

<b>Tab 1</b>	<b>SB 482 by Bracy; Driving While a Driver License or Driving Privilege is Canceled, Suspended, or Revoked</b>					
<b>Tab 2</b>	<b>SB 602 by Bracy; Mandatory Minimum Sentences</b>					
600702	D	S	RCS	CJ, Bracy	Delete everything after	12/04 05:44 PM
<b>Tab 3</b>	<b>SB 644 by Bracy; (Identical to H 00489) Juvenile Civil Citation and Similar Diversion Programs</b>					
890946	A	S	RCS	CJ, Bracy	Delete L.104 - 112:	12/04 05:44 PM
<b>Tab 4</b>	<b>SB 694 by Brandes (CO-INTRODUCERS) Bracy; (Compare to H 00481) Mandatory Sentences</b>					

**The Florida Senate**  
**COMMITTEE MEETING EXPANDED AGENDA**

**CRIMINAL JUSTICE**  
**Senator Bracy, Chair**  
**Senator Baxley, Vice Chair**

**MEETING DATE:** Monday, December 4, 2017  
**TIME:** 4:00—6:00 p.m.  
**PLACE:** Mallory Horne Committee Room, 37 Senate Office Building

**MEMBERS:** Senator Bracy, Chair; Senator Baxley, Vice Chair; Senators Bean, Bradley, Brandes, Grimsley, and Rouson

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	<b>SB 482</b> Bracy	Driving While a Driver License or Driving Privilege is Canceled, Suspended, or Revoked; Repealing a felony offense for a third or subsequent conviction for driving while a driver license or driving privilege is canceled, suspended, or revoked; providing that such a conviction is a misdemeanor offense, etc.  CJ      12/04/2017 Favorable ACJ AP RC	Favorable Yeas 4 Nays 1
2	<b>SB 602</b> Bracy	Mandatory Minimum Sentences; Authorizing a court to depart from certain mandatory minimum terms of imprisonment for drug trafficking if it makes specified findings, etc.  CJ      11/13/2017 Temporarily Postponed CJ      12/04/2017 Fav/CS JU AP RC	Fav/CS Yeas 5 Nays 1
3	<b>SB 644</b> Bracy (Identical H 489)	Juvenile Civil Citation and Similar Diversion Programs; Requiring the establishment of civil citation or similar diversion programs for juveniles; specifying program eligibility, participation, and implementation requirements, etc.  CJ      12/04/2017 Fav/CS ACJ AP	Fav/CS Yeas 4 Nays 2
4	<b>SB 694</b> Brandes (Compare H 481)	Mandatory Sentences; Authorizing a court to issue a sentence shorter than a mandatory minimum term of imprisonment for a person convicted of trafficking if the court makes certain findings on the record, etc.  CJ      12/04/2017 Favorable JU ACJ AP	Favorable Yeas 5 Nays 1

**COMMITTEE MEETING EXPANDED AGENDA**

Criminal Justice

Monday, December 4, 2017, 4:00—6:00 p.m.

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
	Other Related Meeting Documents		

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**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 Criminal Justice

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BILL: SB 482

INTRODUCER: Senator Bracy

SUBJECT: Driving While a Driver License or Driving Privilege is Canceled, Suspended, or Revoked

DATE: December 1, 2017

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Jones</u>	<u>CJ</u>	<u>Favorable</u>
2.	_____	_____	<u>ACJ</u>	_____
3.	_____	_____	<u>AP</u>	_____
4.	_____	_____	<u>RC</u>	_____

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**I. Summary:**

SB 482 removes the third degree felony for a third or subsequent conviction of driving a motor vehicle on a Florida highway when the driver knows his or her driver license or driving privilege is canceled, suspended, or revoked. A second or *subsequent* conviction of this offense will be punished as a first degree misdemeanor. Currently, only a second conviction for this offense is a first degree misdemeanor.

The Legislature's Office of Economic and Demographic Research preliminarily estimates that the impact of the bill is that 313 fewer prison beds will be required over the next five years (FY 2018-19 to FY 2022-23) with a cumulative costs savings of \$27,350,040 (\$7,050,864 in operating costs and \$20,299,176 in fixed capital outlay costs). This impact statement is a standalone estimate of the prison bed need of this bill. The actual appropriation associated with passage of this bill will differ depending on a number of factors including the existing inventory of prison beds. See Section V. Fiscal Impact Statement.

## II. Present Situation:

Except as provided in s. 322.34(2), F.S., a person commits a moving violation under ch. 318, F.S.,<sup>1</sup> if he or she drives a motor vehicle upon a Florida highway while his or her driver license or privilege is canceled, suspended, or revoked.<sup>2</sup>

Section 322.34(2), F.S., punishes a person who, *knowing*<sup>3</sup> his or her driver license or driving privilege is canceled, suspended, or revoke, drives a motor vehicle upon a Florida highway. This offense is punished as follows:

- A first conviction is a second degree misdemeanor;<sup>4</sup>
- A second conviction is a first degree misdemeanor;<sup>5</sup> and
- A third or subsequent conviction is a third degree felony.<sup>6</sup>

## III. Effect of Proposed Changes:

The bill amends s. 322.34(2), F.S., to remove the third degree felony for a third or subsequent conviction of driving a motor vehicle on a Florida highway when the driver knows his or her driver license or driving privilege is canceled, suspended, or revoked. A second or *subsequent* conviction of this offense will be punished as a first degree misdemeanor, which means that a

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<sup>1</sup> A moving violation is a noncriminal traffic infraction. According to information provided by the Department of Highway Safety and Motor Vehicles (DHSMV), a violator is authorized to pay a fine (s. 318.14(4)(a), F.S.), in which case the violator is assessed three points under s. 322.27(3)(d)7., F.S. E-mail from DHSMV staff to staff of the Senate Committee on Criminal Justice, dated Nov. 20, 2017 (on file with the Senate Committee on Criminal Justice). Alternatively, s. 318.14(9), F.S., authorizes the violator to attend a basic driver improvement course approved by the DHSMV, in which case adjudication is withheld and points are not assessed. *Id.* Another alternative is s. 318.14(10)(a), F.S., which authorizes the violator to enter a plea of nolo contendere and provide proof of compliance (a valid, renewed, or reinstated driver license or registration certificate and proper proof of maintenance of applicable security) to the clerk of the court, designated official, or authorized operator of a traffic violations bureau. *Id.* In such case, adjudication is withheld, but the violator is assessed court costs. Section 318.14(10)(b), F.S.

<sup>2</sup> Section 322.34(1), F.S. Subsections (1) and (2) of s. 322.34, F.S., do not apply to a “habitual traffic offender.” As provided s. 322.264, F.S., defines an “habitual traffic offender” as a person whose record, as maintained by the DHSMV, shows that such person has accumulated the requisite number of convictions under subsection (1) or subsection (2) of the statute within a 5-year period. Subsection (1) specifies 3 or more convictions for any offense specified in that subsection, which includes driving a motor vehicle while his or her license is suspended or revoked. Subsection (2) specifies 15 convictions for moving trafficking offenses for which points may be assessed, including those offenses specified in subsection (1). The DHSMV shall revoke the license of any person designated a habitual offender, and such person is not eligible to be relicensed for a minimum of 5 years from the date of revocation, except as provided for in s. 322.271, F.S. (serious hardship). Section 322.27(5)(a), F.S.

<sup>3</sup> The element of knowledge is satisfied if the person: (1) has been previously cited for a moving violation under s. 322.34(1), F.S.; (2) admits to knowledge of the cancellation, suspension, or revocation; or (3) received notice as provided in s. 322.34(4), F.S. Section 322.34(2), F.S. Section 322.34(4), F.S., provides that any judgment or order rendered by a court or adjudicatory body or any uniform traffic citation that cancels, suspends, or revokes a person’s driver license must contain a provision notifying the person that his or her driver license has been canceled, suspended, or revoked. There is a rebuttable presumption that the knowledge requirement is satisfied if a judgment or order as provided in s. 322.34(4), F.S., appears in the records of the DHSMV for any case except for one involving a suspension by the DHSMV for failure to pay a traffic fine or for a financial responsibility violation. Section 322.34(2), F.S.

<sup>4</sup> Section 322.34(2)(a), F.S. A second degree misdemeanor is punishable by a jail term not exceeding 60 days, a fine not exceeding \$500, or both. Sections 775.082 and 775.083, F.S.

<sup>5</sup> Section 322.34(2)(b), F.S. A first degree misdemeanor is punishable by a jail term not exceeding one year, a fine not exceeding \$1,000, or both. Sections 775.082 and 775.083, F.S.

<sup>6</sup> Section 322.34(2)(c), F.S. A third degree felony is punishable by a state prison term not exceeding 5 years, a fine not exceeding \$5,000, or both. Sections 775.082 and 775.083, F.S.

state prison sentence is not an available sentencing option. Currently, only a second conviction for this offense is a first degree misdemeanor.<sup>7</sup>

The bill does not impact s. 322.34(5), F.S., which provides that it is a third degree felony for a person whose driver license has been revoked pursuant to s. 322.264, F.S. (“habitual traffic offender”), to drive a motor vehicle upon a Florida highway while such license is revoked. As previously noted,<sup>8</sup> an “habitual traffic offender” is a person who has been convicted of several traffic-related offenses or moving trafficking offenses *within a 5-year period*. Those convictions may or may not include driving with a suspended or revoked driver license.<sup>9</sup>

The effective date of the bill is October 1, 2018.

#### **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 Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, has not yet reviewed the bill.

The Legislature’s Office of Economic and Demographic Research (EDR) preliminarily estimates that the impact of the bill is that 313 fewer prison beds will be required over the next five years (FY 2018-19 to FY 2022-23) with a cumulative costs savings of \$27,350,040 (\$7,050,864 in operating costs and \$20,299,176 in fixed capital outlay

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<sup>7</sup> Section 322.34(2)(b), F.S.

<sup>8</sup> Supra n. 2.

<sup>9</sup> Section 322.264, F.S.

costs). This impact statement is a standalone estimate of the prison bed need of this bill. The actual appropriation associated with passage of this bill will differ depending on a number of factors including the existing inventory of prison beds.<sup>10</sup>

Fiscal Year	Projected Cumulative Prison Beds Required	Projected Additional Annual Prison Beds Required	FUNDS REQUIRED			
			Annual Operating Costs <sup>11</sup>	Annual Fixed Capital Outlay Costs <sup>12</sup>	TOTAL Annual Funds	TOTAL Cumulative Funds
2018-2019	-100	-100	(\$308,750)	(\$14,694,472)	(\$15,003,222)	(\$15,003,222)
2019-2020	-229	-129	(\$1,042,108)	(\$3,225,964)	(\$4,268,072)	(\$19,271,294)
2020-2021	-278	-49	(\$1,649,271)	(\$1,687,050)	(\$3,336,321)	(\$22,607,615)
2021-2022	-303	-25	(\$1,939,088)	(691,690)	(\$2,630,778)	(\$25,238,392)
2022-2023	-313	-10	(\$2,111,648)	\$0	(\$2,111,648)	(\$27,350,040)
<b>Total</b>	<b>-313</b>	<b>-313</b>	(\$7,050,864)	(\$20,299,176)	(\$27,350,040)	(\$27,350,040)

Prepared by Florida Legislature, Office of Economic and Demographic Research, November 20, 2017.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 322.34 of the Florida Statutes.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

<sup>10</sup> E-mail and prison bed impact analysis from EDR staff to staff of the Senate Committee on Criminal Justice, dated Nov. 20, 2017 (on file with the Senate Committee on Criminal Justice).

<sup>11</sup> FY 2015-16 operating costs per inmate were obtained from the Department of Corrections (DOC). The \$53.49 per diem (\$19,524 annual cost) is for all DOC facilities (excluding private institutions and approximately 150 beds in PRCs) and includes operations, health services, and education services. It does not include debt service costs. It also does not include indirect and administrative costs of \$3.34 per inmate (state facilities). Operating costs in future years were increased by the change in the CPI from the National Economic Estimating Conference.

<sup>12</sup> FY 2006-07 capital costs per bed were based on the DOC cost to build Suwanee CI (\$94,000,000 for 2,003 lawful capacity beds) as reported at the Criminal Justice Impact Conference held February 23, 2010. Capital costs in later years were increased by the change in the chained price index for state and local construction spending obtained from Global Insight, Inc.

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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By Senator Bracy

11-00692-18

2018482\_\_

1 A bill to be entitled  
 2 An act relating to driving while a driver license or  
 3 driving privilege is canceled, suspended, or revoked;  
 4 amending s. 322.34, F.S.; repealing a felony offense  
 5 for a third or subsequent conviction for driving while  
 6 a driver license or driving privilege is canceled,  
 7 suspended, or revoked; providing that such a  
 8 conviction is a misdemeanor offense; providing an  
 9 effective date.

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

11 Section 1. Subsection (2) of section 322.34, Florida  
 12 Statutes, is amended to read:

13 322.34 Driving while license suspended, revoked, canceled,  
 14 or disqualified.—

15 (2) Any person whose driver license or driving privilege  
 16 has been canceled, suspended, or revoked as provided by law,  
 17 except persons defined in s. 322.264, who, knowing of such  
 18 cancellation, suspension, or revocation, drives any motor  
 19 vehicle upon the highways of this state while such license or  
 20 privilege is canceled, suspended, or revoked, upon:

21 (a) A first conviction is guilty of a misdemeanor of the  
 22 second degree, punishable as provided in s. 775.082 or s.  
 23 775.083.

24 (b) A second or subsequent conviction is guilty of a  
 25 misdemeanor of the first degree, punishable as provided in s.  
 26 775.082 or s. 775.083.

27 ~~(c) A third or subsequent conviction is guilty of a felony~~

Page 1 of 2

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

11-00692-18

2018482\_\_

30 ~~of the third degree, punishable as provided in s. 775.082, s.~~  
 31 ~~775.083, or s. 775.084.~~

32

33 The element of knowledge is satisfied if the person has been  
 34 previously cited as provided in subsection (1); or the person  
 35 admits to knowledge of the cancellation, suspension, or  
 36 revocation; or the person received notice as provided in  
 37 subsection (4). There shall be a rebuttable presumption that the  
 38 knowledge requirement is satisfied if a judgment or order as  
 39 provided in subsection (4) appears in the department's records  
 40 for any case except for one involving a suspension by the  
 41 department for failure to pay a traffic fine or for a financial  
 42 responsibility violation.

43 Section 2. This act shall take effect October 1, 2018.

Page 2 of 2

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

12/4/2017

*Meeting Date*

SB 482

*Bill Number (if applicable)*

Topic Diving While a Drivers License is Suspended

*Amendment Barcode (if applicable)*

Name Scott D. McCoy

Job Title Senior Policy Counsel

Address P.O. Box 10788

Phone 850-521-3042

*Street*

Tallahassee

FL

32301

Email scott.mccoy@splcenter.org

*City*

*State*

*Zip*

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
*(The Chair will read this information into the record.)*

Representing Southern Poverty Law Center

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

***This form is part of the public record for this meeting.***

S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4 Dec 17

Meeting Date

482

Bill Number (if applicable)

Topic Driving with Suspended License

Amendment Barcode (if applicable)

Name Barney Bishop III

Job Title Pres & CEO

Address 204 S. Monroe  
Street

Phone 510.9922

Tall  
City

FL  
State

32301  
Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Fla. Smart Justice Alliance

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

12/4/2017

*Meeting Date*

482

*Bill Number (if applicable)*

Topic Criminal Justice

*Amendment Barcode (if applicable)*

Name Sal Nuzzo

Job Title VP of Policy

Address 100 N Duval Street

Phone 850-322-9941

*Street*

Tallahassee

FL

32301

Email snuzzo@jamesmadison.org

*City*

*State*

*Zip*

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
*(The Chair will read this information into the record.)*

Representing The James Madison Institute

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

12/4/2017

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

482

Meeting Date

Bill Number (if applicable)

Topic Driver's License Privilege

Amendment Barcode (if applicable)

Name Heather Turnbull

Job Title government consultant

Address 2460 Lantana Ln

Phone 305-495-3868

Street

Tallahassee FL 32311

Email TurnbullH@rubingroup.com

City

State

Zip

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Campaign for Criminal Justice Reform

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

12-4-17

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

482

Meeting Date

Bill Number (if applicable)

Topic Defining White Supremacy

Amendment Barcode (if applicable)

Name Bob Dillinger

Job Title Public Defender

Address 14250 49th St N

Phone 727-464-6866

Street Spearwater

Email pd@anotherhope.org

City Clearwater State FL Zip 33762

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing PD ASSOC

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

12/4/17

Meeting Date

SB 482

Bill Number (if applicable)

Topic Driving License Suspension

Amendment Barcode (if applicable)

Name KARA GROSS

Job Title LEGISLATIVE COUNSEL

Address 4343 W. FLAGLER ST  
Street

Phone 786-363-4436

Miami, FL  
City State Zip

Email KGROSS@ACLU FL.ORG

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing ACLU OF FLORIDA

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

12/4/17  
Meeting Date

482  
Bill Number (if applicable)

Topic CJ

Amendment Barcode (if applicable)

Name Chelsea Murphy

Job Title State Director

Address 824 N. Duval St

Phone 954 557 0016

TLH FL 32303

City State Zip

Email

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Right on Crime

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.



