

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Appropriations

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BILL: SB 360

INTRODUCER: Senators Bradley and Evers

SUBJECT: Sentencing for Controlled Substance Violations

DATE: January 8, 2014

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<b>Favorable</b>
2.	<u>Clodfelter</u>	<u>Sadberry</u>	<u>ACJ</u>	<b>Fav/CS</b>
3.	<u>Clodfelter</u>	<u>Kynoch</u>	<u>AP</u>	<b>Pre-Meeting</b>

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**I. Summary:**

SB 360 increases from 4 to 14 grams the minimum weight threshold for trafficking in oxycodone and hydrocodone (prescription painkillers) under section 893.135, Florida Statutes, the drug trafficking statute. As a result of this change, persons who unlawfully possess, sell, etc., relatively small quantities of oxycodone or hydrocodone (less than 14 grams) will no longer be punished for drug trafficking. They still may be punished under section 893.13, Florida Statutes, for unlawful acts involving controlled substances, but the penalties are not as significant as drug trafficking penalties. Further, some persons who meet the revised weight threshold for trafficking in oxycodone or hydrocodone will receive a shorter mandatory minimum term than under current law.

Increasing weight thresholds for trafficking in prescription painkillers is an option that the Office of Program Policy Analysis and Government Accountability proposed in a 2012 report.

The bill provides that trafficking in 14 grams or more, but less than 30 kilograms, of oxycodone or hydrocodone is a first degree felony, and is subject to the following mandatory minimum terms and fines:

- Trafficking in 14 grams or more, but less than 28 grams, of oxycodone or hydrocodone: 3-year mandatory minimum term and \$50,000 fine. (Current law: 3-year mandatory minimum term/\$50,000 fine for trafficking in 4 grams or more, but less than 14 grams, of oxycodone or hydrocodone.)
- Trafficking in 28 grams or more, but less than 50 grams, of oxycodone or hydrocodone: 7-year mandatory minimum term and \$100,000 fine. (Current law: 15-year mandatory minimum term/\$100,000 fine for trafficking in 14 grams or more, but less than 28 grams, of oxycodone or hydrocodone.)
- Trafficking in 50 grams or more, but less than 200 grams, of oxycodone or hydrocodone: 15-year mandatory minimum term and \$500,000 fine. (Current law: 25-year mandatory

minimum term/\$500,000 fine for trafficking in 28 grams or more, but less than 30 kilograms, of oxycodone or hydrocodone.)

- Trafficking in 200 grams or more of oxycodone or hydrocodone: 25-year mandatory minimum term and \$750,000 fine. (Current law: 25-year mandatory minimum term/\$500,000 fine for trafficking in 28 grams or more, but less than 30 kilograms, of oxycodone or hydrocodone.)

The Legislature's Office of Economic and Demographic Research preliminarily estimates the increase in the minimum weight threshold for trafficking in oxycodone and hydrocodone (from 4 grams to 14 grams) will result in the need for 465 fewer prison beds cumulatively by Fiscal Year 2018-2019, with a cumulative savings of \$48,387,651 in operating and fixed capital outlay costs. The projected impact in Fiscal Year 2014-2015 is likely a reduction in prison bed need of one bed and a reduction in prison operating costs of \$9,434. See Section V.

## II. Present Situation:

Unlawful activities involving controlled substance (e.g., possession or sale of controlled substances) are punishable under s. 893.13, F.S. (prohibited acts involving controlled substances), and s. 893.135, F.S. (drug trafficking). Oxycodone and hydrocodone are opioid prescription painkillers and Schedule II controlled substances, though materials, compounds, mixtures, or preparations containing limited quantities of hydrocodone are Schedule III controlled substances.<sup>1</sup>

### Drug Trafficking/Oxycodone and Hydrocodone

“Drug trafficking” consists of knowingly selling, purchasing, manufacturing, delivering, or bringing into this state, or knowingly being in actual or constructive possession<sup>2</sup> of, certain controlled substances in a statutorily-specified quantity.

