these offenders would be impacted by this bill.

Per DOC, in FY 17-18, there were 4 (adj.) offenders sentenced for the unlawful killing of a human being which resulted from the unlawful distribution of controlled substances, s. 782.04(1)(a)3, F.S., with 4 (adj.) sentenced to prison (mean sentence length=122.5 m, incarceration rate: 100%). Furthermore, there were 9,424 (adj.) offenders sentenced for sale, manufacture, and delivery penalties under s. 893.13, F.S., with 3,299 (adj.) sentenced to prison (mean sentence length=37.1 m, incarceration rate: 35.0% adj.-35.0% unadj.). Also, there were 2,005 (adj.) offenders sentenced for drug trafficking offenses, and 1,502 (adj.) were sentenced to prison (mean sentence length=75.7 m, incarceration rate: 74.9% adj.-74.9% unadj.). Finally, there were 21 (adj.) offenders sentenced under s. 893.147, F.S., with 2 (adj.) sentenced to prison (mean sentence length=36.0 m, incarceration rate: 9.5% adj.-10.0% unadj.). It is not known how many offenders in these offense groups would fit the new criteria for receiving immunity.

CONFERENCE ADOPTED ESTIMATE: Negative Indeterminate

Amends s. 812.014(2)(c)(1), F.S., increasing the minimum threshold property values for third degree grand theft from \$300 to \$1,500. Further amending third degree grand theft, it removes “a will, codicil, or other testamentary instrument,” and removes any fire extinguisher.

It also amends s. 812.014(2)(d), F.S., increasing the minimum threshold property values for third degree grand theft for stealing property from a dwelling or unenclosed curtilage of a dwelling from \$100 to \$1,500 and increasing the maximum threshold from \$300 to \$5,000.

This bill also amends s. 812.014(2)(e), F.S., increasing the minimum threshold property values for petit theft of the first degree (misdemeanor) from \$100 to \$500 and increasing the maximum threshold from \$300 to \$1,500. While these changes would impact s. 812.014(3)(c), F.S., the bill also amends this, adding that a “person who commits petit theft in the first degree and who has previously been convicted two or more times as an adult of any theft” commits a Level 1, 3rd degree felony, “if the third or subsequent petit theft offense occurred within 3 years after the expiration of his or her sentence for the most recent theft conviction.” Currently, this felony applies for any petit theft committed for a third or more time at any age without any point in time where the prior offenses could no longer be considered.

It also adds that “for purposes of determining the value of property taken in violation of this section, the value must be based on the fair market value of the property at the time the taking occurred.”

Per DOC, in FY 17-18 there were 10,351 (adj.) offenders sentenced under s. 812.014(2)(c)(1), F.S., with 1,131 (adj.) of these offenders sentenced to prison (mean sentence length=25.7 m, incarceration rate: 10.9% adj.-10.9% unadj). The number of offenders that currently fall within the proposed changes to the s. 812.014(2)(c)(1), F.S., thresholds cannot be differentiated from the current thresholds. Per DOC, in FY 17-18,

nobody was sentenced for theft of a will. Theft of a fire extinguisher had 4 (adj.) offenders sentenced, with no offenders receiving a prison sentence.

Per DOC, in FY 17-18, there were 116 (adj.) offenders sentenced under s. 812.014(2)(d), F.S., with 10 (adj.) of these offenders sentenced to prison (mean sentence length=20.9 m, incarceration rate: 8.6% adj-8.3% unadj). A certain number of offenders currently charged under s. 812.014(2)(c)(1), F.S. will now fall into the new threshold for s. 812.014(2)(d), F.S., where a higher incarceration rate existed in prior years. However, it is not known how many offenders charged under s. 812.014(2)(c)(1), F.S. stole property from a dwelling or unenclosed curtilage of a dwelling.

Per DOC, in FY 17-18, there were 3,389 (adj.) offenders sentenced under s. 812.014(3)(c), F.S., with 436 (adj.) of these offenders sentenced to prison (mean sentence length=23.1 m, incarceration rate: 12.9% adj-12.9% unadj). The available data cannot determine how many offenders would be impacted by the proposed changes.