**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 Criminal Justice

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BILL: CS/SB 602

INTRODUCER: Criminal Justice Committee and Senator Bracy

SUBJECT: Mandatory Minimum Sentences

DATE: December 5, 2017      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Jones	CJ	Fav/CS
2.			JU	
3.			AP	
4.			RC	

**Please see Section IX. for Additional Information:**  
COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 602 authorizes a court to depart from the 3-year mandatory minimum term of imprisonment applicable to trafficking in various controlled substances, excluding opioids and opiates. The departure is authorized if the court makes the following written findings:

- The violation only involved possession;
- The offender did not use or threaten violence or use a weapon during the commission of the offense;
- The offense did not result in a death or serious bodily injury of a person not a party to the offense; and
- A factor, consideration, or circumstance clearly demonstrates that imposing the mandatory minimum term of imprisonment would constitute or result in an injustice.

The Legislature’s Office of Economic and Demographic Research estimates that the bill will have a “negative indeterminate” prison bed impact (an unquantifiable decrease in prison beds). See Section V. Fiscal Impact Statement.

## II. Present Situation:

### Florida's Controlled Substance Schedules

Section 893.03, F.S., classifies controlled substances into five categories, known as schedules. These schedules regulate the manufacture, distribution, preparation, and dispensing of the substances listed in the schedules. The most important factors in determining which schedule may apply to a substance are the “potential for abuse”<sup>1</sup> of the substance and whether there is a currently accepted medical use for the substance. The controlled substance schedules are as follows:

- Schedule I substances (s. 893.03(1), F.S.) have a high potential for abuse and no currently accepted medical use in treatment in the United States. Use of these substances under medical supervision does not meet accepted safety standards.
- Schedule II substances (s. 893.03(2), F.S.) have a high potential for abuse and a currently accepted but severely restricted medical use in treatment in the United States. Abuse of these substances may lead to severe psychological or physical dependence.
- Schedule III substances (s. 893.03(3), F.S.) have a potential for abuse less than the Schedule I and Schedule II substances and a currently accepted medical use in treatment in the United States. Abuse of these substances may lead to moderate or low physical dependence or high psychological dependence. Abuse of anabolic steroids may lead to physical damage.
- Schedule IV substances (s. 893.03(4), F.S.) have a low potential for abuse relative to Schedule III substances and a currently accepted medical use in treatment in the United States. Abuse of these substances may lead to limited physical or psychological dependence relative to Schedule III substances.
- Schedule V substances (s. 893.03(5), F.S.) have a low potential for abuse relative to the substances in Schedule IV and a currently accepted medical use in treatment in the United States. Abuse of these substances may lead to limited physical or psychological dependence relative to Schedule IV substances.

### Punishment of Prohibited Drug Acts

Section 893.13, F.S., in part, punishes unlawful possession, sale, purchase, manufacture, and delivery of a controlled substance. The penalty for violating s. 893.13, F.S., can depend on the act committed, the substance and quantity of the substance involved, and the location in which the violation occurred. For example, selling a controlled substance listed in s. 893.03(1)(c), F.S., which includes many synthetic controlled substances, is a third degree felony.<sup>2</sup> However, if that substance is sold within 1,000 feet of a K-12 school or other designated facility or location, the

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<sup>1</sup> Pursuant to s. 893.035(3)(a), F.S., “potential for abuse” means a substance has properties as a central nervous system stimulant or depressant or a hallucinogen that create a substantial likelihood of the substance being: (1) used in amounts that create a hazard to the user’s health or the safety of the community; (2) diverted from legal channels and distributed through illegal channels; or (3) taken on the user’s own initiative rather than on the basis of professional medical advice.

<sup>2</sup> Section 893.13(1)(a)2., F.S. A third-degree felony is punishable by up to 5 years in state prison, a fine of up to \$5,000, or both. Sections 775.082 and 775.083, F.S.

violation is a second-degree felony.<sup>3</sup> With three exceptions,<sup>4</sup> s. 893.13, F.S., does not provide for mandatory minimum terms of imprisonment.

Drug trafficking, which is punished in s. 893.135, F.S., consists of knowingly selling, purchasing, manufacturing, delivering, or bringing into this state (importation), or knowingly being in actual or constructive possession of, certain Schedule I or Schedule II controlled substances in a statutorily-specified quantity. The statute only applies to a limited number of such controlled substances. The controlled substance involved in the trafficking must meet a specified weight or quantity threshold.

Most drug trafficking offenses are first degree felonies<sup>5</sup> and are subject to a mandatory minimum term<sup>6</sup> and a mandatory fine, which is determined by the weight or quantity range applicable to the weight or quantity of the substance involved in the trafficking.<sup>7</sup> For example, trafficking in 28 grams or more, but less than 200 grams, of cocaine, a first degree felony, is punishable by a 3-year mandatory minimum term of imprisonment and a mandatory fine of \$50,000.<sup>8</sup> Trafficking in 200 grams or more, but less than 400 grams, of cocaine, a first degree felony, is punishable by a 15-year mandatory minimum term of imprisonment and a mandatory fine of \$100,000.<sup>9</sup>

### **Criminal Punishment Code**

The Criminal Punishment Code<sup>10</sup> (Code) is Florida's "primary sentencing policy."<sup>11</sup> Noncapital felonies sentenced under the Code receive an offense severity level ranking (Levels 1-10).<sup>12</sup> Points are assigned and accrue based upon the level ranking assigned to the primary offense, additional offenses, and prior offenses. Sentence points escalate as the level escalates. Points may also be added or multiplied for other factors such as victim injury or the commission of certain offenses like a Level 7 or 8 drug trafficking offense. The lowest permissible sentence is any nonstate prison sanction in which total sentence points equal or are less than 44 points, unless the court determines that a prison sentence is appropriate. If total sentence points exceed 44 points, the lowest permissible sentence in prison months is calculated by subtracting 28 points

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<sup>3</sup> Section 893.13(1)(c)2., F.S. A second-degree felony is punishable by up to 15 years in state prison, a fine of up to \$10,000, or both. Sections 775.082 and 775.083, F.S.

<sup>4</sup> Exceptions: s. 893.13(1)(c)1., F.S. (selling, etc., certain Schedule I and II controlled substances within 1,000 feet of a K-12 school, park, community center, or publicly owned recreational facility); s. 893.13(1)(g)1., F.S. (manufacturing methamphetamine or phencyclidine in a structure or conveyance where any child under 16 is present); and s. 893.13(1)(g)2., F.S. (manufacturing methamphetamine or phencyclidine causes a child under 16 to suffer great bodily harm).

<sup>5</sup> A first degree felony is generally punishable by up to 30 years in state prison and a fine of up to \$10,000. However, when specifically provided by statute, a first degree felony may be punished by imprisonment for a term of years not exceeding life imprisonment. Sections 775.082 and 775.083, F.S.

<sup>6</sup> There are currently 56 mandatory minimum terms of imprisonment in s. 893.135, F.S., which range from three years to life imprisonment.

<sup>7</sup> See s. 893.135, F.S.

<sup>8</sup> Section 893.135(b)(1)a., F.S.

<sup>9</sup> Section 893.135(b)(1)b., F.S.

<sup>10</sup> Sections 921.002-921.0027, F.S. See chs. 97-194 and 98-204, L.O.F. The Code is effective for offenses committed on or after October 1, 1998.

<sup>11</sup> *Florida's Criminal Punishment Code: A Comparative Assessment (FY 2012-2013) Executive Summary (Offenses Committed On or After October 1, 1998)*, Florida Department of Corrections, available at [http://www.dc.state.fl.us/pub/sg\\_annual/1213/executives.html](http://www.dc.state.fl.us/pub/sg_annual/1213/executives.html) (last visited on Nov. 6, 2017).

<sup>12</sup> Offenses are either ranked in the offense severity level ranking chart in s. 921.0022, F.S., or are ranked by default based on a ranking assigned to the felony degree of the offense as provided in s. 921.0023, F.S.

from the total sentence points and decreasing the remaining total by 25 percent.<sup>13</sup> Absent mitigation,<sup>14</sup> the permissible sentencing range under the Code is generally the lowest permissible sentence scored up to and including the maximum penalty provided under s. 775.082, F.S.<sup>15</sup>

### **Mandatory Minimum Sentences and Departures**

Mandatory minimum terms of imprisonment limit judicial discretion in Code sentencing: “If the lowest permissible sentence is less than the mandatory minimum sentence, the mandatory minimum sentence takes precedence.”<sup>16</sup> As previously noted, the sentencing range under the Code is generally the scored lowest permissible sentence up to and including the statutory maximum penalty. However, if there is a mandatory minimum sentence that is longer than the scored lowest permissible sentence, the sentencing range is narrowed to the mandatory minimum sentence up to and including the statutory maximum penalty.

Prosecutors have “complete discretion” in the charging decision.<sup>17</sup> The exercise of this discretion may determine whether or not a defendant is subject to a mandatory minimum term or a reduced mandatory minimum term. A prosecutor could determine in a particular case that mandatory minimum sentencing is inappropriate or too severe and avoid or ameliorate such sentencing. For example, the prosecutor could offer a plea to a violation of s. 893.13, F.S., or attempted drug trafficking, neither of which carries a mandatory minimum term. A prosecutor could also offer a plea to a drug trafficking violation that carries a 3-year mandatory minimum term, even though the defendant could be prosecuted for a drug trafficking violation that carries a greater mandatory minimum term. Further, a prosecutor could move the court to reduce or suspend a sentence if the defendant renders substantial assistance.<sup>18</sup>

There are few circumstances in which a court of its own accord can depart from a mandatory minimum term. A court may depart from a mandatory minimum term if the defendant is a youthful offender.<sup>19</sup> A court may also depart from a mandatory minimum term for a violation s. 316.027(2)(c), F.S. (driver involved in a fatal crash fails to stop and remain at the scene of a crash) if the court “finds that a factor, consideration or circumstance clearly demonstrates that

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<sup>13</sup> Section 921.0024, F.S. Unless otherwise noted, information on the Code is from this source.

<sup>14</sup> The court may “mitigate” or “depart downward” from the scored lowest permissible sentence if the court finds a mitigating circumstance. Section 921.0026, F.S., provides a list of mitigating circumstances.

<sup>15</sup> If the scored lowest permissible sentence exceeds the maximum penalty in s. 775.082, F.S., the sentence required by the Code must be imposed. If total sentence points are greater than or equal to 363 points, the court may sentence the offender to life imprisonment. Section 921.0024(2), F.S.

<sup>16</sup> Fla. R. Crim. P. 3.704(d)(26).

<sup>17</sup> “Under Florida’s constitution, the decision to charge and prosecute is an executive responsibility, and the state attorney has complete discretion in deciding whether and how to prosecute.” *State v. Bloom*, 497 So.2d 2, 3 (Fla. 1986).

<sup>18</sup> Sections 790.163(2), 790.164(2), 893.135(4), and 921.0024(1)(b), F.S. However, lower-level dealers or peripheral actors may have little, if any, information beneficial to prosecutors. Inmate population data reported in a 2009 Senate interim report indicated that the average sentence of inmates with a lower-level trafficking offense was above the mandatory minimum term, while the average sentence of inmates with a higher-level trafficking offense was below the mandatory minimum term. *A Policy Analysis of Minimum Mandatory Sentencing for Drug Traffickers*, Interim Report 2010-109 (October 2009), p. 7, Committee on Criminal Justice, The Florida Senate, [http://archive.flsenate.gov/data/Publications/2010/Senate/reports/interim\\_reports/pdf/2010-109cj.pdf](http://archive.flsenate.gov/data/Publications/2010/Senate/reports/interim_reports/pdf/2010-109cj.pdf) (last visited on Nov. 6, 2017).

<sup>19</sup> Section 958.04, F.S.

imposing a mandatory minimum term of imprisonment would constitute or result in an injustice.”<sup>20</sup>

### III. Effect of Proposed Changes:

The bill authorizes a court to depart from the 3-year mandatory minimum term of imprisonment applicable to trafficking in various controlled substances, excluding opioids and opiates. The departure is authorized if the court makes the following written findings:

- The violation only involved possession;
- The offender did not use or threaten violence or use a weapon during the commission of the offense;
- The offense did not result in a death or serious bodily injury of a person not a party to the offense; and
- A factor, consideration, or circumstance clearly demonstrates that imposing the mandatory minimum term of imprisonment would constitute or result in an injustice.

Because only a drug trafficking act involving possession may be considered for departure under the bill, the court may not depart from the mandatory minimum term if the drug trafficking violation involves sale, purchase, manufacture, delivery, or importation of a controlled substance.

The bill impacts trafficking in specified quantities of the following controlled substances:

- In excess of 25 pounds, but less than 2,000 pounds of cannabis, or 300 or more cannabis plants, but not more than 2,000 cannabis plants;<sup>21</sup>
- 28 grams or more, but less than 200 grams, of cocaine;<sup>22</sup>
- 28 grams or more, but less than 200 grams, of phencyclidine;<sup>23</sup>
- 200 grams or more, but less than 5 kilograms, of methaqualone;<sup>24</sup>
- 14 grams or more, but less than 28 grams, of amphetamine or methamphetamine;<sup>25</sup>
- 4 grams or more, but less than 14 grams, of flunitrazepam;<sup>26</sup>
- 1 kilogram or more, but less than 5 kilograms, of gamma-hydroxybutyric acid (GHB);<sup>27</sup>

<sup>20</sup> Section 316.027(2)(g), F.S.

<sup>21</sup> Section 893.135(1)(a)1., F.S.

<sup>22</sup> Section 893.135(1)(b)1.a., F.S.

<sup>23</sup> Section 893.135(1)(d)1.a., F.S. Phencyclidine “is a hallucinogen formerly used as a veterinary anesthetic, and briefly as a general anesthetic for humans.” “Phencyclidine,” PubChem, U.S. National Library of Medicine, <https://pubchem.ncbi.nlm.nih.gov/compound/phencyclidine> (last visited on Nov. 6, 2017).

<sup>24</sup> Section 893.135(1)(e)1.a., F.S. Methaqualone “is a quinazoline derivative with hypnotic and sedative properties.” “Methaqualone,” PubChem, U.S. National Library of Medicine, <https://pubchem.ncbi.nlm.nih.gov/compound/6292> (last visited on Nov. 6, 2017).

<sup>25</sup> Section 893.135(1)(f)1.a., F.S.

<sup>26</sup> Section 893.135(1)(g)1.a., F.S. “Flunitrazepam, trade name Rohypnol, is a central nervous system depressant in a class of drugs called benzodiazepines.” “Flunitrazepam (Rohypnol),” Center for Substance Abuse Research, <http://www.cesar.umd.edu/cesar/drugs/rohypnol.asp> (last visited on Nov. 6, 2017).

<sup>27</sup> Section 893.135(1)(h)1.a., F.S. “Gamma-hydroxybutyric acid (GHB) is a naturally occurring analog of gamma-aminobutyric acid (GABA) that has been used in research and clinical medicine for many years. GHB was used clinically as an anesthetic in the 1960s but was withdrawn due to side effects that included seizures and coma.” Kapoor P., Revati Deshmukh R., and Kukreja I., “GHB Acid: A rage or reprove” (abstract) (Oct.–Dec. 2013) 4(4): 173, *Journal of Advanced Pharmaceutical Technology and Research*, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3853692/> (last visited on Nov. 6, 2017). “The primary effects of GHB use are those of a CNS [central nervous system] depressant[.]” *Id.*

- 1 kilogram or more, but less than 5 kilograms, of gamma-butyrolactone (GBL);<sup>28</sup>
- 1 kilogram or more, but less than 5 kilograms, of 1,4-Butanediol;<sup>29</sup>
- 10 grams or more, but less than 200 grams, of specified phenethylamines and cathinones, substituted<sup>30</sup> phenethylamines, and substituted cathinones;<sup>31</sup>
- 1 gram or more, but less than 5 grams, of lysergic acid diethylamide (LSD);<sup>32</sup>
- 280 grams or more, but less than 500 grams, of specified synthetic cannabinoids;<sup>33</sup> and
- 14 grams or more, but less than 100 grams, of n-benzyl phenethylamines.<sup>34</sup>

Except for cannabis, mixtures containing the above-referenced controlled substances are included.