Whether a person is charged with drug trafficking depends, in part, on the type of controlled substance possessed, sold, etc. Only a limited number of controlled substances are covered under s. 893.135, F.S. Oxycodone and hydrocodone are covered drugs. Specifically, s. 893.135(1)(c), F.S., punishes “trafficking in illegal drugs.” The relevant “illegal drugs” include morphine, opium, oxycodone, hydrocodone, hydromorphone, and salts, derivatives, isomers, and salts of isomers of these substances, including heroin, and mixtures containing any of these substances.

The quantity of a covered controlled substance must also meet a minimum weight threshold prescribed in s. 893.135, F.S. Most drug trafficking offenses are first degree felonies and are subject to mandatory minimum terms.<sup>3</sup> Section 893.135, F.S., establishes escalating weight ranges. The mandatory minimum term applicable to a drug trafficking act depends upon which

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<sup>1</sup> Schedule III: not more than 300 milligrams of hydrocodone per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium or with recognized therapeutic amounts of one or more active ingredients which are not controlled substances. Section 893.03(3)(c)3. and 4., F.S.

<sup>2</sup> One important and unique feature of the drug trafficking statute is that the prosecutor is not required to prove that the possession of the controlled substance was with the intent to sell, deliver, manufacture, etc., the substance.

<sup>3</sup> Most drug offenses under s. 893.13, F.S., are not subject to mandatory minimum terms.

weight range is applicable to the quantity of the controlled substances that are possessed, sold, etc.

*Trafficking in oxycodone and hydrocodone (first degree felony)*

Section 893.135(1)(c)1., F.S., provides, in part, that it is a first degree felony<sup>4</sup> to traffic in 4 grams<sup>5</sup> or more of oxycodone or hydrocodone.

If the quantity involved:

- Is 4 grams or more, but less than 14 grams, the offender is subject to a mandatory minimum term of imprisonment of 3 years and a fine of \$50,000.<sup>6</sup>
- Is 14 grams or more, but less than 28 grams, the offender is subject to a mandatory minimum term of imprisonment of 15 years and a fine of \$100,000.<sup>7</sup>
- Is 28 grams or more, but less than 30 kilograms, the offender is subject to a mandatory minimum term of imprisonment of 25 calendar years and a fine of \$500,000.<sup>8</sup>

*Trafficking in oxycodone or hydrocodone (first degree felony punishable by life imprisonment)*

Section 893.135(1)(c)2., F.S., provides, in part, that it is a first degree felony punishable by life imprisonment<sup>9</sup> and a fine of \$500,000 to traffic in 30 kilograms or more of oxycodone or hydrocodone. A person convicted of this offense is ineligible for any form of discretionary early release except pardon or executive clemency or conditional medical release under s. 947.149, F.S.

*Trafficking in oxycodone or hydrocodone (capital felony)*

Section 893.135(1)(c)2., F.S., provides, in part, that it is a capital felony<sup>10</sup> to traffic in 30 kilograms or more of oxycodone or hydrocodone if:

- The offender intentionally killed an individual or counseled, commanded, induced, procured, or caused the intentional killing of an individual and such killing was the result.

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<sup>4</sup> A first degree felony is generally punishable by up to 30 years in state prison. Section 775.082, F.S. Repeat offender sanctions may be available under ss. 775.082 and 775.084, F.S.

<sup>5</sup> For purpose of comparison, the approximate weight of a U.S. currency note, regardless of denomination, is one gram. This information is available at <http://www.moneyfactory.gov/faqlibrary.html> (last visited on December 13, 2013).

<sup>6</sup> Section 893.135(1)(c)1.a., F.S. This offense is ranked in Level 7 of the Criminal Punishment Code offense severity ranking chart. Section 921.0022(3)(g), F.S.