CONFERENCE ADOPTED ESTIMATE: Negative Significant

This bill also amends s. 812.015(8), F.S., increasing the minimum threshold property values for retail theft from \$300 to \$1,500, a Level 5, 3rd degree felony, and amends s. 812.015(9)(a), F.S., adding that the Level 6, 2nd degree felony applies when the person violates s. 812.015(8), F.S. as an adult “and has previously been convicted of a violation of subsection (8) within 3 years after the expiration of his or her sentence for the conviction.” Currently, there is no age range or time limit for when the first violation occurred.

Value is also defined as “the fair market value of the property taken in violation of this section at the time the taking occurred.”

Per DOC, in FY 17-18, there were 301 (adj.) offenders sentenced under s. 812.015(8), F.S., with 65 (adj.) of these offenders sentenced to prison (mean sentence length=30.1 m, incarceration rate: 21.6% adj-21.7% unadj). There were 5 (adj.) offenders sentenced under s. 812.015(9)(a), F.S., and one of these offenders received a prison sentence (sentence length=24.0, incarceration rate: 20.0% adj-20.0% unadj). The number of offenders that currently fall within the proposed changes to the s. 812.015(8), F.S., threshold cannot be differentiated from the current threshold.

CONFERENCE ADOPTED ESTIMATE: Negative Indeterminate

This bill amends s. 893.13, F.S., removing “deliver, or possess with intent to sell, manufacture, or deliver” from prohibitions against sale/manufacture/delivery near a child care facility, school, park, community center, college, physical place of worship, convenience business, public housing facility, or assisted living facility. This would result in selling and manufacturing being the only acts where these enhanced prohibitions would apply. Furthermore, it reduces the distance from these areas where one is

prohibited from committing these acts from within 1,000 feet to within 250 feet for a park, community center, college, convenience business, and public housing facility.

Per DOC, in FY 17-18, 1,071 (adj.) offenders were sentenced for sale/manufacture/delivery offenses near prohibited places, with 628 (adj.) sentenced to prison (mean sentence length=53.5 m, incarceration rate: 58.6% adj.-58.7% unadj.). There were 8,353 (adj.) offenders sentenced for all other sale, manufacture, and delivery penalties under s. 893.13, F.S., with 2,671 (adj.) sentenced to prison (mean sentence length=36.0 m, incarceration rate: 32.0% adj.-32.0% unadj.). It is not known how many of these offenses would be impacted by the proposed changes to the statute.

CONFERENCE ADOPTED ESTIMATE: Negative Significant

This bill amends s. 893.135, F.S., adding “trafficking in pharmaceuticals” to the list of trafficking offenses under this statute, defined as “a person who knowingly sells, purchases, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 120 or more dosage units containing a controlled substance described in this section.” Additionally, “the term ‘dosage unit’ means an individual tablet, capsule, pill, transdermal patch, unit of sublingual gelatin, or other visually distinctive form, each having a clear manufacturer marking, of a commercial drug product approved by the federal Food and Drug Administration and manufactured and distributed by a pharmaceutical company lawfully doing business in the United States.” Therefore, the new penalties only apply to trafficking of commercial drug products.

The bill specifies that “the sale, purchase, manufacture, delivery, or actual or constructive possession of fewer than 120 dosage units containing any controlled substance described in this section” would not be a violation under s. 893.135, F.S. Therefore, any penalties applied for these amounts would be under s. 893.13, F.S. Otherwise, anything above that threshold for dosage units that is already included under the drug trafficking statute will also be included under the following thresholds (unranked, 1st degree felonies, Level 7 by default):

- between 120-499 dosage units – 3 year mandatory minimum
- between 500-999 dosage units – 7 year mandatory minimum
- between 1,000-4,999 dosage units – 15 year mandatory minimum
- 5,000 or more dosage units – 25 year mandatory minimum