Excluded from the departure provisions of the bill are trafficking in various opiates or opioids, such as opium, morphine, heroin, hydromorphone, codeine, hydrocodone, oxycodone, fentanyl, and carfentanil and other fentanyl derivatives.<sup>35</sup>

The bill does not authorize departure from mandatory fines.

The effective date of the bill is July 1, 2018.

#### IV. Constitutional Issues:

##### A. Municipality/County Mandates Restrictions:

None.

##### B. Public Records/Open Meetings Issues:

None.

<sup>28</sup> Section 893.135(1)(i)1.a., F.S. “Analogues that are often substituted for GHB include GBL (gamma butyrolactone) and 1,4 BD (also called just “BD”), which is 1,4-butanediol.” “Drug Fact Sheet/GHB” (undated), U.S. Drug Enforcement Administration (on file with the Senate Committee on Criminal Justice).

<sup>29</sup> Section 893.135(1)(j)1.a., F.S. Supra n. 28.

<sup>30</sup> “The term ‘substituted’ is a general term that means a portion of the chemical structure is removed and replaced with a different chemical structure.” Staff Analysis (CS/CS/CS/SB 150) (April 27, 2017), p. 11, n. 58, The Florida Senate, <http://www.flsenate.gov/Session/Bill/2017/150/Analyses/2017s00150.ap.PDF> (last visited on Nov. 6, 2017).

<sup>31</sup> Section 893.135(1)(k)2.a., F.S. “Phenethylamines” is a broad category of “psychoactive substances.” Sanders B., Lankenau S., Bloom J., and Hathazi D., “‘Research chemicals’: Tryptamine and Phenethylamine Use Among High Risk Youth” (2008) 43(3-4): 389, *Substance Use & Misuse*, <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2536767/> (last visited on Nov. 6, 2017). “Cathinone ... is a monoamine alkaloid found in the shrub *Catha edulis* (Khat)[.]” and is “[c]losely related to ephedrine, cathine and other amphetamines[.]” “Cathinone,” PubChem, U.S. National Library of Medicine, <https://pubchem.ncbi.nlm.nih.gov/compound/Cathinone#section=Top> (last visited on Nov. 6, 2017).

<sup>32</sup> Section 893.135(1)(l)1.a., F.S.

<sup>33</sup> Section 893.135(1)(m)2.a., F.S. “Synthetic [c]annabinoids are chemicals that act as cannabinoid receptor agonists. Chemically they are not similar to cannabinoids but ... they are cannabinoid-like in their activity.” “Synthetic Cannabinoids Drug Information,” Redwood Toxicology Laboratory, [https://www.redwoodtoxicology.com/resources/drug\\_info/synthetic\\_cannabinoids](https://www.redwoodtoxicology.com/resources/drug_info/synthetic_cannabinoids) (last visited on Nov. 6, 2017).

<sup>34</sup> Section 893.135(1)(n)2.a., F.S. Supra n. 31.

<sup>35</sup> These controlled substances are described in s. 893.135(1)(c), F.S.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The bill does not provide for retroactive application. Consequently, drug trafficking departures authorized by the bill would apply to applicable drug trafficking offenses committed on or after July 1, 2018, the effective date of the bill. “In Florida, without clear legislative intent to the contrary, a law is presumed to apply prospectively.”<sup>36</sup>

Additionally, Article X, Section 9 of the Florida Constitution, provides that repeal or amendment of a criminal statute shall not affect prosecution or punishment for any crime previously committed.<sup>37</sup> This prohibition applies even if the retroactive application does not disadvantage the offender.<sup>38</sup>

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation has not yet reviewed the bill. The Legislature’s Office of Economic and Demographic Research’s (EDR) preliminary estimated that the original bill would have a “negative indeterminate” prison bed impact (an unquantifiable decrease in prison beds).<sup>39</sup> CS/SB 602 includes additional findings the court must make to depart from a mandatory minimum term. However, these changes should have no impact on EDR’s estimate.

**VI. Technical Deficiencies:**

None.

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<sup>36</sup> *Bates v. State*, 750 So.2d 6, 10 (Fla. 1999) (in the absence of explicit legislative direction, the court refused to retroactively apply amendments to a sentencing statute to offenses committed before the effective date of the amendments).

<sup>37</sup> This constitutional provision operates as a savings clause to preserve laws in effect at the time of a defendant’s crime that affect prosecution or punishment of the defendant for that crime.

<sup>38</sup> See *Castle v. State*, 305 So.2d 794, 796 (Fla. 4th DCA 1974), *affirmed*, 330 So.2d 10 (Fla. 1976) (Florida’s saving clause prohibits retroactive application of a reduced penalty for arson to a defendant sentenced under the pre-amended arson statute).

<sup>39</sup> E-mail from EDR staff to staff of the Senate Committee on Criminal Justice, dated Nov. 3, 2017 (on file with the Senate Committee on Criminal Justice).

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 893.135 of the Florida Statutes.

**IX. Additional Information:**

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

**CS by Criminal Justice on December 4, 2017:**

The Committee Substitute provides additional findings the court must make to depart from a mandatory minimum term: the offender did not use or threaten violence or use a weapon during the commission of the offense; and the offense did not result in a death or serious bodily injury of a person not a party to the offense.

- B. **Amendments:**

None.





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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
12/04/2017	.	
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The Committee on Criminal Justice (Bracy) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Paragraphs (a), (b), and (d) through (n) of  
subsection (1) of section 893.135, Florida Statutes, are amended  
and subsection (8) is added to that section, to read:

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

(1) Except as authorized in this chapter or in chapter 499



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11 and notwithstanding the provisions of s. 893.13:

12 (a) Any person who knowingly sells, purchases,  
13 manufactures, delivers, or brings into this state, or who is  
14 knowingly in actual or constructive possession of, in excess of  
15 25 pounds of cannabis, or 300 or more cannabis plants, commits a  
16 felony of the first degree, which felony shall be known as  
17 "trafficking in cannabis," punishable as provided in s. 775.082,  
18 s. 775.083, or s. 775.084. If the quantity of cannabis involved:

19 1. Is in excess of 25 pounds, but less than 2,000 pounds,  
20 or is 300 or more cannabis plants, but not more than 2,000  
21 cannabis plants, such person shall be sentenced to a mandatory  
22 minimum term of imprisonment of 3 years, and the defendant shall  
23 be ordered to pay a fine of \$25,000. However, the court may  
24 depart from the mandatory minimum term of imprisonment if it  
25 makes written findings as provided in subsection (8).

26 2. Is 2,000 pounds or more, but less than 10,000 pounds, or  
27 is 2,000 or more cannabis plants, but not more than 10,000  
28 cannabis plants, such person shall be sentenced to a mandatory  
29 minimum term of imprisonment of 7 years, and the defendant shall  
30 be ordered to pay a fine of \$50,000.

31 3. Is 10,000 pounds or more, or is 10,000 or more cannabis  
32 plants, such person shall be sentenced to a mandatory minimum  
33 term of imprisonment of 15 calendar years and pay a fine of  
34 \$200,000.

35

36 For the purpose of this paragraph, a plant, including, but not  
37 limited to, a seedling or cutting, is a "cannabis plant" if it  
38 has some readily observable evidence of root formation, such as  
39 root hairs. To determine if a piece or part of a cannabis plant



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40 severed from the cannabis plant is itself a cannabis plant, the  
41 severed piece or part must have some readily observable evidence  
42 of root formation, such as root hairs. Callous tissue is not  
43 readily observable evidence of root formation. The viability and  
44 sex of a plant and the fact that the plant may or may not be a  
45 dead harvested plant are not relevant in determining if the  
46 plant is a "cannabis plant" or in the charging of an offense  
47 under this paragraph. Upon conviction, the court shall impose  
48 the longest term of imprisonment provided for in this paragraph.

49 (b)1. Any person who knowingly sells, purchases,  
50 manufactures, delivers, or brings into this state, or who is  
51 knowingly in actual or constructive possession of, 28 grams or  
52 more of cocaine, as described in s. 893.03(2)(a)4., or of any  
53 mixture containing cocaine, but less than 150 kilograms of  
54 cocaine or any such mixture, commits a felony of the first  
55 degree, which felony shall be known as "trafficking in cocaine,"  
56 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.  
57 If the quantity involved:

58 a. Is 28 grams or more, but less than 200 grams, such  
59 person shall be sentenced to a mandatory minimum term of  
60 imprisonment of 3 years, and the defendant shall be ordered to  
61 pay a fine of \$50,000. However, the court may depart from the  
62 mandatory minimum term of imprisonment if it makes written  
63 findings as provided in subsection (8).

64 b. Is 200 grams or more, but less than 400 grams, such  
65 person shall be sentenced to a mandatory minimum term of  
66 imprisonment of 7 years, and the defendant shall be ordered to  
67 pay a fine of \$100,000.

68 c. Is 400 grams or more, but less than 150 kilograms, such



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69 person shall be sentenced to a mandatory minimum term of  
70 imprisonment of 15 calendar years and pay a fine of \$250,000.

71 2. Any person who knowingly sells, purchases, manufactures,  
72 delivers, or brings into this state, or who is knowingly in  
73 actual or constructive possession of, 150 kilograms or more of  
74 cocaine, as described in s. 893.03(2)(a)4., commits the first  
75 degree felony of trafficking in cocaine. A person who has been  
76 convicted of the first degree felony of trafficking in cocaine  
77 under this subparagraph shall be punished by life imprisonment  
78 and is ineligible for any form of discretionary early release  
79 except pardon or executive clemency or conditional medical  
80 release under s. 947.149. However, if the court determines that,  
81 in addition to committing any act specified in this paragraph:

82 a. The person intentionally killed an individual or  
83 counseled, commanded, induced, procured, or caused the  
84 intentional killing of an individual and such killing was the  
85 result; or

86 b. The person's conduct in committing that act led to a  
87 natural, though not inevitable, lethal result,  
88  
89 such person commits the capital felony of trafficking in  
90 cocaine, punishable as provided in ss. 775.082 and 921.142. Any  
91 person sentenced for a capital felony under this paragraph shall  
92 also be sentenced to pay the maximum fine provided under  
93 subparagraph 1.

94 3. Any person who knowingly brings into this state 300  
95 kilograms or more of cocaine, as described in s. 893.03(2)(a)4.,  
96 and who knows that the probable result of such importation would  
97 be the death of any person, commits capital importation of



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98 cocaine, a capital felony punishable as provided in ss. 775.082  
99 and 921.142. Any person sentenced for a capital felony under  
100 this paragraph shall also be sentenced to pay the maximum fine  
101 provided under subparagraph 1.

102 (d)1. Any person who knowingly sells, purchases,  
103 manufactures, delivers, or brings into this state, or who is  
104 knowingly in actual or constructive possession of, 28 grams or  
105 more of phencyclidine, as described in s. 893.03(2)(b)23., a  
106 substituted phenylcyclohexylamine, as described in s.  
107 893.03(1)(c)195., or a substance described in s.  
108 893.03(1)(c)13., 32., 38., 103., or 146., or of any mixture  
109 containing phencyclidine, as described in s. 893.03(2)(b)23., a  
110 substituted phenylcyclohexylamine, as described in s.  
111 893.03(1)(c)195., or a substance described in s.  
112 893.03(1)(c)13., 32., 38., 103., or 146., commits a felony of  
113 the first degree, which felony shall be known as "trafficking in  
114 phencyclidine," punishable as provided in s. 775.082, s.  
115 775.083, or s. 775.084. If the quantity involved:

116 a. Is 28 grams or more, but less than 200 grams, such  
117 person shall be sentenced to a mandatory minimum term of  
118 imprisonment of 3 years, and the defendant shall be ordered to  
119 pay a fine of \$50,000. However, the court may depart from the  
120 mandatory minimum term of imprisonment if it makes written  
121 findings as provided in subsection (8).

122 b. Is 200 grams or more, but less than 400 grams, such  
123 person shall be sentenced to a mandatory minimum term of  
124 imprisonment of 7 years, and the defendant shall be ordered to  
125 pay a fine of \$100,000.

126 c. Is 400 grams or more, such person shall be sentenced to



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127 a mandatory minimum term of imprisonment of 15 calendar years  
128 and pay a fine of \$250,000.

129 2. Any person who knowingly brings into this state 800  
130 grams or more of phencyclidine, as described in s.  
131 893.03(2)(b)23., a substituted phenylcyclohexylamine, as  
132 described in s. 893.03(1)(c)195., or a substance described in s.  
133 893.03(1)(c)13., 32., 38., 103., or 146., or of any mixture  
134 containing phencyclidine, as described in s. 893.03(2)(b)23., a  
135 substituted phenylcyclohexylamine, as described in s.  
136 893.03(1)(c)195., or a substance described in s.  
137 893.03(1)(c)13., 32., 38., 103., or 146., and who knows that the  
138 probable result of such importation would be the death of any  
139 person commits capital importation of phencyclidine, a capital  
140 felony punishable as provided in ss. 775.082 and 921.142. Any  
141 person sentenced for a capital felony under this paragraph shall  
142 also be sentenced to pay the maximum fine provided under  
143 subparagraph 1.

144 (e)1. Any person who knowingly sells, purchases,  
145 manufactures, delivers, or brings into this state, or who is  
146 knowingly in actual or constructive possession of, 200 grams or  
147 more of methaqualone or of any mixture containing methaqualone,  
148 as described in s. 893.03(1)(d), commits a felony of the first  
149 degree, which felony shall be known as "trafficking in  
150 methaqualone," punishable as provided in s. 775.082, s. 775.083,  
151 or s. 775.084. If the quantity involved:

152 a. Is 200 grams or more, but less than 5 kilograms, such  
153 person shall be sentenced to a mandatory minimum term of  
154 imprisonment of 3 years, and the defendant shall be ordered to  
155 pay a fine of \$50,000. However, the court may depart from the



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156 mandatory minimum term of imprisonment if it makes written  
157 findings as provided in subsection (8).

158         b. Is 5 kilograms or more, but less than 25 kilograms, such  
159 person shall be sentenced to a mandatory minimum term of  
160 imprisonment of 7 years, and the defendant shall be ordered to  
161 pay a fine of \$100,000.

162         c. Is 25 kilograms or more, such person shall be sentenced  
163 to a mandatory minimum term of imprisonment of 15 calendar years  
164 and pay a fine of \$250,000.

165         2. Any person who knowingly brings into this state 50  
166 kilograms or more of methaqualone or of any mixture containing  
167 methaqualone, as described in s. 893.03(1)(d), and who knows  
168 that the probable result of such importation would be the death  
169 of any person commits capital importation of methaqualone, a  
170 capital felony punishable as provided in ss. 775.082 and  
171 921.142. Any person sentenced for a capital felony under this  
172 paragraph shall also be sentenced to pay the maximum fine  
173 provided under subparagraph 1.

174         (f)1. Any person who knowingly sells, purchases,  
175 manufactures, delivers, or brings into this state, or who is  
176 knowingly in actual or constructive possession of, 14 grams or  
177 more of amphetamine, as described in s. 893.03(2)(c)2., or  
178 methamphetamine, as described in s. 893.03(2)(c)4., or of any  
179 mixture containing amphetamine or methamphetamine, or  
180 phenylacetone, phenylacetic acid, pseudoephedrine, or ephedrine  
181 in conjunction with other chemicals and equipment utilized in  
182 the manufacture of amphetamine or methamphetamine, commits a  
183 felony of the first degree, which felony shall be known as  
184 "trafficking in amphetamine," punishable as provided in s.



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185 775.082, s. 775.083, or s. 775.084. If the quantity involved:

186 a. Is 14 grams or more, but less than 28 grams, such person  
187 shall be sentenced to a mandatory minimum term of imprisonment  
188 of 3 years, and the defendant shall be ordered to pay a fine of  
189 \$50,000. However, the court may depart from the mandatory  
190 minimum term of imprisonment if it makes written findings as  
191 provided in subsection (8).

192 b. Is 28 grams or more, but less than 200 grams, such  
193 person shall be sentenced to a mandatory minimum term of  
194 imprisonment of 7 years, and the defendant shall be ordered to  
195 pay a fine of \$100,000.

196 c. Is 200 grams or more, such person shall be sentenced to  
197 a mandatory minimum term of imprisonment of 15 calendar years  
198 and pay a fine of \$250,000.