<sup>7</sup> Section 893.135(1)(c)1.b., F.S. This offense is ranked in Level 8 of the Criminal Punishment Code offense severity ranking chart. Section 921.0022(3)(h), F.S.

<sup>8</sup> Section 893.135(1)(c)1.c., F.S. This offense is ranked in Level 9 of the Criminal Punishment Code offense severity ranking chart. Section 921.0022(3)(i), F.S.

<sup>9</sup> As previously indicated, in general, a first degree felony is punishable by up to 30 years in state prison under s. 775.082, F.S. However, this section also provides that a first degree felony may be punished by a term of years not exceeding life imprisonment when specifically provided by statute.

<sup>10</sup> A capital felony is punishable by life imprisonment or death. Section 775.082, F.S. See s. 921.142, F.S. (further proceedings to determine sentence for capital trafficking felonies).

- The offender’s conduct in committing that act led to a natural, though not inevitable, lethal result.

The offender is also subject to a fine of \$500,000.

*Capital importation of oxycodone or hydrocodone (capital felony)*

Section 893.135(1)(c)3., F.S., provides, in part, that it is a capital felony to knowingly bring into this state (“import”) 60 kilograms or more of oxycodone or hydrocodone, knowing that the probable result of such importation would be the death of any person. The offender is also subject to a fine of \$500,000.

**“Opioid” Medications and Drug Trafficking**

Medications that contain oxycodone or hydrocodone (“opioid” medications) are within the ambit of s. 893.135(1)(c), F.S., which also covers “mixtures” containing these substances. Trafficking weight involving pills containing either of these controlled substances is determined by the total weight of each pill multiplied by the number of pills possessed, sold, etc. The total weight of a pill includes the weight of the controlled substance in the pill (e.g., hydrocodone) and the weight of noncontrolled substances or matter in the pill, such as coating, binders, and nonprescription drugs (e.g., acetaminophen).<sup>11</sup> A relatively small number of pills may meet the 4 gram threshold for trafficking.

In a 2012 report, the Office of Program Policy Analysis and Government Accountability (OPPAGA) provided a table<sup>12</sup> indicating how many hydrocodone and oxycodone pills would be necessary to meet the threshold gram weight for each gram weight range in s. 893.135(1)(c)1.a.-c., F.S. The weight ranges are:

- 4 grams or more, but less than 14 grams.
- 14 grams or more, but less than 28 grams.
- 28 grams or more, but less than 30 kilograms.

The table is based on a hydrocodone pill that weighs 0.65 grams with 10 mg. of hydrocodone and an oxycodone pill that weighs 0.13 grams with 30 mg. of oxycodone. Due to the different compositions of prescription opioids, noncontrolled substances may add significantly to the total weight of the pill or tablet as, for example, is the case with medication that contains hydrocodone and acetaminophen. Provided is the information from OPPAGA’s table and the mandatory minimum term applicable to the threshold weight for each gram weight range in s. 893.135(1)(c)1.a.-c., F.S. (i.e., 4 grams, 14 grams, and 28 grams):

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<sup>11</sup> See ss. 893.02(16) and 893.135(6), F.S.

<sup>12</sup> *Opinions Are Mixed About Sentencing Laws for Painkiller Trafficking*, Report No. 12-02 (January 2012), at p. 5 (Exhibit 6), Office of Program Policy Analysis and Government Accountability, available at <http://www.oppaga.state.fl.us/Summary.aspx?reportNum=12-02> (last visited on December 13, 2013). This report is further cited as “OPPAGA Report.”