Per DOC, in FY 17-18, there were 32,369 (adj.) offenders sentenced for drug possession offenses under s. 893.13, F.S., and 2,831 (adj.) were sentenced to prison (mean sentence length=23.0 m, incarceration rate: 8.8% adj.-8.8% unadj.). There were 9,424 (adj.) offenders sentenced for sale, manufacture, and delivery penalties under s. 893.13, F.S., with 3,299 (adj.) sentenced to prison (mean sentence length=37.1 m, incarceration rate: 35.0% adj.-35.0% unadj.). Finally, there were 2,005 (adj.) offenders

sentenced for drug trafficking offenses, and 1,502 (adj.) were sentenced to prison (mean sentence length=75.7 m, incarceration rate: 74.9% adj.-74.9% unadj.).

It is not known which of the offenses above involved substances in dosage unit form. Additionally, the current incarceration thresholds cannot be broken down any further to examine how possession, sale/manufacture/delivery, and trafficking offense sentences might be structured under the new dosage unit thresholds. However, for certain drugs, these new thresholds could lower the number of offenders receiving drug trafficking mandatory minimum sentences, as well as the number of mandatory minimum years served, due to the dosage unit number thresholds allowing greater weights for controlled substances before triggering mandatory minimum sentences than existing weight thresholds for the same substances. The data on dosage units for commercial drug products containing substances listed under s. 893.135, F.S. is insufficient to determine how prisons might be impacted.

CONFERENCE ADOPTED ESTIMATE: Negative Indeterminate

This bill amends s. 893.135, F.S., adding that a “a court may impose a sentence for a violation of this section other than the mandatory minimum term of imprisonment and mandatory fine if the court finds on the record that all of the following circumstances exist:

- “(a) The person did not engage in a continuing criminal enterprise as defined in s. 893.20(1).
- “(b) The person did not use or threaten violence or use a weapon during the commission of the crime.
- “(c) The person did not cause a death or serious bodily injury.”

Per DOC, in FY 17-18, there were 1,269 offenders fitting the criteria to be eligible for a sentence other than a drug trafficking mandatory minimum. Of those, 511 (40.3%) received a sentence less than the mandatory minimum, with 264 receiving a prison sentence and 247 receiving probation. Therefore, it cannot be quantified how these changes to the language would affect current court practices.

CONFERENCE ADOPTED ESTIMATE: Negative Significant

This bill amends s. 945.091, F.S., allowing an inmate to “participate in supervised community release as prescribed by the department by rule,” beginning “180 days before his or her provisional or tentative release date” and would “include active electronic monitoring and community control.”

Per DOC, there were 3,000 inmates under community custody that were also within 180 days of release as of June 30, 2018, with that number proving to be stable over time. It is not known how many inmates currently under community custody would be included

under this new language, nor is it known how many more would be eligible to be released under supervision.

CONFERENCE ADOPTED ESTIMATE: Negative Significant

This bill amends s. 947.005, F.S., defining conditional medical release, and also amends s. 947.149, F.S., adding the following: "Inmate with a debilitating illness," which means an inmate who is determined to be suffering from a significant terminal or nonterminal condition, disease, or syndrome that has rendered the inmate so physically or cognitively impaired, debilitated, or incapacitated as to create a reasonable probability that the inmate does not constitute a danger to herself or himself or others." It also replaces the requirement that death be imminent for a terminally ill inmate, adding that death "is expected within 12 months." This expands the pool of those eligible for conditional medical release.

Per DOC, under the criteria provided in HB 607, there are approximately 160 inmates that would be eligible for conditional medical release. However, this bill removes the requirement that a debilitating illness must be "permanent," and adds cognitive impairment to the definition. Therefore, this bill is expected to expand the eligible pool calculated under HB 607, though DOC cannot determine what that population would be. In the past, FCOR approved an average of 40% of all eligible inmates per calendar year for conditional medical release (2014 through 2016).

CONFERENCE ADOPTED ESTIMATE: Negative Significant

**CONFERENCE ADOPTED ESTIMATE FOR ENTIRE BILL:
Negative Significant**

Requested by: Senate