199 2. Any person who knowingly manufactures or brings into  
200 this state 400 grams or more of amphetamine, as described in s.  
201 893.03(2)(c)2., or methamphetamine, as described in s.  
202 893.03(2)(c)4., or of any mixture containing amphetamine or  
203 methamphetamine, or phenylacetone, phenylacetic acid,  
204 pseudoephedrine, or ephedrine in conjunction with other  
205 chemicals and equipment used in the manufacture of amphetamine  
206 or methamphetamine, and who knows that the probable result of  
207 such manufacture or importation would be the death of any person  
208 commits capital manufacture or importation of amphetamine, a  
209 capital felony punishable as provided in ss. 775.082 and  
210 921.142. Any person sentenced for a capital felony under this  
211 paragraph shall also be sentenced to pay the maximum fine  
212 provided under subparagraph 1.

213 (g)1. Any person who knowingly sells, purchases,





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214 manufactures, delivers, or brings into this state, or who is  
215 knowingly in actual or constructive possession of, 4 grams or  
216 more of flunitrazepam or any mixture containing flunitrazepam as  
217 described in s. 893.03(1)(a) commits a felony of the first  
218 degree, which felony shall be known as "trafficking in  
219 flunitrazepam," punishable as provided in s. 775.082, s.  
220 775.083, or s. 775.084. If the quantity involved:

221       a. Is 4 grams or more but less than 14 grams, such person  
222 shall be sentenced to a mandatory minimum term of imprisonment  
223 of 3 years, and the defendant shall be ordered to pay a fine of  
224 \$50,000. However, the court may depart from the mandatory  
225 minimum term of imprisonment if it makes written findings as  
226 provided in subsection (8).

227       b. Is 14 grams or more but less than 28 grams, such person  
228 shall be sentenced to a mandatory minimum term of imprisonment  
229 of 7 years, and the defendant shall be ordered to pay a fine of  
230 \$100,000.

231       c. Is 28 grams or more but less than 30 kilograms, such  
232 person shall be sentenced to a mandatory minimum term of  
233 imprisonment of 25 calendar years and pay a fine of \$500,000.

234       2. Any person who knowingly sells, purchases, manufactures,  
235 delivers, or brings into this state or who is knowingly in  
236 actual or constructive possession of 30 kilograms or more of  
237 flunitrazepam or any mixture containing flunitrazepam as  
238 described in s. 893.03(1)(a) commits the first degree felony of  
239 trafficking in flunitrazepam. A person who has been convicted of  
240 the first degree felony of trafficking in flunitrazepam under  
241 this subparagraph shall be punished by life imprisonment and is  
242 ineligible for any form of discretionary early release except



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243 pardon or executive clemency or conditional medical release  
244 under s. 947.149. However, if the court determines that, in  
245 addition to committing any act specified in this paragraph:

246 a. The person intentionally killed an individual or  
247 counseled, commanded, induced, procured, or caused the  
248 intentional killing of an individual and such killing was the  
249 result; or

250 b. The person's conduct in committing that act led to a  
251 natural, though not inevitable, lethal result,

252

253 such person commits the capital felony of trafficking in  
254 flunitrazepam, punishable as provided in ss. 775.082 and  
255 921.142. Any person sentenced for a capital felony under this  
256 paragraph shall also be sentenced to pay the maximum fine  
257 provided under subparagraph 1.

258 (h)1. Any person who knowingly sells, purchases,  
259 manufactures, delivers, or brings into this state, or who is  
260 knowingly in actual or constructive possession of, 1 kilogram or  
261 more of gamma-hydroxybutyric acid (GHB), as described in s.  
262 893.03(1)(d), or any mixture containing gamma-hydroxybutyric  
263 acid (GHB), commits a felony of the first degree, which felony  
264 shall be known as "trafficking in gamma-hydroxybutyric acid  
265 (GHB)," punishable as provided in s. 775.082, s. 775.083, or s.  
266 775.084. If the quantity involved:

267 a. Is 1 kilogram or more but less than 5 kilograms, such  
268 person shall be sentenced to a mandatory minimum term of  
269 imprisonment of 3 years, and the defendant shall be ordered to  
270 pay a fine of \$50,000. However, the court may depart from the  
271 mandatory minimum term of imprisonment if it makes written



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272 findings as provided in subsection (8).

273         b. Is 5 kilograms or more but less than 10 kilograms, such  
274 person shall be sentenced to a mandatory minimum term of  
275 imprisonment of 7 years, and the defendant shall be ordered to  
276 pay a fine of \$100,000.

277         c. Is 10 kilograms or more, such person shall be sentenced  
278 to a mandatory minimum term of imprisonment of 15 calendar years  
279 and pay a fine of \$250,000.

280         2. Any person who knowingly manufactures or brings into  
281 this state 150 kilograms or more of gamma-hydroxybutyric acid  
282 (GHB), as described in s. 893.03(1)(d), or any mixture  
283 containing gamma-hydroxybutyric acid (GHB), and who knows that  
284 the probable result of such manufacture or importation would be  
285 the death of any person commits capital manufacture or  
286 importation of gamma-hydroxybutyric acid (GHB), a capital felony  
287 punishable as provided in ss. 775.082 and 921.142. Any person  
288 sentenced for a capital felony under this paragraph shall also  
289 be sentenced to pay the maximum fine provided under subparagraph  
290 1.

291         (i)1. Any person who knowingly sells, purchases,  
292 manufactures, delivers, or brings into this state, or who is  
293 knowingly in actual or constructive possession of, 1 kilogram or  
294 more of gamma-butyrolactone (GBL), as described in s.  
295 893.03(1)(d), or any mixture containing gamma-butyrolactone  
296 (GBL), commits a felony of the first degree, which felony shall  
297 be known as "trafficking in gamma-butyrolactone (GBL),"  
298 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.  
299 If the quantity involved:

300         a. Is 1 kilogram or more but less than 5 kilograms, such



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301 person shall be sentenced to a mandatory minimum term of  
302 imprisonment of 3 years, and the defendant shall be ordered to  
303 pay a fine of \$50,000. However, the court may depart from the  
304 mandatory minimum term of imprisonment if it makes written  
305 findings as provided in subsection (8).

306 b. Is 5 kilograms or more but less than 10 kilograms, such  
307 person shall be sentenced to a mandatory minimum term of  
308 imprisonment of 7 years, and the defendant shall be ordered to  
309 pay a fine of \$100,000.

310 c. Is 10 kilograms or more, such person shall be sentenced  
311 to a mandatory minimum term of imprisonment of 15 calendar years  
312 and pay a fine of \$250,000.

313 2. Any person who knowingly manufactures or brings into the  
314 state 150 kilograms or more of gamma-butyrolactone (GBL), as  
315 described in s. 893.03(1)(d), or any mixture containing gamma-  
316 butyrolactone (GBL), and who knows that the probable result of  
317 such manufacture or importation would be the death of any person  
318 commits capital manufacture or importation of gamma-  
319 butyrolactone (GBL), a capital felony punishable as provided in  
320 ss. 775.082 and 921.142. Any person sentenced for a capital  
321 felony under this paragraph shall also be sentenced to pay the  
322 maximum fine provided under subparagraph 1.

323 (j)1. Any person who knowingly sells, purchases,  
324 manufactures, delivers, or brings into this state, or who is  
325 knowingly in actual or constructive possession of, 1 kilogram or  
326 more of 1,4-Butanediol as described in s. 893.03(1)(d), or of  
327 any mixture containing 1,4-Butanediol, commits a felony of the  
328 first degree, which felony shall be known as "trafficking in  
329 1,4-Butanediol," punishable as provided in s. 775.082, s.



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330 775.083, or s. 775.084. If the quantity involved:

331 a. Is 1 kilogram or more, but less than 5 kilograms, such  
332 person shall be sentenced to a mandatory minimum term of  
333 imprisonment of 3 years, and the defendant shall be ordered to  
334 pay a fine of \$50,000. However, the court may depart from the  
335 mandatory minimum term of imprisonment if it makes written  
336 findings as provided in subsection (8).

337 b. Is 5 kilograms or more, but less than 10 kilograms, such  
338 person shall be sentenced to a mandatory minimum term of  
339 imprisonment of 7 years, and the defendant shall be ordered to  
340 pay a fine of \$100,000.

341 c. Is 10 kilograms or more, such person shall be sentenced  
342 to a mandatory minimum term of imprisonment of 15 calendar years  
343 and pay a fine of \$500,000.

344 2. Any person who knowingly manufactures or brings into  
345 this state 150 kilograms or more of 1,4-Butanediol as described  
346 in s. 893.03(1)(d), or any mixture containing 1,4-Butanediol,  
347 and who knows that the probable result of such manufacture or  
348 importation would be the death of any person commits capital  
349 manufacture or importation of 1,4-Butanediol, a capital felony  
350 punishable as provided in ss. 775.082 and 921.142. Any person  
351 sentenced for a capital felony under this paragraph shall also  
352 be sentenced to pay the maximum fine provided under subparagraph  
353 1.

354 (k)1. A person who knowingly sells, purchases,  
355 manufactures, delivers, or brings into this state, or who is  
356 knowingly in actual or constructive possession of, 10 grams or  
357 more of a:

358 a. Substance described in s. 893.03(1)(c)4., 5., 10., 11.,



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359 15., 17., 21.-27., 29., 39., 40.-45., 58., 72.-80., 81.-86.,  
360 90.-102., 104.-108., 110.-113., 143.-145., 148.-150., 160.-163.,  
361 165., or 187.-189., a substituted cathinone, as described in s.  
362 893.03(1)(c)191., or substituted phenethylamine, as described in  
363 s. 893.03(1)(c)192.;

364 b. Mixture containing any substance described in sub-  
365 subparagraph a.; or

366 c. Salt, isomer, ester, or ether or salt of an isomer,  
367 ester, or ether of a substance described in sub-subparagraph a.,  
368

369 commits a felony of the first degree, which felony shall be  
370 known as "trafficking in phenethylamines," punishable as  
371 provided in s. 775.082, s. 775.083, or s. 775.084.

372 2. If the quantity involved under subparagraph 1.:

373 a. Is 10 grams or more, but less than 200 grams, such  
374 person shall be sentenced to a mandatory minimum term of  
375 imprisonment of 3 years and shall be ordered to pay a fine of  
376 \$50,000. However, the court may depart from the mandatory  
377 minimum term of imprisonment if it makes written findings as  
378 provided in subsection (8).

379 b. Is 200 grams or more, but less than 400 grams, such  
380 person shall be sentenced to a mandatory minimum term of  
381 imprisonment of 7 years and shall be ordered to pay a fine of  
382 \$100,000.

383 c. Is 400 grams or more, such person shall be sentenced to  
384 a mandatory minimum term of imprisonment of 15 years and shall  
385 be ordered to pay a fine of \$250,000.

386 3. A person who knowingly manufactures or brings into this  
387 state 30 kilograms or more of a substance described in sub-



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388 subparagraph 1.a., a mixture described in sub-subparagraph 1.b.,  
389 or a salt, isomer, ester, or ether or a salt of an isomer,  
390 ester, or ether described in sub-subparagraph 1.c., and who  
391 knows that the probable result of such manufacture or  
392 importation would be the death of any person commits capital  
393 manufacture or importation of phenethylamines, a capital felony  
394 punishable as provided in ss. 775.082 and 921.142. A person  
395 sentenced for a capital felony under this paragraph shall also  
396 be sentenced to pay the maximum fine under subparagraph 2.

397 (1)1. Any person who knowingly sells, purchases,  
398 manufactures, delivers, or brings into this state, or who is  
399 knowingly in actual or constructive possession of, 1 gram or  
400 more of lysergic acid diethylamide (LSD) as described in s.  
401 893.03(1)(c), or of any mixture containing lysergic acid  
402 diethylamide (LSD), commits a felony of the first degree, which  
403 felony shall be known as "trafficking in lysergic acid  
404 diethylamide (LSD)," punishable as provided in s. 775.082, s.  
405 775.083, or s. 775.084. If the quantity involved:

406 a. Is 1 gram or more, but less than 5 grams, such person  
407 shall be sentenced to a mandatory minimum term of imprisonment  
408 of 3 years, and the defendant shall be ordered to pay a fine of  
409 \$50,000. However, the court may depart from the mandatory  
410 minimum term of imprisonment if it makes written findings as  
411 provided in subsection (8).

412 b. Is 5 grams or more, but less than 7 grams, such person  
413 shall be sentenced to a mandatory minimum term of imprisonment  
414 of 7 years, and the defendant shall be ordered to pay a fine of  
415 \$100,000.

416 c. Is 7 grams or more, such person shall be sentenced to a



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417 mandatory minimum term of imprisonment of 15 calendar years and  
418 pay a fine of \$500,000.

419         2. Any person who knowingly manufactures or brings into  
420 this state 7 grams or more of lysergic acid diethylamide (LSD)  
421 as described in s. 893.03(1)(c), or any mixture containing  
422 lysergic acid diethylamide (LSD), and who knows that the  
423 probable result of such manufacture or importation would be the  
424 death of any person commits capital manufacture or importation  
425 of lysergic acid diethylamide (LSD), a capital felony punishable  
426 as provided in ss. 775.082 and 921.142. Any person sentenced for  
427 a capital felony under this paragraph shall also be sentenced to  
428 pay the maximum fine provided under subparagraph 1.

429         (m)1. A person who knowingly sells, purchases,  
430 manufactures, delivers, or brings into this state, or who is  
431 knowingly in actual or constructive possession of, 280 grams or  
432 more of a:

433             a. Substance described in s. 893.03(1)(c)30., 46.-50.,  
434 114.-142., 151.-156., 166.-173., or 176.-186. or a synthetic  
435 cannabinoid, as described in s. 893.03(1)(c)190.; or

436             b. Mixture containing any substance described in sub-  
437 subparagraph a.,

438  
439 commits a felony of the first degree, which felony shall be  
440 known as "trafficking in synthetic cannabinoids," punishable as  
441 provided in s. 775.082, s. 775.083, or s. 775.084.

442         2. If the quantity involved under subparagraph 1.:

443             a. Is 280 grams or more, but less than 500 grams, such  
444 person shall be sentenced to a mandatory minimum term of  
445 imprisonment of 3 years, and the defendant shall be ordered to





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446 pay a fine of \$50,000. However, the court may depart from the  
447 mandatory minimum term of imprisonment if it makes written  
448 findings as provided in subsection (8).

449 b. Is 500 grams or more, but less than 1,000 grams, such  
450 person shall be sentenced to a mandatory minimum term of  
451 imprisonment of 7 years, and the defendant shall be ordered to  
452 pay a fine of \$100,000.

453 c. Is 1,000 grams or more, but less than 30 kilograms, such  
454 person shall be sentenced to a mandatory minimum term of  
455 imprisonment of 15 years, and the defendant shall be ordered to  
456 pay a fine of \$200,000.

457 d. Is 30 kilograms or more, such person shall be sentenced  
458 to a mandatory minimum term of imprisonment of 25 years, and the  
459 defendant shall be ordered to pay a fine of \$750,000.

460 (n)1. A person who knowingly sells, purchases,  
461 manufactures, delivers, or brings into this state, or who is  
462 knowingly in actual or constructive possession of, 14 grams or  
463 more of:

464 a. A substance described in s. 893.03(1)(c)164., 174., or  
465 175., a n-benzyl phenethylamine compound, as described in s.  
466 893.03(1)(c)193.; or

467 b. A mixture containing any substance described in sub-  
468 subparagraph a.,

469  
470 commits a felony of the first degree, which felony shall be  
471 known as "trafficking in n-benzyl phenethylamines," punishable  
472 as provided in s. 775.082, s. 775.083, or s. 775.084.

473 2. If the quantity involved under subparagraph 1.:

474 a. Is 14 grams or more, but less than 100 grams, such



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475 person shall be sentenced to a mandatory minimum term of  
476 imprisonment of 3 years, and the defendant shall be ordered to  
477 pay a fine of \$50,000. However, the court may depart from the  
478 mandatory minimum term of imprisonment if it makes written  
479 findings as provided in subsection (8).

480 b. Is 100 grams or more, but less than 200 grams, such  
481 person shall be sentenced to a mandatory minimum term of  
482 imprisonment of 7 years, and the defendant shall be ordered to  
483 pay a fine of \$100,000.

484 c. Is 200 grams or more, such person shall be sentenced to  
485 a mandatory minimum term of imprisonment of 15 years, and the  
486 defendant shall be ordered to pay a fine of \$500,000.