<b>Number of Pills and Gram Weight Thresholds to Meet Mandatory Minimum Term</b>				
<b>Prescription Drug</b>	<b>Pill Weight</b>	<b>3-year mandatory minimum term</b>	<b>15-year mandatory minimum term</b>	<b>25-year mandatory minimum term</b>
Hydrocodone (10 mg.)	0.65 grams	7 pills (4 grams)	22 pills (14 grams)	44 pills (28 grams)
Oxycodone (30 mg.)	0.13 grams	31 pills (4 grams)	108 pills (14 grams)	215 pills (28 grams)

**OPPAGA Report No. 12-02: Prison Admissions for Opioid Trafficking and Profile of Opioid Trafficking Offenders**

Using Department of Corrections’ data for Fiscal Year 2006-2007 to Fiscal Year 2010-2011, the OPPAGA found prescription admissions for trafficking quadrupled over those five fiscal years. According to the OPPAGA, this substantial increase in admissions was primarily attributable to oxycodone trafficking convictions:

Department of Corrections data shows that prison admissions for trafficking in opioids have more than quadrupled over the past five years, from 262 admissions in Fiscal Year 2006-07 to 1,200 in Fiscal Year 2010-11.... This data does not distinguish among the types of opioids, and as a result, offenses involving heroin are grouped with those involving prescription painkillers. This is because these two controlled substances are addressed in the same section of the drug trafficking statute, and thus subject to the same weight thresholds and minimum mandatory sentences.

To evaluate the factors leading to the recent increase in prison admissions for trafficking in opioids, we reviewed data for a statewide random sample of 194 offenders admitted to prison for this offense during Fiscal Year 2010-11. We determined the type and amount of drugs involved in their offenses and the circumstances surrounding their arrests and convictions. Our analyses found that the recent increase in prison admissions for opioid trafficking was primarily due to convictions for prescription painkillers rather than heroin....<sup>13</sup>

A noteworthy postscript to the OPPAGA report is that the quadrupled prison admissions for trafficking in opioids began to wane in Fiscal Year 2011-2012. Between Fiscal Year 2010-2011 and Fiscal Year 2011-2012 there was a 14.1 percent decline in prison admissions for trafficking in opioids.<sup>14</sup> Although the cause of this decline is empirically unknown, it is most likely attributable to a number of measures taken by Florida to reduce prescription drug abuse, such as removing so-called “pill mills” in the state.

The OPPAGA analyzed arrest reports for the sample 194 offenders and determined that “almost all (93%) were convicted of trafficking in prescription painkillers.... [A]rrests most commonly

<sup>13</sup> OPPAGA Report, at pp. 2-3 (footnotes omitted).

<sup>14</sup> Information provided on April 4, 2013, to staff (via e-mail) by the Office of Economic and Demographic Research.

involved oxycodone (73%) or hydrocodone (28%). In comparison, 6% of the offenders were convicted of trafficking in heroin.”<sup>15</sup>

The OPPAGA provided the following information regarding how most of these arrests occurred:

Most offenders in our sample (62%) were arrested for selling prescription painkillers to an undercover law enforcement officer or confidential informant.... In these cases, officers worked undercover to buy drugs from known dealers or monitored confidential informants during meetings they arranged to make purchases. In other cases, offenders were arrested for trafficking after a traffic stop or other law enforcement contact, or after being reported by a pharmacist for possible prescription fraud.<sup>16</sup>

The majority of the offenders in the OPPAGA’s sample illegally possessed or sold 30 to 90 pills:

For most of the offenders convicted of trafficking in oxycodone or hydrocodone, their convictions were based on the illegal possession or sale of a number of pills equivalent to one or two prescriptions. For those offenders sentenced for trafficking in hydrocodone, 50% were arrested for possessing or selling fewer than 30 pills and 25% were arrested for fewer than 15 pills. For offenders sentenced for trafficking in oxycodone, offenders possessed or sold a median number of 91 pills at the time of their arrests.