487 3. A person who knowingly manufactures or brings into this  
488 state 400 grams or more of a substance described in sub-  
489 subparagraph 1.a. or a mixture described in sub-subparagraph  
490 1.b., and who knows that the probable result of such manufacture  
491 or importation would be the death of any person commits capital  
492 manufacture or importation of a n-benzyl phenethylamine  
493 compound, a capital felony punishable as provided in ss. 775.082  
494 and 921.142. A person sentenced for a capital felony under this  
495 paragraph shall also be sentenced to pay the maximum fine under  
496 subparagraph 2.

497 (8) The court may depart from the mandatory minimum term of  
498 imprisonment for a violation of this section if the departure is  
499 specifically authorized by this section and the court makes the  
500 following written findings:

501 (a) The offense only involved possession.

502 (b) The offender did not use or threaten violence or use a  
503 weapon during the commission of the offense.



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504           (c) The offense did not result in a death or serious bodily  
505 injury of a person not a party to the offense.

506           (d) A factor, consideration, or circumstance clearly  
507 demonstrates that imposing the mandatory minimum term of  
508 imprisonment would constitute or result in an injustice.

509           Section 2. This act shall take effect July 1, 2018.

510

511 ===== T I T L E   A M E N D M E N T =====

512 And the title is amended as follows:

513           Delete everything before the enacting clause  
514 and insert:

515                           A bill to be entitled  
516           An act relating to mandatory minimum sentences;  
517           amending s. 893.135, F.S.; authorizing a court to  
518           depart from certain mandatory minimum terms of  
519           imprisonment for drug trafficking if it makes  
520           specified findings; providing an effective date.

521

By Senator Bracy

11-00693-18

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A bill to be entitled

An act relating to mandatory minimum sentences; amending s. 893.135, F.S.; authorizing a court to depart from certain mandatory minimum terms of imprisonment for drug trafficking if it makes specified findings; providing an effective date.

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

Section 1. Paragraphs (a), (b), and (d) through (n) of subsection (1) of section 893.135, Florida Statutes, are amended to read:

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

(1) Except as authorized in this chapter or in chapter 499 and notwithstanding the provisions of s. 893.13:

(a) Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, in excess of 25 pounds of cannabis, or 300 or more cannabis plants, commits a felony of the first degree, which felony shall be known as "trafficking in cannabis," punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the quantity of cannabis involved:

1. Is in excess of 25 pounds, but less than 2,000 pounds, or is 300 or more cannabis plants, but not more than 2,000 cannabis plants, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be ordered to pay a fine of \$25,000. However, the court may depart from the mandatory minimum term of imprisonment if it

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**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

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makes written findings that the violation only involved possession and that a factor, consideration, or circumstance clearly demonstrates that imposing the mandatory minimum term of imprisonment would constitute or result in an injustice.

2. Is 2,000 pounds or more, but less than 10,000 pounds, or is 2,000 or more cannabis plants, but not more than 10,000 cannabis plants, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years, and the defendant shall be ordered to pay a fine of \$50,000.

3. Is 10,000 pounds or more, or is 10,000 or more cannabis plants, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and pay a fine of \$200,000.

For the purpose of this paragraph, a plant, including, but not limited to, a seedling or cutting, is a "cannabis plant" if it has some readily observable evidence of root formation, such as root hairs. To determine if a piece or part of a cannabis plant severed from the cannabis plant is itself a cannabis plant, the severed piece or part must have some readily observable evidence of root formation, such as root hairs. Callous tissue is not readily observable evidence of root formation. The viability and sex of a plant and the fact that the plant may or may not be a dead harvested plant are not relevant in determining if the plant is a "cannabis plant" or in the charging of an offense under this paragraph. Upon conviction, the court shall impose the longest term of imprisonment provided for in this paragraph.

(b)1. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is

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59 knowingly in actual or constructive possession of, 28 grams or  
 60 more of cocaine, as described in s. 893.03(2)(a)4., or of any  
 61 mixture containing cocaine, but less than 150 kilograms of  
 62 cocaine or any such mixture, commits a felony of the first  
 63 degree, which felony shall be known as "trafficking in cocaine,"  
 64 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.  
 65 If the quantity involved:

66 a. Is 28 grams or more, but less than 200 grams, such  
 67 person shall be sentenced to a mandatory minimum term of  
 68 imprisonment of 3 years, and the defendant shall be ordered to  
 69 pay a fine of \$50,000. However, the court may depart from the  
 70 mandatory minimum term of imprisonment if it makes written  
 71 findings that the violation only involved possession and that a  
 72 factor, consideration, or circumstance clearly demonstrates that  
 73 imposing the mandatory minimum term of imprisonment would  
 74 constitute or result in an injustice.

75 b. Is 200 grams or more, but less than 400 grams, such  
 76 person shall be sentenced to a mandatory minimum term of  
 77 imprisonment of 7 years, and the defendant shall be ordered to  
 78 pay a fine of \$100,000.

79 c. Is 400 grams or more, but less than 150 kilograms, such  
 80 person shall be sentenced to a mandatory minimum term of  
 81 imprisonment of 15 calendar years and pay a fine of \$250,000.

82 2. Any person who knowingly sells, purchases, manufactures,  
 83 delivers, or brings into this state, or who is knowingly in  
 84 actual or constructive possession of, 150 kilograms or more of  
 85 cocaine, as described in s. 893.03(2)(a)4., commits the first  
 86 degree felony of trafficking in cocaine. A person who has been  
 87 convicted of the first degree felony of trafficking in cocaine

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88 under this subparagraph shall be punished by life imprisonment  
 89 and is ineligible for any form of discretionary early release  
 90 except pardon or executive clemency or conditional medical  
 91 release under s. 947.149. However, if the court determines that,  
 92 in addition to committing any act specified in this paragraph:

93 a. The person intentionally killed an individual or  
 94 counseled, commanded, induced, procured, or caused the  
 95 intentional killing of an individual and such killing was the  
 96 result; or

97 b. The person's conduct in committing that act led to a  
 98 natural, though not inevitable, lethal result,

99  
 100 such person commits the capital felony of trafficking in  
 101 cocaine, punishable as provided in ss. 775.082 and 921.142. Any  
 102 person sentenced for a capital felony under this paragraph shall  
 103 also be sentenced to pay the maximum fine provided under  
 104 subparagraph 1.

105 3. Any person who knowingly brings into this state 300  
 106 kilograms or more of cocaine, as described in s. 893.03(2)(a)4.,  
 107 and who knows that the probable result of such importation would  
 108 be the death of any person, commits capital importation of  
 109 cocaine, a capital felony punishable as provided in ss. 775.082  
 110 and 921.142. Any person sentenced for a capital felony under  
 111 this paragraph shall also be sentenced to pay the maximum fine  
 112 provided under subparagraph 1.

113 (d)1. Any person who knowingly sells, purchases,  
 114 manufactures, delivers, or brings into this state, or who is  
 115 knowingly in actual or constructive possession of, 28 grams or  
 116 more of phencyclidine, as described in s. 893.03(2)(b)23., a

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117 substituted phenylcyclohexylamine, as described in s.  
 118 893.03(1)(c)195., or a substance described in s.  
 119 893.03(1)(c)13., 32., 38., 103., or 146., or of any mixture  
 120 containing phencyclidine, as described in s. 893.03(2)(b)23., a  
 121 substituted phenylcyclohexylamine, as described in s.  
 122 893.03(1)(c)195., or a substance described in s.  
 123 893.03(1)(c)13., 32., 38., 103., or 146., commits a felony of  
 124 the first degree, which felony shall be known as "trafficking in  
 125 phencyclidine," punishable as provided in s. 775.082, s.  
 126 775.083, or s. 775.084. If the quantity involved:

127 a. Is 28 grams or more, but less than 200 grams, such  
 128 person shall be sentenced to a mandatory minimum term of  
 129 imprisonment of 3 years, and the defendant shall be ordered to  
 130 pay a fine of \$50,000. However, the court may depart from the  
 131 mandatory minimum term of imprisonment if it makes written  
 132 findings that the violation only involved possession and that a  
 133 factor, consideration, or circumstance clearly demonstrates that  
 134 imposing the mandatory minimum term of imprisonment would  
 135 constitute or result in an injustice.

136 b. Is 200 grams or more, but less than 400 grams, such  
 137 person shall be sentenced to a mandatory minimum term of  
 138 imprisonment of 7 years, and the defendant shall be ordered to  
 139 pay a fine of \$100,000.

140 c. Is 400 grams or more, such person shall be sentenced to  
 141 a mandatory minimum term of imprisonment of 15 calendar years  
 142 and pay a fine of \$250,000.

143 2. Any person who knowingly brings into this state 800  
 144 grams or more of phencyclidine, as described in s.

145 893.03(2)(b)23., a substituted phenylcyclohexylamine, as

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146 described in s. 893.03(1)(c)195., or a substance described in s.  
 147 893.03(1)(c)13., 32., 38., 103., or 146., or of any mixture  
 148 containing phencyclidine, as described in s. 893.03(2)(b)23., a  
 149 substituted phenylcyclohexylamine, as described in s.  
 150 893.03(1)(c)195., or a substance described in s.  
 151 893.03(1)(c)13., 32., 38., 103., or 146., and who knows that the  
 152 probable result of such importation would be the death of any  
 153 person commits capital importation of phencyclidine, a capital  
 154 felony punishable as provided in ss. 775.082 and 921.142. Any  
 155 person sentenced for a capital felony under this paragraph shall  
 156 also be sentenced to pay the maximum fine provided under  
 157 subparagraph 1.

158 (e)1. Any person who knowingly sells, purchases,  
 159 manufactures, delivers, or brings into this state, or who is  
 160 knowingly in actual or constructive possession of, 200 grams or  
 161 more of methaqualone or of any mixture containing methaqualone,  
 162 as described in s. 893.03(1)(d), commits a felony of the first  
 163 degree, which felony shall be known as "trafficking in  
 164 methaqualone," punishable as provided in s. 775.082, s. 775.083,  
 165 or s. 775.084. If the quantity involved:

166 a. Is 200 grams or more, but less than 5 kilograms, such  
 167 person shall be sentenced to a mandatory minimum term of  
 168 imprisonment of 3 years, and the defendant shall be ordered to  
 169 pay a fine of \$50,000. However, the court may depart from the  
 170 mandatory minimum term of imprisonment if it makes written  
 171 findings that the violation only involved possession and that a  
 172 factor, consideration, or circumstance clearly demonstrates that  
 173 imposing the mandatory minimum term of imprisonment would  
 174 constitute or result in an injustice.

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175 b. Is 5 kilograms or more, but less than 25 kilograms, such  
 176 person shall be sentenced to a mandatory minimum term of  
 177 imprisonment of 7 years, and the defendant shall be ordered to  
 178 pay a fine of \$100,000.

179 c. Is 25 kilograms or more, such person shall be sentenced  
 180 to a mandatory minimum term of imprisonment of 15 calendar years  
 181 and pay a fine of \$250,000.

182 2. Any person who knowingly brings into this state 50  
 183 kilograms or more of methaqualone or of any mixture containing  
 184 methaqualone, as described in s. 893.03(1)(d), and who knows  
 185 that the probable result of such importation would be the death  
 186 of any person commits capital importation of methaqualone, a  
 187 capital felony punishable as provided in ss. 775.082 and  
 188 921.142. Any person sentenced for a capital felony under this  
 189 paragraph shall also be sentenced to pay the maximum fine  
 190 provided under subparagraph 1.

191 (f)1. Any person who knowingly sells, purchases,  
 192 manufactures, delivers, or brings into this state, or who is  
 193 knowingly in actual or constructive possession of, 14 grams or  
 194 more of amphetamine, as described in s. 893.03(2)(c)2., or  
 195 methamphetamine, as described in s. 893.03(2)(c)4., or of any  
 196 mixture containing amphetamine or methamphetamine, or  
 197 phenylacetone, phenylacetic acid, pseudoephedrine, or ephedrine  
 198 in conjunction with other chemicals and equipment utilized in  
 199 the manufacture of amphetamine or methamphetamine, commits a  
 200 felony of the first degree, which felony shall be known as  
 201 "trafficking in amphetamine," punishable as provided in s.  
 202 775.082, s. 775.083, or s. 775.084. If the quantity involved:

203 a. Is 14 grams or more, but less than 28 grams, such person

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204 shall be sentenced to a mandatory minimum term of imprisonment  
 205 of 3 years, and the defendant shall be ordered to pay a fine of  
 206 \$50,000. However, the court may depart from the mandatory  
 207 minimum term of imprisonment if it makes written findings that  
 208 the violation only involved possession and that a factor,  
 209 consideration, or circumstance clearly demonstrates that  
 210 imposing the mandatory minimum term of imprisonment would  
 211 constitute or result in an injustice.

212 b. Is 28 grams or more, but less than 200 grams, such  
 213 person shall be sentenced to a mandatory minimum term of  
 214 imprisonment of 7 years, and the defendant shall be ordered to  
 215 pay a fine of \$100,000.

216 c. Is 200 grams or more, such person shall be sentenced to  
 217 a mandatory minimum term of imprisonment of 15 calendar years  
 218 and pay a fine of \$250,000.

219 2. Any person who knowingly manufactures or brings into  
 220 this state 400 grams or more of amphetamine, as described in s.  
 221 893.03(2)(c)2., or methamphetamine, as described in s.  
 222 893.03(2)(c)4., or of any mixture containing amphetamine or  
 223 methamphetamine, or phenylacetone, phenylacetic acid,  
 224 pseudoephedrine, or ephedrine in conjunction with other  
 225 chemicals and equipment used in the manufacture of amphetamine  
 226 or methamphetamine, and who knows that the probable result of  
 227 such manufacture or importation would be the death of any person  
 228 commits capital manufacture or importation of amphetamine, a  
 229 capital felony punishable as provided in ss. 775.082 and  
 230 921.142. Any person sentenced for a capital felony under this  
 231 paragraph shall also be sentenced to pay the maximum fine  
 232 provided under subparagraph 1.

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233 (g)1. Any person who knowingly sells, purchases,  
 234 manufactures, delivers, or brings into this state, or who is  
 235 knowingly in actual or constructive possession of, 4 grams or  
 236 more of flunitrazepam or any mixture containing flunitrazepam as  
 237 described in s. 893.03(1)(a) commits a felony of the first  
 238 degree, which felony shall be known as "trafficking in  
 239 flunitrazepam," punishable as provided in s. 775.082, s.  
 240 775.083, or s. 775.084. If the quantity involved:

241 a. Is 4 grams or more but less than 14 grams, such person  
 242 shall be sentenced to a mandatory minimum term of imprisonment  
 243 of 3 years, and the defendant shall be ordered to pay a fine of  
 244 \$50,000. However, the court may depart from the mandatory  
 245 minimum term of imprisonment if it makes written findings that  
 246 the violation only involved possession and that a factor,  
 247 consideration, or circumstance clearly demonstrates that  
 248 imposing the mandatory minimum term of imprisonment would  
 249 constitute or result in an injustice.

250 b. Is 14 grams or more but less than 28 grams, such person  
 251 shall be sentenced to a mandatory minimum term of imprisonment  
 252 of 7 years, and the defendant shall be ordered to pay a fine of  
 253 \$100,000.

254 c. Is 28 grams or more but less than 30 kilograms, such  
 255 person shall be sentenced to a mandatory minimum term of  
 256 imprisonment of 25 calendar years and pay a fine of \$500,000.

257 2. Any person who knowingly sells, purchases, manufactures,  
 258 delivers, or brings into this state or who is knowingly in  
 259 actual or constructive possession of 30 kilograms or more of  
 260 flunitrazepam or any mixture containing flunitrazepam as  
 261 described in s. 893.03(1)(a) commits the first degree felony of

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262 trafficking in flunitrazepam. A person who has been convicted of  
 263 the first degree felony of trafficking in flunitrazepam under  
 264 this subparagraph shall be punished by life imprisonment and is  
 265 ineligible for any form of discretionary early release except  
 266 pardon or executive clemency or conditional medical release  
 267 under s. 947.149. However, if the court determines that, in  
 268 addition to committing any act specified in this paragraph:

269 a. The person intentionally killed an individual or  
 270 counseled, commanded, induced, procured, or caused the  
 271 intentional killing of an individual and such killing was the  
 272 result; or

273 b. The person's conduct in committing that act led to a  
 274 natural, though not inevitable, lethal result,

275  
 276 such person commits the capital felony of trafficking in  
 277 flunitrazepam, punishable as provided in ss. 775.082 and  
 278 921.142. Any person sentenced for a capital felony under this  
 279 paragraph shall also be sentenced to pay the maximum fine  
 280 provided under subparagraph 1.

281 (h)1. Any person who knowingly sells, purchases,  
 282 manufactures, delivers, or brings into this state, or who is  
 283 knowingly in actual or constructive possession of, 1 kilogram or  
 284 more of gamma-hydroxybutyric acid (GHB), as described in s.  
 285 893.03(1)(d), or any mixture containing gamma-hydroxybutyric  
 286 acid (GHB), commits a felony of the first degree, which felony  
 287 shall be known as "trafficking in gamma-hydroxybutyric acid  
 288 (GHB)," punishable as provided in s. 775.082, s. 775.083, or s.  
 289 775.084. If the quantity involved:

290 a. Is 1 kilogram or more but less than 5 kilograms, such



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291 person shall be sentenced to a mandatory minimum term of  
 292 imprisonment of 3 years, and the defendant shall be ordered to  
 293 pay a fine of \$50,000. However, the court may depart from the  
 294 mandatory minimum term of imprisonment if it makes written  
 295 findings that the violation only involved possession and that a  
 296 factor, consideration, or circumstance clearly demonstrates that  
 297 imposing the mandatory minimum term of imprisonment would  
 298 constitute or result in an injustice.

299 b. Is 5 kilograms or more but less than 10 kilograms, such  
 300 person shall be sentenced to a mandatory minimum term of  
 301 imprisonment of 7 years, and the defendant shall be ordered to  
 302 pay a fine of \$100,000.

303 c. Is 10 kilograms or more, such person shall be sentenced  
 304 to a mandatory minimum term of imprisonment of 15 calendar years  
 305 and pay a fine of \$250,000.

306 2. Any person who knowingly manufactures or brings into  
 307 this state 150 kilograms or more of gamma-hydroxybutyric acid  
 308 (GHB), as described in s. 893.03(1)(d), or any mixture  
 309 containing gamma-hydroxybutyric acid (GHB), and who knows that  
 310 the probable result of such manufacture or importation would be  
 311 the death of any person commits capital manufacture or  
 312 importation of gamma-hydroxybutyric acid (GHB), a capital felony  
 313 punishable as provided in ss. 775.082 and 921.142. Any person  
 314 sentenced for a capital felony under this paragraph shall also  
 315 be sentenced to pay the maximum fine provided under subparagraph  
 316 1.

317 (i)1. Any person who knowingly sells, purchases,  
 318 manufactures, delivers, or brings into this state, or who is  
 319 knowingly in actual or constructive possession of, 1 kilogram or

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320 more of gamma-butyrolactone (GBL), as described in s.  
 321 893.03(1)(d), or any mixture containing gamma-butyrolactone  
 322 (GBL), commits a felony of the first degree, which felony shall  
 323 be known as "trafficking in gamma-butyrolactone (GBL)," and  
 324 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.  
 325 If the quantity involved:

326 a. Is 1 kilogram or more but less than 5 kilograms, such  
 327 person shall be sentenced to a mandatory minimum term of  
 328 imprisonment of 3 years, and the defendant shall be ordered to  
 329 pay a fine of \$50,000. However, the court may depart from the  
 330 mandatory minimum term of imprisonment if it makes written  
 331 findings that the violation only involved possession and that a  
 332 factor, consideration, or circumstance clearly demonstrates that  
 333 imposing the mandatory minimum term of imprisonment would  
 334 constitute or result in an injustice.

335 b. Is 5 kilograms or more but less than 10 kilograms, such  
 336 person shall be sentenced to a mandatory minimum term of  
 337 imprisonment of 7 years, and the defendant shall be ordered to  
 338 pay a fine of \$100,000.

339 c. Is 10 kilograms or more, such person shall be sentenced  
 340 to a mandatory minimum term of imprisonment of 15 calendar years  
 341 and pay a fine of \$250,000.

342 2. Any person who knowingly manufactures or brings into the  
 343 state 150 kilograms or more of gamma-butyrolactone (GBL), as  
 344 described in s. 893.03(1)(d), or any mixture containing gamma-  
 345 butyrolactone (GBL), and who knows that the probable result of  
 346 such manufacture or importation would be the death of any person  
 347 commits capital manufacture or importation of gamma-  
 348 butyrolactone (GBL), a capital felony punishable as provided in

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349 ss. 775.082 and 921.142. Any person sentenced for a capital  
350 felony under this paragraph shall also be sentenced to pay the  
351 maximum fine provided under subparagraph 1.

352 (j)1. Any person who knowingly sells, purchases,  
353 manufactures, delivers, or brings into this state, or who is  
354 knowingly in actual or constructive possession of, 1 kilogram or  
355 more of 1,4-Butanediol as described in s. 893.03(1)(d), or of  
356 any mixture containing 1,4-Butanediol, commits a felony of the  
357 first degree, which felony shall be known as "trafficking in  
358 1,4-Butanediol," punishable as provided in s. 775.082, s.  
359 775.083, or s. 775.084. If the quantity involved:

360 a. Is 1 kilogram or more, but less than 5 kilograms, such  
361 person shall be sentenced to a mandatory minimum term of  
362 imprisonment of 3 years, and the defendant shall be ordered to  
363 pay a fine of \$50,000. However, the court may depart from the  
364 mandatory minimum term of imprisonment if it makes written  
365 findings that the violation only involved possession and that a  
366 factor, consideration, or circumstance clearly demonstrates that  
367 imposing the mandatory minimum term of imprisonment would  
368 constitute or result in an injustice.

369 b. Is 5 kilograms or more, but less than 10 kilograms, such  
370 person shall be sentenced to a mandatory minimum term of  
371 imprisonment of 7 years, and the defendant shall be ordered to  
372 pay a fine of \$100,000.

373 c. Is 10 kilograms or more, such person shall be sentenced  
374 to a mandatory minimum term of imprisonment of 15 calendar years  
375 and pay a fine of \$500,000.

376 2. Any person who knowingly manufactures or brings into  
377 this state 150 kilograms or more of 1,4-Butanediol as described

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378 in s. 893.03(1)(d), or any mixture containing 1,4-Butanediol,  
379 and who knows that the probable result of such manufacture or  
380 importation would be the death of any person commits capital  
381 manufacture or importation of 1,4-Butanediol, a capital felony  
382 punishable as provided in ss. 775.082 and 921.142. Any person  
383 sentenced for a capital felony under this paragraph shall also  
384 be sentenced to pay the maximum fine provided under subparagraph  
385 1.

386 (k)1. A person who knowingly sells, purchases,  
387 manufactures, delivers, or brings into this state, or who is  
388 knowingly in actual or constructive possession of, 10 grams or  
389 more of a:

390 a. Substance described in s. 893.03(1)(c)4., 5., 10., 11.,  
391 15., 17., 21.-27., 29., 39., 40.-45., 58., 72.-80., 81.-86.,  
392 90.-102., 104.-108., 110.-113., 143.-145., 148.-150., 160.-163.,  
393 165., or 187.-189., a substituted cathinone, as described in s.  
394 893.03(1)(c)191., or substituted phenethylamine, as described in  
395 s. 893.03(1)(c)192.;

396 b. Mixture containing any substance described in sub-  
397 subparagraph a.; or

398 c. Salt, isomer, ester, or ether or salt of an isomer,  
399 ester, or ether of a substance described in sub-subparagraph a.,  
400  
401 commits a felony of the first degree, which felony shall be  
402 known as "trafficking in phenethylamines," punishable as  
403 provided in s. 775.082, s. 775.083, or s. 775.084.

404 2. If the quantity involved under subparagraph 1.:

405 a. Is 10 grams or more, but less than 200 grams, such  
406 person shall be sentenced to a mandatory minimum term of

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407 imprisonment of 3 years and shall be ordered to pay a fine of  
 408 \$50,000. However, the court may depart from the mandatory  
 409 minimum term of imprisonment if it makes written findings that  
 410 the violation only involved possession and that a factor,  
 411 consideration, or circumstance clearly demonstrates that  
 412 imposing the mandatory minimum term of imprisonment would  
 413 constitute or result in an injustice.

414 b. Is 200 grams or more, but less than 400 grams, such  
 415 person shall be sentenced to a mandatory minimum term of  
 416 imprisonment of 7 years and shall be ordered to pay a fine of  
 417 \$100,000.

418 c. Is 400 grams or more, such person shall be sentenced to  
 419 a mandatory minimum term of imprisonment of 15 years and shall  
 420 be ordered to pay a fine of \$250,000.

421 3. A person who knowingly manufactures or brings into this  
 422 state 30 kilograms or more of a substance described in sub-  
 423 subparagraph 1.a., a mixture described in sub-subparagraph 1.b.,  
 424 or a salt, isomer, ester, or ether or a salt of an isomer,  
 425 ester, or ether described in sub-subparagraph 1.c., and who  
 426 knows that the probable result of such manufacture or  
 427 importation would be the death of any person commits capital  
 428 manufacture or importation of phenethylamines, a capital felony  
 429 punishable as provided in ss. 775.082 and 921.142. A person  
 430 sentenced for a capital felony under this paragraph shall also  
 431 be sentenced to pay the maximum fine under subparagraph 2.

432 (1)1. Any person who knowingly sells, purchases,  
 433 manufactures, delivers, or brings into this state, or who is  
 434 knowingly in actual or constructive possession of, 1 gram or  
 435 more of lysergic acid diethylamide (LSD) as described in s.

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436 893.03(1)(c), or of any mixture containing lysergic acid  
 437 diethylamide (LSD), commits a felony of the first degree, which  
 438 felony shall be known as "trafficking in lysergic acid  
 439 diethylamide (LSD)," punishable as provided in s. 775.082, s.  
 440 775.083, or s. 775.084. If the quantity involved:

441 a. Is 1 gram or more, but less than 5 grams, such person  
 442 shall be sentenced to a mandatory minimum term of imprisonment  
 443 of 3 years, and the defendant shall be ordered to pay a fine of  
 444 \$50,000. However, the court may depart from the mandatory  
 445 minimum term of imprisonment if it makes written findings that  
 446 the violation only involved possession and that a factor,  
 447 consideration, or circumstance clearly demonstrates that  
 448 imposing the mandatory minimum term of imprisonment would  
 449 constitute or result in an injustice.

450 b. Is 5 grams or more, but less than 7 grams, such person  
 451 shall be sentenced to a mandatory minimum term of imprisonment  
 452 of 7 years, and the defendant shall be ordered to pay a fine of  
 453 \$100,000.

454 c. Is 7 grams or more, such person shall be sentenced to a  
 455 mandatory minimum term of imprisonment of 15 calendar years and  
 456 pay a fine of \$500,000.

457 2. Any person who knowingly manufactures or brings into  
 458 this state 7 grams or more of lysergic acid diethylamide (LSD)  
 459 as described in s. 893.03(1)(c), or any mixture containing  
 460 lysergic acid diethylamide (LSD), and who knows that the  
 461 probable result of such manufacture or importation would be the  
 462 death of any person commits capital manufacture or importation  
 463 of lysergic acid diethylamide (LSD), a capital felony punishable  
 464 as provided in ss. 775.082 and 921.142. Any person sentenced for

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465 a capital felony under this paragraph shall also be sentenced to  
 466 pay the maximum fine provided under subparagraph 1.

467 (m)1. A person who knowingly sells, purchases,  
 468 manufactures, delivers, or brings into this state, or who is  
 469 knowingly in actual or constructive possession of, 280 grams or  
 470 more of a:

471 a. Substance described in s. 893.03(1)(c)30., 46.-50.,  
 472 114.-142., 151.-156., 166.-173., or 176.-186. or a synthetic  
 473 cannabinoid, as described in s. 893.03(1)(c)190.; or

474 b. Mixture containing any substance described in sub-  
 475 subparagraph a.,

476

477 commits a felony of the first degree, which felony shall be  
 478 known as "trafficking in synthetic cannabinoids," punishable as  
 479 provided in s. 775.082, s. 775.083, or s. 775.084.

480 2. If the quantity involved under subparagraph 1.:

481 a. Is 280 grams or more, but less than 500 grams, such  
 482 person shall be sentenced to a mandatory minimum term of  
 483 imprisonment of 3 years, and the defendant shall be ordered to  
 484 pay a fine of \$50,000. However, the court may depart from the  
 485 mandatory minimum term of imprisonment if it makes written  
 486 findings that the violation only involved possession and that a  
 487 factor, consideration, or circumstance clearly demonstrates that  
 488 imposing the mandatory minimum term of imprisonment would  
 489 constitute or result in an injustice.

490 b. Is 500 grams or more, but less than 1,000 grams, such  
 491 person shall be sentenced to a mandatory minimum term of  
 492 imprisonment of 7 years, and the defendant shall be ordered to  
 493 pay a fine of \$100,000.

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494 c. Is 1,000 grams or more, but less than 30 kilograms, such  
 495 person shall be sentenced to a mandatory minimum term of  
 496 imprisonment of 15 years, and the defendant shall be ordered to  
 497 pay a fine of \$200,000.

498 d. Is 30 kilograms or more, such person shall be sentenced  
 499 to a mandatory minimum term of imprisonment of 25 years, and the  
 500 defendant shall be ordered to pay a fine of \$750,000.

501 (n)1. A person who knowingly sells, purchases,  
 502 manufactures, delivers, or brings into this state, or who is  
 503 knowingly in actual or constructive possession of, 14 grams or  
 504 more of:

505 a. A substance described in s. 893.03(1)(c)164., 174., or  
 506 175., a n-benzyl phenethylamine compound, as described in s.  
 507 893.03(1)(c)193.; or

508 b. A mixture containing any substance described in sub-  
 509 subparagraph a.,

510

511 commits a felony of the first degree, which felony shall be  
 512 known as "trafficking in n-benzyl phenethylamines," punishable  
 513 as provided in s. 775.082, s. 775.083, or s. 775.084.

514 2. If the quantity involved under subparagraph 1.:

515 a. Is 14 grams or more, but less than 100 grams, such  
 516 person shall be sentenced to a mandatory minimum term of  
 517 imprisonment of 3 years, and the defendant shall be ordered to  
 518 pay a fine of \$50,000. However, the court may depart from the  
 519 mandatory minimum term of imprisonment if it makes written  
 520 findings that the violation only involved possession and that a  
 521 factor, consideration, or circumstance clearly demonstrates that  
 522 imposing the mandatory minimum term of imprisonment would

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523 constitute or result in an injustice.

524 b. Is 100 grams or more, but less than 200 grams, such  
525 person shall be sentenced to a mandatory minimum term of  
526 imprisonment of 7 years, and the defendant shall be ordered to  
527 pay a fine of \$100,000.

528 c. Is 200 grams or more, such person shall be sentenced to  
529 a mandatory minimum term of imprisonment of 15 years, and the  
530 defendant shall be ordered to pay a fine of \$500,000.

531 3. A person who knowingly manufactures or brings into this  
532 state 400 grams or more of a substance described in sub-  
533 subparagraph 1.a. or a mixture described in sub-subparagraph  
534 1.b., and who knows that the probable result of such manufacture  
535 or importation would be the death of any person commits capital  
536 manufacture or importation of a n-benzyl phenethylamine  
537 compound, a capital felony punishable as provided in ss. 775.082  
538 and 921.142. A person sentenced for a capital felony under this  
539 paragraph shall also be sentenced to pay the maximum fine under  
540 subparagraph 2.

541 Section 2. This act shall take effect July 1, 2018.

# APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

12/4/2017

602

Meeting Date

Bill Number (if applicable)

Topic Criminal Justice

Amendment Barcode (if applicable)

Name Sal Nuzzo

Job Title VP of Policy

Address 100 N Duval Street

Phone 850-322-9941

Street

Tallahassee

FL

32301

Email snuzzo@jamesmadison.org

City

State

Zip

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing The James Madison Institute

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4 Dec 17

Meeting Date

602

Bill Number (if applicable)

Topic Mandatory Minimum Sentencing

Amendment Barcode (if applicable)

Name Barney Bishop III

Job Title Pres & CEO

Address 204 S. Monroe St.

Phone 510.9922

Street

Tall

City

FL

State

32301

Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Fla. Smart Justice Alliance

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

**This form is part of the public record for this meeting.**

THE FLORIDA SENATE  
**APPEARANCE RECORD**

602

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

12/4/17  
Meeting Date

SB 482  
Bill Number (if applicable)

Topic Mandatory Minimums -

Amendment Barcode (if applicable)

Name Carey Haughwout

Job Title Public Defender of Palm Beach County

Address 421 3rd St  
Street

Phone 561-355-7651

WPB FL 33401  
City State Zip

Email careypd@pd15.org

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Florida Public Defenders

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.



THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date

~~600~~ 602  
Bill Number (if applicable)

Topic mandatory minimum sentences

Amendment Barcode (if applicable)

Name DAPHNEE SAINVILLE

Job Title LEGISLATIVE COORDINATOR

Address 115 S. Andrews Ave., Rm. 426

Phone 954-253-7320

Street

Ft. Lauderdale

FL

33301

Email dsainville@broward.org

City

State

Zip

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Broward County

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

**This form is part of the public record for this meeting.**

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

12/4/17  
Meeting Date

602  
Bill Number (if applicable)

Topic CW

Amendment Barcode (if applicable)

Name Chelsea Murphy

Job Title State Director

Address 824 N. Duval St

Phone 9545570016

Street

Tallahassee FL 32303

Email \_\_\_\_\_

City

State

Zip

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Right on Crime

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

**This form is part of the public record for this meeting.**

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

12/4/17

Meeting Date

SB 602

Bill Number (if applicable)

Topic Mandatory Minimum

Amendment Barcode (if applicable)

Name Kara Gross

Job Title Legislative Counsel

Address 4343 W. Flagler St

Phone 786-363-4436

Street

Miami, FL

City

State

Zip

Email Kgross@aclufl.org

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing ACLU OF FLORIDA

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

12-4-17

Meeting Date

SB 602

Bill Number (if applicable)

Topic Sentencing

Amendment Barcode (if applicable)

Name Greg Newburn

Job Title State Policy Director

Address PO Box 142933

Phone 352.682.2542

Street

Gainesville

FL

32614

City

State

Zip

Email gnewburn@fammm.org

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Families Against Mandatory Minimums

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

12/4/2017

Meeting Date

602

Bill Number (if applicable)

Topic Minimum Mandatory Sentences

Amendment Barcode (if applicable)

Name Jorge Chamizo

Job Title Attorney

Address 108 South Monroe Street

Phone 850-681-0024

Street  
Tallahassee, FL 32301

Email jorge@flapartners.com

City State Zip

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Fla. Assoc. of Criminal Defense Lawyers (FACDL)

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

**This form is part of the public record for this meeting.**

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

12/4/17  
Meeting Date

602  
Bill Number (if applicable)

Topic Mandatory Manners

Amendment Barcode (if applicable)

Name Scott McCoy

Job Title \_\_\_\_\_

Address \_\_\_\_\_  
Street

Phone \_\_\_\_\_

City

State

Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
*(The Chair will read this information into the record.)*

Representing SPLC

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

**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 Criminal Justice

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**BILL:** CS/SB 644

**INTRODUCER:** Criminal Justice Committee and Senator Bracy

**SUBJECT:** Juvenile Civil Citation and Similar Diversion Programs

**DATE:** December 5, 2017      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Storch	Jones	CJ	<b>Fav/CS</b>
2.			ACJ	
3.			AP	

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**Please see Section IX. for Additional Information:**  
COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 644 requires the establishment of one or more juvenile civil citation or similar diversion programs in each county.

The bill provides that a law enforcement officer must issue a juvenile a civil citation or require the juvenile's participation in a similar diversion program when the juvenile admits to committing one of the following first-time misdemeanor offenses:

- Possession of alcoholic beverages by persons under age 21 (s. 562.111, F.S.);
- Battery (s. 784.03(1), F.S.);
- Criminal mischief (s. 806.13, F.S.);
- Trespass (ss. 810.08 or 810.09, F.S.);
- Petit theft (s. 812.014(2)(e) or (3)(a), F.S.);
- Retail and farm theft (s. 812.015(2), F.S.);
- Resisting an officer without violence (s. 843.02, F.S.);
- Affrays and riots (s. 870.01(1), F.S.);
- Breach of the peace or disorderly conduct (s. 877.03, F.S.);
- Possession of 20 grams or less of cannabis (s. 893.13(6)(b), F.S.); or
- Use, possession, manufacture, delivery, transportation, advertisement, or retail sale of drug paraphernalia (s. 893.147, F.S.).

The bill permits a law enforcement officer to issue a juvenile a civil citation or require the juvenile's participation in a similar diversion program when the juvenile admits to committing:

- A misdemeanor offense not enumerated in the bill; or
- A second-time or third-time misdemeanor offense, regardless of whether the offense is enumerated in the bill.

The bill specifies that the option of the issuance of a civil citation or referral to a similar diversion program does not apply to:

- A juvenile who is alleged to have committed, is charged with, has plead, is awaiting disposition, or has been found to have committed a felony; or
- A misdemeanor offense arising out of an episode in which the juvenile is also alleged to have committed a felony.

The bill provides that participation in a civil citation or similar diversion program is not considered a referral to the Department of Juvenile Justice (DJJ). However, the law enforcement officer may process the original delinquent act as a referral to the DJJ if the juvenile fails to comply with the requirements of the program or commits a subsequent misdemeanor.

The bill may have a positive fiscal impact on state and local governments. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2018.

## II. Present Situation:

Section 985.12, F.S., establishes a juvenile civil citation process that provides law enforcement an alternative to arresting juveniles for nonserious delinquent acts. The DJJ is required to assist in the implementation of civil citation or other similar diversion programs. The DJJ must also develop guidelines for these programs that include intervention services based upon proven civil citation or similar diversion programs within the state.<sup>1</sup>

The civil citation process is designed to divert juveniles prior to arrest and prevent the juvenile's further involvement in the juvenile justice system.<sup>2</sup> These civil citation or similar diversion programs are established on a discretionary basis at the local level. A civil citation or similar diversion program has been implemented in 61 counties in Florida, with Taylor County in the process of implementation.<sup>3</sup> The following counties have not established a civil citation program: Bradford, Calhoun, Gulf, Hardee, and Washington.<sup>4</sup>

If established at the local level, the program must be created with the concurrence of the chief judge of the circuit, state attorney, public defender, and the head of each local law enforcement

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<sup>1</sup> Section 985.12(1) and (2), F.S.

<sup>2</sup> Florida Department of Juvenile Justice 2014-15, *Civil Citation*, [http://www.djj.state.fl.us/docs/car-reports/\(2014-15-car\)-civil-citation-\(12-21-2015\)-mg-final.pdf?sfvrsn=2](http://www.djj.state.fl.us/docs/car-reports/(2014-15-car)-civil-citation-(12-21-2015)-mg-final.pdf?sfvrsn=2) (last visited November 28, 2017).

<sup>3</sup> Florida Department of Juvenile Justice, *Civil Citation Implementation by County as of July 21, 2017*, <http://www.djj.state.fl.us/docs/probation-policy-memos/counties-with-cc-as-of-may-09-2016.pdf?Status=Master&sfvrsn=25> (last visited December 1, 2017).

<sup>4</sup> *Id.*



agency. The program may be operated by a law enforcement agency, the DJJ, a juvenile assessment center, the county or municipality, or another entity selected by the county or municipality.<sup>5</sup>

Currently, a law enforcement officer who makes contact with a juvenile who admits to having committed a misdemeanor<sup>6</sup> has the discretion to:

- Issue a warning or inform the juvenile's parent or guardian of the child's infraction;
- Issue a civil citation or require participation in a similar diversion program; or
- Arrest the juvenile.<sup>7</sup>

From October 2016 to September 2017, there were 17,463 juveniles eligible to receive a civil citation. Of those eligible, 9,678 juveniles were issued a civil citation and the remaining 7,785 were arrested.<sup>8</sup>

A law enforcement officer can issue a civil citation to any juvenile who admits to committing a first-time, second-time, or third-time misdemeanor.<sup>9</sup> The officer must advise the juvenile of the option to refuse the civil citation and instead be referred to the DJJ. The juvenile may exercise that option at any time prior to completion of the program.<sup>10</sup> An officer who issues a civil citation or requires participation in a similar diversion program may also assess up to 50 hours of community service and require participation in intervention services.<sup>11</sup>

The juvenile must report to the community service performance monitor within seven business days after being issued the civil citation and complete at least five hours of work per week. The monitor must inform the DJJ intake office when the juvenile has reported to them and the expected date that the work assignment will be completed.<sup>12</sup>

The issuance of a civil citation is not considered a referral to the DJJ. However, the law enforcement officer must issue a report alleging the juvenile has committed a delinquent act, resulting in the juvenile probation officer processing the act as a referral to the DJJ, if:

- The child fails to report on time for a work assignment or fails to complete a work assignment;
- The child fails to comply with assigned intervention services within the prescribed time; or
- The child commits a subsequent misdemeanor.<sup>13</sup>

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<sup>5</sup> Section 985.12(1), F.S.

<sup>6</sup> Misdemeanors involving sex or firearm offenses are currently ineligible for civil citations. Florida Department of Juvenile Justice, *Civil Citation Model Plan: A Guide to Implementation*, <http://www.djj.state.fl.us/docs/probation-policy-memos/civil-citation-model-plan.pdf?Status=Master&sfvrsn=4> (last visited November 30, 2017).

<sup>7</sup> An officer who elects to arrest the juvenile must provide written documentation explaining why the arrest was warranted. Section 985.12(1), F.S.

<sup>8</sup> Florida Department of Juvenile Justice, *Civil Citation & Other Similar Diversion Program Dashboard*, <http://www.djj.state.fl.us/research/reports/reports-and-data/interactive-data-reports/civil-citation-dashboard/cc-dashboard> (last visited November 28, 2017).

<sup>9</sup> Section 985.12(1), F.S.

<sup>10</sup> Section 985.12(6), F.S.

<sup>11</sup> Section 985.12(1), F.S.

<sup>12</sup> Section 985.12(4), F.S.

<sup>13</sup> Section 985.12(5), F.S.

### III. Effect of Proposed Changes:

The bill amends s. 985.12, F.S., to require the establishment of one or more juvenile civil citation or similar diversion programs in each county.

The bill provides that a law enforcement officer<sup>14</sup> must issue a civil citation or require the juvenile's participation in a similar diversion program to a juvenile who admits to committing one of the following first-time misdemeanor offenses:<sup>15</sup>

- Possession of alcoholic beverages by persons under age 21 (s. 562.111, F.S.);
- Battery (s. 784.03(1), F.S.);
- Criminal mischief (s. 806.13, F.S.);
- Trespass (ss. 810.08 or 810.09, F.S.);
- Petit theft (s. 812.014(2)(e) or (3)(a), F.S.);
- Retail and farm theft (s. 812.015(2), F.S.);
- Resisting an officer without violence (s. 843.02, F.S.);
- Affrays and riots (s. 870.01(1), F.S.);
- Breach of the peace or disorderly conduct (s. 877.03, F.S.);
- Possession of 20 grams or less of cannabis (s. 893.13(6)(b), F.S.); or
- Use, possession, manufacture, delivery, transportation, advertisement, or retail sale of drug paraphernalia (s. 893.147, F.S.).<sup>16</sup>

The bill permits a law enforcement officer to issue a civil citation or require the juvenile's participation in a similar diversion program to a juvenile who admits to committing:

- A misdemeanor offense not enumerated in the bill; or
- A second-time or third-time misdemeanor offense, regardless of whether the offense is enumerated in the bill.

The bill preserves the requirement that a law enforcement officer who has the discretion to issue a civil citation, but instead chooses to arrest the juvenile, to provide written documentation explaining why an arrest is warranted.

The bill retains the statutory right for a juvenile who is eligible for a civil citation or similar diversion program to be informed of his or her right to refuse these options and instead be

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<sup>14</sup> The bill defines "law enforcement officer" to have the same meaning as provided in s. 943.10, F.S. Section 943.10, F.S., defines the term as any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with the authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.

<sup>15</sup> The bill defines a "misdemeanor offense" as one or more misdemeanor violations of law arising out of the same criminal episode, act, or transaction.

<sup>16</sup> In Fiscal Year 2016-17, for those enumerated offenses, 55 percent of eligible first-time misdemeanants received a civil citation. Florida Department of Juvenile Justice, *2018 Legislative Bill Analysis for SB 644*, (November 28, 2017) (on file with the Senate Criminal Justice Committee).

referred to the DJJ. The bill specifies that a juvenile may exercise this right of refusal at any time prior to the completion of the community service assignment.

The bill limits the recipients of a copy of the civil citation or documentation requiring a similar diversion program to the entity operating the program, the parent or guardian of the juvenile, and the victim. The information is then entered into the Juvenile Justice Information System Prevention Web.

The bill extends the time in which the juvenile must report to the entity operating the program, from seven business days to 10 business days, after the issuance of the civil citation or documentation for a similar diversion program. The bill specifies that a juvenile must complete up to 50 hours of community service and participate in intervention services, as assigned by the civil citation or similar diversion program. The bill does not specify how many hours of work must be completed each week.

Participation in a civil citation or similar diversion program is not considered a referral to the DJJ. However, the law enforcement officer may issue a report alleging the juvenile has committed a delinquent act, resulting in the juvenile probation officer processing the original delinquent act as a referral to the DJJ, if:

- The juvenile fails to report on time for a work assignment or fails to complete a work assignment;
- The juvenile fails to comply with assigned intervention services within the prescribed time; or
- The juvenile commits a subsequent misdemeanor.

The bill specifies that the option of the issuance of a civil citation or referral to a similar diversion program does not apply to:

- A juvenile who is alleged to have committed, is charged with, has plead, is awaiting disposition, or has been found to have committed a felony; or
- A misdemeanor offense arising out of an episode in which the juvenile is also alleged to have committed a felony offense.

A law enforcement officer who makes contact with a juvenile who is alleged to have committed a misdemeanor offense still maintains the authority to issue a warning to the juvenile or notice to the juvenile's parent or guardian.

The bill amends ss. 943.051 and 985.11, F.S., to make conforming changes.

The bill is effective July 1, 2018.

#### **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 could have a positive fiscal impact to state and local governments because an increase in the issuance of civil citations or referrals to similar diversion programs could lead to less juveniles being referred to the costlier juvenile justice system.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 985.12 of the Florida Statutes.

The bill makes conforming technical changes to the following sections of the Florida Statutes: 943.051 and 985.11.

**IX. Additional Information:**

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Criminal Justice on December 4, 2017:**

The Committee Substitute:

- Clarifies that information relating to the issuance of a juvenile civil citation or referral to a similar diversion program will be entered into the Juvenile Justice Information System Prevention Web; and

- Clarifies that the juvenile civil citation or similar diversion program will determine the community service hours and intervention services that the juvenile is required to complete.

**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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890946

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
12/04/2017	.	
	.	
	.	
	.	

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The Committee on Criminal Justice (Bracy) recommended the following:

**Senate Amendment**

Delete lines 104 - 112  
and insert:  
information into the Juvenile Justice Information System  
Prevention Web.

(8) A juvenile who elects to participate in a civil  
citation or similar diversion program shall complete, and asses  
up to 50 community service hours, and participate require  
participation in intervention services, as indicated by an



890946

11 ~~assessment of the needs of the juvenile, including family~~  
12 ~~counseling, urinalysis monitoring, and substance abuse and~~  
13 ~~mental health treatment services~~ as assigned by the civil  
14 citation or similar diversion program.