Following accepted medical practice, physicians may prescribe 30 or more prescription painkillers for patients with chronic pain or recovering from surgery. For example, a patient recovering from surgery may receive a one-time prescription of 30 to 60 hydrocodone or oxycodone pills, often in forms that also contain acetaminophen. Illegal possession of such an amount could trigger a minimum mandatory sentence.<sup>17</sup>

Most of the offenders in the OPPAGA sample did not have a prior drug trafficking record and were determined by prison staff to need substance abuse treatment:

Our analysis of Department of Corrections data on the 1,200 offenders admitted to prison for opioid trafficking in Fiscal Year 2010-11 found that 74% had not previously been admitted to prison.... Half had either never been on probation or had been on probation solely for drug possession, and 81% did not have a prior history of offenses involving selling or trafficking drugs. Most (84%) had no current or past violent offenses.

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<sup>15</sup> OPPAGA Report, at p. 3.

<sup>16</sup> *Id.*

<sup>17</sup> OPPAGA Report, at p. 4. In a footnote (n. 7, at p. 4) at the end of the second paragraph of this quote, the OPPAGA noted: “Law enforcement and other stakeholders reported that pain clinics they would consider as being ‘pill mills’ routinely prescribe much higher amounts of prescription painkillers, such as 180 oxycodone pills per month.”

These offenders tended to have substance abuse problems and were at low risk for recidivism. Prison staff assessments determined that 65% of these offenders needed substance abuse treatment and 61% were at low risk for recidivism.<sup>18</sup>

### **Drug Trafficking Sentencing**

The Criminal Punishment Code (Code)<sup>19</sup> is Florida's framework or mechanism for determining permissible sentencing ranges for noncapital felonies. Noncapital felonies sentenced under the Code receive an offense severity level ranking (Levels 1-10). Points are assigned and accrue based upon the level ranking (sentence points escalate as the level escalates) assigned to the primary offense, additional offenses, and prior offenses. Points may be added or multiplied for other factors. For example, if the primary offense is drug trafficking, the subtotal sentence points are multiplied, at the discretion of the court, for a Level 7 or Level 8 offense, by 1.5.<sup>20</sup>

Total sentence points are entered into a mathematical calculation (specified in statute) to determine the lowest permissible sentence. The permissible sentencing range is generally the lowest permissible sentence scored up to and including the maximum penalty provided under s. 775.082, F.S., for the primary offense and any additional offenses before the court for sentencing. The court is permitted to impose sentences concurrently or consecutively.

The Code includes a list of 'mitigating' factors. If a mitigating factor is found by the sentencing court, the court may decrease an offender's sentence below the lowest permissible sentence (a "downward departure"). A mandatory minimum term is not subject to these mitigating factors.<sup>21</sup>

Most of the mandatory minimum terms found in Florida law involve drug trafficking offenses. Mandatory minimum terms impact Code sentencing. "If the lowest permissible sentence is less than the mandatory minimum sentence, the mandatory minimum sentence takes precedence. If the lowest permissible sentence exceeds the mandatory sentence, the requirements of the ... Code and any mandatory minimum penalties apply."<sup>22</sup>

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<sup>18</sup> *Id.* In a footnote (n. 8, at p. 4) at the end of the second paragraph of this quote, the OPPAGA noted: "Prison staff assessed offenders' risk of recidivism using the risk assessment instrument developed by the Department of Corrections. Recidivism is defined as return to prison within three years of release."

<sup>19</sup> Sections 921.002 - 921.0027, F.S.

<sup>20</sup> Section 921.0024(1)(b), F.S.

<sup>21</sup> *See State v. Vanderhoff*, 14 So.3d 1185 (Fla. 5th DCA 2009).

<sup>22</sup> Rule 3.704(26) ("The Criminal Punishment Code"), Florida Rules of Criminal Procedure. A trafficking mandatory minimum term is a minimum sentencing 'floor' for the court and there is no prohibition to gain-time. If the court only sentences the defendant to the mandatory term specified by statute, the Department of Corrections (DOC) establishes an 85% minimum service date on the term and the offender is subject to s. 944.275(4)(b)3., F.S., which does not allow release prior to serving a minimum of 85% of the sentence. If the court imposes a sentence that exceeds the mandatory term specified by statute, the DOC establishes an 85% minimum service date on the sentence. *See Mastay v. McDonough*, 928 So.2d 512 (Fla. 1st DCA 2006) (Section 893.135, F.S., does not preclude earning gain-time during the mandatory term as long as it does not result in the prisoner's release prior to serving a minimum of 85% of the sentence).

A mandatory minimum sentence is often longer than a prison sentence scored as the lowest permissible sentence under the Code, so the sentencing range is narrowed. Further, with few exceptions, the sentencing court must impose the mandatory minimum term.<sup>23</sup>

Mandatory minimums terms are not uniform for all controlled substances covered under s. 893.135, F.S. Further, the quantity of the controlled substance that will trigger mandatory minimum terms depends upon the controlled substance trafficked, as illustrated in the table below.

<b>COMPARISON OF TRAFFICKING WEIGHT RANGES AND MANDATORY MINIMUM TERMS FOR CERTAIN CONTROLLED SUBSTANCES</b>			
<b>Trafficking Provision</b>	<b>First Weight Range</b>	<b>Second Weight Range</b>	<b>Third Weight Range</b>
Trafficking in illegal drugs (includes <b>prescription opioids</b> ) (s. 893.135(1)(c)1., F.S.)	<b>3-year</b> mandatory minimum term ( <b>4 grams</b> to less than 14 grams)	<b>15-year</b> mandatory minimum term ( <b>14 grams</b> to less than 28 grams)	<b>25-year</b> mandatory minimum term ( <b>28 grams</b> to less than 30 kilograms)
Trafficking in <b>cocaine</b> (s. 893.135(1)(b)1., F.S.)	<b>3-year</b> mandatory minimum term ( <b>28 grams</b> to less than 200 grams)	<b>7-year</b> mandatory minimum term ( <b>200 grams</b> to less than 400 grams)	<b>15-year</b> mandatory minimum term ( <b>400 grams</b> to less than 150 kilograms)
Trafficking in <b>phencyclidine</b> (s. 893.135(1)(d)1., F.S.)	<b>3-year</b> mandatory minimum term ( <b>28 grams</b> to less than 200 grams)	<b>7-year</b> mandatory minimum term ( <b>200 grams</b> to less than 400 grams)	<b>15-year</b> mandatory minimum term ( <b>400 grams</b> or more)
Trafficking in <b>methaqualone</b> (s. 893.135(1)(e)1., F.S.)	<b>3-year</b> mandatory minimum term ( <b>200 grams</b> to less than 5 kilograms)	<b>7-year</b> mandatory minimum term ( <b>5 kilograms</b> to less than 25 kilograms)	<b>15-year</b> mandatory minimum term ( <b>25 kilograms</b> or more)
Trafficking in <b>amphetamine or methamphetamine</b> (s. 893.135(1)(f)1., F.S.)	<b>3-year</b> mandatory minimum term ( <b>14 grams</b> to less than 28 grams)	<b>7-year</b> mandatory minimum term ( <b>28 grams</b> to less than 200 grams)	<b>15-year</b> mandatory minimum term ( <b>200 grams</b> or more)

<sup>23</sup> Staff found only two circumstances in which a sentencing court is authorized by law to impose a sentence below the mandatory minimum term. The first circumstance is when the court sentences a defendant as a youthful offender. Section 958.04, F.S. See *Christian v. State*, 84 So.3d 437 (Fla. 5th DCA 2012). The second circumstance is when the court grants a motion from the state attorney to reduce or suspend a sentence based upon substantial assistance rendered by the defendant. Section 893.135(4), F.S.

### **OPPAGA Report No. 12-02: Increasing Weight Thresholds for Trafficking in Prescription Painkillers is an Option**

In its report the OPPAGA provided a number of options for addressing trafficking in prescription painkillers. One of those options was to “[r]evise Florida statutes to increase the weight thresholds for prescription painkillers so that it would take more pills to be charged with drug trafficking offenses subject to minimum mandatory sentences.”<sup>24</sup>

#### **III. Effect of Proposed Changes:**

The bill increases from 4 to 14 grams the minimum weight threshold for trafficking in oxycodone and hydrocodone (prescription painkillers) under s. 893.135, F.S., the drug trafficking statute. As a result of this change, persons who unlawfully possess, sell, etc., relatively small quantities of oxycodone or hydrocodone will no longer be punished for drug trafficking. They still may be punished under s. 893.13, F.S., for unlawful acts involving controlled substances, but the penalties are not as significant as drug trafficking penalties. Further, some persons who meet the revised weight threshold for trafficking in oxycodone or hydrocodone will receive a shorter mandatory minimum term than under current law.

The bill removes reference to “oxycodone” and “hydrocodone” wherever those words appear in s. 893.135(1)(c)1. and 2., F.S. (which punish trafficking in opium, morphine, heroin, hydromorphone, oxycodone, and hydrocodone, and other substances).

The bill creates a new subparagraph s. 893.135(1)(c)3., F.S., which punishes (as a first degree felony) “trafficking in illegal prescription drugs.” The new trafficking provision only applies to a person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of 14 grams or more of any oxycodone or hydrocodone, or 14 grams or more of any mixture containing any such substance.

Under the new trafficking provision, the minimum gram weight threshold for trafficking in oxycodone or hydrocodone, which is 14 grams, differs from current law in which the minimum gram weight threshold for trafficking in these substances is 4 grams. Gram weight ranges and applicable mandatory minimum terms differ from current law.<sup>25</sup>

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<sup>24</sup> OPPAGA Report, at p. 8.

<sup>25</sup> Fines are the same as current law with one exception. The bill provides for a \$750,000 fine for trafficking in 200 grams or more of oxycodone or hydrocodone. Current law provides for a \$500,000 fine for trafficking in the same quantity of oxycodone or hydrocodone. Section 893.135(1)(c)1.c., F.S.

<b>CURRENT LAW AND SB 360 ON MANDATORY MINIMUM TERMS</b>		
<b>Drug Trafficking Mandatory Minimum Term</b>	<b>Quantity/Weight Required for Hydrocodone and Oxycodone Under Current Law</b>	<b>Quantity/Weight Required for Hydrocodone and Oxycodone Under SB 360</b>
3 years	4 grams or more but less than 14 grams	14 grams or more but less than 28 grams
7 years	N/A	28 grams or more but less than 50 grams
15 years	14 grams or more but less than 28 grams	50 grams or more but less than 200 grams
25 years	28 grams or more but less than 30 kilograms	200 grams or more
Life	30 kilograms or more	N/A

Section 893.135(1)(c), F.S., currently includes a life imprisonment penalty (s. 893.135(1)(c)2., F.S.)<sup>26</sup> and two capital felonies (s. 893.135(1)(c)2. and 3., F.S.). Under the bill, the life imprisonment penalty and one of the two capital felonies would not apply to trafficking in oxycodone and hydrocodone.

The bill amends s. 921.022, F.S., the offense severity ranking chart of the Criminal Punishment Code, to rank the offenses relating to trafficking in oxycodone and hydrocodone that have been removed from s. 893.135(1)(c)1. and 2., F.S., and placed in their own subparagraph. The offenses are ranked as follows:

- Trafficking in 14 grams or more, but less than 28 grams, of oxycodone/hydrocodone: Level 6.
- Trafficking in 28 grams or more, but less than 50 grams, of oxycodone/hydrocodone: Level 7.
- Trafficking in 50 grams or more, but less than 200 grams, of oxycodone/hydrocodone: Level 8.
- Trafficking in 200 grams or more of oxycodone/hydrocodone: Level 9.

The bill reenacts ss. 787.087(2)(a) and (3)(a) and 782.04(1)(a), (3), and (4), F.S., to incorporate the amendments made to s. 893.135, F.S., in references to that statute.

The effective date of the bill is July 1, 2014.

<sup>26</sup> According to the OPPAGA, “[i]n Fiscal Year 2010-11, there were no offenders imprisoned for life for trafficking in opioids.” OPPAGA Report, at p. 2, n. 1.

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

None.

## C. Government Sector Impact:

The bill will result in a positive fiscal impact (cost avoidance) in several ways. First, drug offenders who are convicted of possessing, selling, etc., less than 14 grams of oxycodone or hydrocodone will no longer be subject to the drug trafficking 3-year mandatory minimum term, but instead will be sentenced under the Criminal Punishment Code (based on a conviction for a drug offense under s. 893.13, F.S.).

According to a preliminary estimate from the Legislature's Office of Economic and Demographic Research (EDR), this change alone is estimated to result in the need for 465 fewer prison beds cumulatively by Fiscal Year 2018-2019, with a cumulative savings of \$48,387,615, including both operating costs and fixed capital outlay costs. However, the current prison bed surplus makes it unlikely that there will actually be any fixed capital outlay cost savings. Therefore, a more realistic projection would be a cumulative savings of \$16,930,000 in operations costs over the next five fiscal years.

The following table summarizes this projected fiscal impact:

<b>Fiscal Impact of SB 360</b> <b>Increasing from 4 Grams to 14 Grams the Threshold for the 3-Year Minimum Mandatory for Trafficking in Hydrocodone or Oxycodone For offenses after July 1, 2014</b>						
Fiscal Year	Projected Cumulative Prison Beds Required	Projected Additional Annual Prison Beds Required	FUNDS REQUIRED			
			Annual Operating Costs	Annual Fixed Capital Outlay Costs	TOTAL Annual Funds	TOTAL Cumulative Funds
2014-2015	-1	-1	(\$9,434)	(\$2,543,927)	(\$2,553,361)	(\$2,553,361)
2015-2016	-41	-40	(\$402,570)	(\$9,440,046)	(\$9,842,616)	(\$12,395,977)
2016-2017	-188	-147	(\$2,234,468)	(\$13,002,052)	(\$15,236,520)	(\$27,632,497)
2017-2018	-384	-196	(\$5,681,676)	(\$5,502,330)	(\$11,184,006)	(\$38,816,503)
2018-2019	-465	-81	(\$8,602,068)	(\$969,080)	(\$9,571,148)	(\$48,387,651)
<b>TOTAL</b>	<b>-465</b>	<b>-465</b>	<b>(\$16,930,216)</b>	<b>(\$31,457,435)</b>	<b>(\$48,387,651)</b>	<b>(\$48,387,651)</b>

Prepared by Florida Legislature, Office of Economic and Demographic Research, November 13, 2013

The EDR notes that this impact statement does not represent the direct appropriations impact of the bill. Rather, it provides a stand-alone estimate of the prison bed need of the bill. Cost data are included to allow a comparison of the impact of the bill with other proposed legislation. The actual appropriation associated with passage of the bill will depend on a number of factors, including the existing inventory of prison beds.

Second, staff notes that an additional but indeterminate cost avoidance is also likely to be achieved based on the inclusion of an intermediate 7-year mandatory minimum term in the bill. Currently, s. 893.135(1)(c), F.S., jumps from a 3-year to a 15-year mandatory minimum term. The bill also includes changes to other weight thresholds and weight ranges. The impact of these changes will not be experienced for many years and is expected to be significantly less than the impact of removing possession of less than 14 grams from the trafficking statute.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 893.135 and 921.0022.

This bill reenacts provisions of the following sections of the Florida Statutes: 775.087 and 782.04.

**IX. Additional Information:**

- A. **Committee Substitute – Statement of Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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