By Senator Bracy

11-00428-18

2018644\_\_

1 A bill to be entitled  
 2 An act relating to juvenile civil citation and similar  
 3 diversion programs; amending s. 985.12, F.S.; defining  
 4 terms; requiring the establishment of civil citation  
 5 or similar diversion programs for juveniles;  
 6 specifying program eligibility, participation, and  
 7 implementation requirements; providing exceptions;  
 8 providing applicability; providing construction;  
 9 amending ss. 943.051 and 985.11, F.S.; conforming  
 10 provisions to changes made by the act; providing an  
 11 effective date.  
 12  
 13 Be It Enacted by the Legislature of the State of Florida:  
 14  
 15 Section 1. Section 985.12, Florida Statutes, is amended to  
 16 read:  
 17 985.12 Civil citation and similar diversion programs.—  
 18 (1) As used in this section, the term:  
 19 (a) "Law enforcement officer" has the same meaning as  
 20 provided in s. 943.10.  
 21 (b) "Misdemeanor offense" means one or more misdemeanor  
 22 violations of law arising out of the same criminal episode, act,  
 23 or transaction.  
 24 (2) (a) There is established a process for the use of  
 25 juvenile civil citation and similar diversion programs to  
 26 provide process for the purpose of providing an efficient and  
 27 innovative alternative to custody by the department ~~of Juvenile~~  
 28 ~~Justice~~ for juveniles ~~children~~ who commit nonserious delinquent  
 29 acts and to ensure swift and appropriate consequences. The

Page 1 of 10

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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30 department shall encourage and assist in the implementation and  
 31 improvement of civil citation ~~and programs or other~~ similar  
 32 diversion programs ~~in around~~ the state.  
 33 (b) ~~One or more~~ The civil citation or similar diversion  
 34 programs program shall be established in each county which must  
 35 individually or collectively serve all juveniles who are alleged  
 36 to have committed a violation of law which would be a  
 37 misdemeanor offense if committed by an adult. Such programs must  
 38 be established at the local level with the concurrence of the  
 39 chief judge of the circuit, the state attorney, the public  
 40 defender, and the head of each local law enforcement agency  
 41 involved and. ~~The program~~ may be operated by an entity such as a  
 42 law enforcement agency, the department, a juvenile assessment  
 43 center, the county or municipality, or another entity selected  
 44 by the county or municipality. An entity operating such a the  
 45 ~~civil citation or similar diversion~~ program must do so in  
 46 consultation and agreement with the state attorney and local law  
 47 enforcement agencies.  
 48 (3) Under ~~such~~ a juvenile civil citation or similar  
 49 diversion program, a law enforcement officer who makes, upon  
 50 ~~making~~ contact with a juvenile who admits having committed a  
 51 first-time misdemeanor offense: misdemeanor, ~~may choose to issue~~  
 52 ~~a simple warning or inform the child's guardian or parent of the~~  
 53 ~~child's infraction, or may~~  
 54 (a) Shall issue a civil citation to the juvenile or require  
 55 the juvenile's participation in a similar diversion program if  
 56 the misdemeanor offense is one or more of the following:  
 57 1. Section 562.111, relating to possession of alcoholic  
 58 beverages by persons under age 21;

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59 2. Section 784.03(1), relating to battery;  
 60 3. Section 806.13, relating to criminal mischief;  
 61 4. Section 810.08 or s. 810.09, relating to trespass;  
 62 5. Section 812.014(2)(e) or (3)(a), relating to theft;  
 63 6. Section 812.015(2), relating to theft from a merchant,  
 64 farmer, or transit agency;  
 65 7. Section 843.02, relating to resisting an officer without  
 66 violence;  
 67 8. Section 870.01(1), relating to an affray;  
 68 9. Section 877.03, relating to breach of the peace or  
 69 disorderly conduct;  
 70 10. Section 893.13(6)(b), relating to possession of certain  
 71 amounts of cannabis; or  
 72 11. Section 893.147, relating to use, possession,  
 73 manufacture, delivery, transportation, advertisement, or retail  
 74 sale of drug paraphernalia.  
 75 (b) May issue a civil citation to the juvenile or require  
 76 the juvenile's participation in a similar diversion program if  
 77 the misdemeanor offense is not specified in paragraph (a).  
 78 (4) Under a juvenile civil citation or similar diversion  
 79 program, a law enforcement officer who makes contact with a  
 80 juvenile who admits having committed a second or a third  
 81 misdemeanor offense may issue a civil citation to the juvenile  
 82 or require the juvenile's participation in a similar diversion  
 83 program, regardless of whether the misdemeanor offense is  
 84 specified in paragraph (3)(a).  
 85 (5) If a juvenile is arrested for a misdemeanor offense  
 86 subject to paragraph (3)(b) or subsection (4), the law  
 87 enforcement officer must provide written documentation as to why

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88 the arrest was warranted.  
 89 (6) A law enforcement officer shall advise a juvenile who  
 90 is eligible under subsection (3) or subsection (4) that the  
 91 juvenile has the option to refuse the civil citation or other  
 92 similar diversion program and be referred to the department, and  
 93 that the juvenile may elect this option at any time before fully  
 94 completing the community service assignment required under  
 95 subsection (8). Participation in a civil citation or similar  
 96 diversion program is not considered a referral to the  
 97 department.  
 98 (7) Upon issuance of the civil citation or documentation  
 99 requiring a similar diversion program, the law enforcement  
 100 officer shall send a copy to the entity designated to operate  
 101 the program, the parent or guardian of the juvenile, and the  
 102 victim. The operating entity, appropriate intake office, or a  
 103 designee of the entity or intake office shall enter such  
 104 information into the Juvenile Justice Information System or the  
 105 Prevention Web system.  
 106 (8) A juvenile who elects to participate in a civil  
 107 citation or similar diversion program must complete, ~~and assess~~  
 108 up to 50 community service hours, ~~and participate~~ ~~require~~  
 109 participation in intervention services as indicated by an  
 110 assessment of the needs of the juvenile, including family  
 111 counseling, urinalysis monitoring, and substance abuse and  
 112 mental health treatment services.  
 113 (a) The juvenile shall report to the entity designated to  
 114 operate the program, or its designee, within 10 business days  
 115 after the date of issuance of the civil citation or  
 116 documentation for a similar diversion program. ~~A copy of each~~

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

11-00428-18 2018644\_\_  
 117 ~~citation issued under this section shall be provided to the~~  
 118 ~~department, and the department shall enter appropriate~~  
 119 ~~information into the juvenile offender information system. Use~~  
 120 ~~of the civil citation or similar diversion program is not~~  
 121 ~~limited to first time misdemeanors and may be used in up to two~~  
 122 ~~subsequent misdemeanors. If an arrest is made, a law enforcement~~  
 123 ~~officer must provide written documentation as to why an arrest~~  
 124 ~~was warranted.~~

(b) At the conclusion of a juvenile's participation in a  
 125 civil citation program or similar diversion program, the entity  
 126 agency operating the program shall report the outcome of the  
 127 juvenile's participation in the program to the department.

(c) If the juvenile fails to timely report for a community  
 129 service assignment, complete the assignment, or comply with  
 130 assigned intervention services within the prescribed time, or if  
 131 the juvenile commits a new misdemeanor offense, the law  
 132 enforcement officer may issue a report alleging that the  
 133 juvenile has committed a delinquent act, at which time a  
 134 juvenile probation officer shall process the original delinquent  
 135 act as a referral to the department and refer the report to the  
 136 state attorney for review ~~The issuance of a civil citation is~~  
 137 ~~not considered a referral to the department.~~

~~(9)(2)~~ The department shall develop guidelines for the  
 140 civil citation and similar diversion programs program which  
 141 include intervention services that are based on ~~upon~~ proven  
 142 civil citation or similar diversion programs in within the  
 143 state.

(10) This section does not apply to:

(a) A juvenile who is alleged to have committed, or is

11-00428-18 2018644\_\_  
 146 charged with, and awaiting final disposition of an offense that  
 147 would be a felony if committed by an adult.

(b) A juvenile who has entered a plea of nolo contendere or  
 148 guilty to, or has been found to have committed, an offense that  
 149 would be a felony if committed by an adult.

(c) A misdemeanor offense arising out of an episode in  
 151 which the juvenile is also alleged to have committed an offense  
 152 that would be a felony if committed by an adult.

(11) This section does not modify the authority of a law  
 154 enforcement officer who, upon making contact with a juvenile who  
 155 is alleged to have committed a misdemeanor offense, elects to  
 156 issue only a simple warning to the juvenile or notice to a  
 157 juvenile's parent or guardian of the alleged offense.

~~(3) Upon issuing such citation, the law enforcement officer~~  
 159 ~~shall send a copy to the county sheriff, state attorney, the~~  
 160 ~~appropriate intake office of the department, or the community~~  
 161 ~~service performance monitor designated by the department, the~~  
 162 ~~parent or guardian of the child, and the victim.~~

~~(4) The child shall report to the community service~~  
 164 ~~performance monitor within 7 working days after the date of~~  
 165 ~~issuance of the citation. The work assignment shall be~~  
 166 ~~accomplished at a rate of not less than 5 hours per week. The~~  
 167 ~~monitor shall advise the intake office immediately upon~~  
 168 ~~reporting by the child to the monitor, that the child has in~~  
 169 ~~fact reported and the expected date upon which completion of the~~  
 170 ~~work assignment will be accomplished.~~

~~(5) If the child fails to report timely for a work~~  
 172 ~~assignment, complete a work assignment, or comply with assigned~~  
 173 ~~intervention services within the prescribed time, or if the~~  
 174

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175 ~~juvenile commits a subsequent misdemeanor, the law enforcement~~  
 176 ~~officer shall issue a report alleging the child has committed a~~  
 177 ~~delinquent act, at which point a juvenile probation officer~~  
 178 ~~shall process the original delinquent act as a referral to the~~  
 179 ~~department and refer the report to the state attorney for~~  
 180 ~~review.~~

181 ~~(6) At the time of issuance of the citation by the law~~  
 182 ~~enforcement officer, such officer shall advise the child that~~  
 183 ~~the child has the option to refuse the citation and to be~~  
 184 ~~referred to the intake office of the department. That option may~~  
 185 ~~be exercised at any time before completion of the work~~  
 186 ~~assignment.~~

187 Section 2. Paragraph (b) of subsection (3) of section  
 188 943.051, Florida Statutes, is amended to read:

189 943.051 Criminal justice information; collection and  
 190 storage; fingerprinting.—

191 (3)

192 (b) A minor who is charged with or found to have committed  
 193 the following offenses shall be fingerprinted and the  
 194 fingerprints shall be submitted electronically to the  
 195 department, unless the minor participates in ~~is issued~~ a civil  
 196 citation or similar diversion program pursuant to s. 985.12:

- 197 1. Assault, as defined in s. 784.011.
- 198 2. Battery, as defined in s. 784.03.
- 199 3. Carrying a concealed weapon, as defined in s. 790.01(1).
- 200 4. Unlawful use of destructive devices or bombs, as defined
- 201 in s. 790.1615(1).
- 202 5. Neglect of a child, as defined in s. 827.03(1)(e).
- 203 6. Assault or battery on a law enforcement officer, a

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204 firefighter, or other specified officers, as defined in s.  
 205 784.07(2) (a) and (b).

206 7. Open carrying of a weapon, as defined in s. 790.053.

207 8. Exposure of sexual organs, as defined in s. 800.03.

208 9. Unlawful possession of a firearm, as defined in s.

209 790.22(5).

210 10. Petit theft, as defined in s. 812.014(3).

211 11. Cruelty to animals, as defined in s. 828.12(1).

212 12. Arson, as defined in s. 806.031(1).

213 13. Unlawful possession or discharge of a weapon or firearm  
 214 at a school-sponsored event or on school property, as provided  
 215 in s. 790.115.

216 Section 3. Paragraph (b) of subsection (1) of section  
 217 985.11, Florida Statutes, is amended to read:

218 985.11 Fingerprinting and photographing.—

219 (1)

220 (b) Unless the child is participating in ~~is issued~~ a civil  
 221 citation or is participating in ~~is participating in~~ a similar diversion program  
 222 pursuant to s. 985.12, a child who is charged with or found to  
 223 have committed one of the following offenses shall be  
 224 fingerprinted, and the fingerprints shall be submitted to the  
 225 Department of Law Enforcement as provided in s. 943.051(3)(b):

- 226 1. Assault, as defined in s. 784.011.
- 227 2. Battery, as defined in s. 784.03.
- 228 3. Carrying a concealed weapon, as defined in s. 790.01(1).
- 229 4. Unlawful use of destructive devices or bombs, as defined
- 230 in s. 790.1615(1).
- 231 5. Neglect of a child, as defined in s. 827.03(1)(e).
- 232 6. Assault on a law enforcement officer, a firefighter, or

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233 other specified officers, as defined in s. 784.07(2)(a).  
 234 7. Open carrying of a weapon, as defined in s. 790.053.  
 235 8. Exposure of sexual organs, as defined in s. 800.03.  
 236 9. Unlawful possession of a firearm, as defined in s.  
 237 790.22(5).  
 238 10. Petit theft, as defined in s. 812.014.  
 239 11. Cruelty to animals, as defined in s. 828.12(1).  
 240 12. Arson, resulting in bodily harm to a firefighter, as  
 241 defined in s. 806.031(1).  
 242 13. Unlawful possession or discharge of a weapon or firearm  
 243 at a school-sponsored event or on school property as defined in  
 244 s. 790.115.  
 245  
 246 A law enforcement agency may fingerprint and photograph a child  
 247 taken into custody upon probable cause that such child has  
 248 committed any other violation of law, as the agency deems  
 249 appropriate. Such fingerprint records and photographs shall be  
 250 retained by the law enforcement agency in a separate file, and  
 251 these records and all copies thereof must be marked "Juvenile  
 252 Confidential." These records are not available for public  
 253 disclosure and inspection under s. 119.07(1) except as provided  
 254 in ss. 943.053 and 985.04(2), but shall be available to other  
 255 law enforcement agencies, criminal justice agencies, state  
 256 attorneys, the courts, the child, the parents or legal  
 257 custodians of the child, their attorneys, and any other person  
 258 authorized by the court to have access to such records. In  
 259 addition, such records may be submitted to the Department of Law  
 260 Enforcement for inclusion in the state criminal history records  
 261 and used by criminal justice agencies for criminal justice

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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262 purposes. These records may, in the discretion of the court, be  
 263 open to inspection by anyone upon a showing of cause. The  
 264 fingerprint and photograph records shall be produced in the  
 265 court whenever directed by the court. Any photograph taken  
 266 pursuant to this section may be shown by a law enforcement  
 267 officer to any victim or witness of a crime for the purpose of  
 268 identifying the person who committed such crime.  
 269 Section 4. This act shall take effect July 1, 2018.

Page 10 of 10

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

12/4/2017

*Meeting Date*

SB 644

*Bill Number (if applicable)*

Topic Juvenile Civil Citation and Similar Diversion Programs

*Amendment Barcode (if applicable)*

Name Scott D. McCoy

Job Title Senior Policy Counsel

Address P.O. Box 10788

Phone 850-521-3042

*Street*

Tallahassee

FL

32301

Email scott.mccoy@splcenter.org

*City*

*State*

*Zip*

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
*(The Chair will read this information into the record.)*

Representing Southern Poverty Law Center

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

***This form is part of the public record for this meeting.***

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

A Dec 17

Meeting Date

644

Bill Number (if applicable)

Topic Juvenile Justice Civil Citations

Amendment Barcode (if applicable)

Name Barney Bishop III

Job Title Pres & CEO

Address 204 S. Monroe

Phone 510.9922

Street

Tall

City

FL

State

32301

Zip

Email

Speaking: For [ ] Against [x] Information [ ]

Waive Speaking: In Support [ ] Against [ ] (The Chair will read this information into the record.)

Representing Fla. Smart Justice Alliance

Appearing at request of Chair: Yes [ ] No [x]

Lobbyist registered with Legislature: Yes [x] No [ ]

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

12-4-17  
Meeting Date

644  
Bill Number (if applicable)

Topic Civil Citation

Amendment Barcode (if applicable)

Name Bob Dillinger - Public

Job Title 14250 49th St N Defender

Address Clearwater

Phone 727-464-1846

Street 71 33762

Email pdle@wearthehope.org

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing \_\_\_\_\_

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

12/4/17  
Meeting Date

644  
Bill Number (if applicable)

Topic Juvenile Civil Citation

Amendment Barcode (if applicable)

Name Ingrid Delgado

Job Title Associate for Social Concerns & Respect Life

Address 201 W. Park Ave. Phone \_\_\_\_\_  
Street

Tallahassee FL 32301 Email \_\_\_\_\_  
City State Zip

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Florida Conference of Catholic Bishops

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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11/4/17

Meeting Date

644

Bill Number (if applicable)

Topic Juvenile Civil Citation

Amendment Barcode (if applicable)

Name DAPHNEE SAINVIL

Job Title LEGISLATIVE COORDINATOR

Address 115 S. Andrews Ave, Rm. 426

Phone 954-253-7320

Street

Ft. Lauderdale

FL

33301

Email dsainvil@broward.org

City

State

Zip

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Broward County

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

12/4/17

Meeting Date

SB 644

Bill Number (if applicable)

Topic Juvenile Citation

Amendment Barcode (if applicable)

Name Kara Gross

Job Title Legislative Counsel

Address 4343 W. Flagler St  
Street

Phone 786-363-4436

Miami, FL  
City State Zip

Email Kgross@aclufl.org

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing ACLU of Florida

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

12/4/2017

Meeting Date

644

Bill Number (if applicable)

Topic Civil Citations

Amendment Barcode (if applicable)

Name Jorge Chamizo

Job Title Attorney

Address 108 South Monroe Street

Phone 850-681-0024

Street Tallahassee, FL 32301

Email jorge@flapartners.com

City State Zip

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Fla Assoc of Criminal Defense Lawyers

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

12-4-17

Meeting Date

SB 644

~~SB 644~~

Bill Number (if applicable)

Topic Civil Citation

Amendment Barcode (if applicable)

Name DAWN Steward

Job Title \_\_\_\_\_

Address 1707 Oak Central Parkway

Phone \_\_\_\_\_

Street

Orlando, FL 32809

Email \_\_\_\_\_

City

State

Zip

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing \_\_\_\_\_

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

**This form is part of the public record for this meeting.**

**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 Criminal Justice

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BILL: SB 694

INTRODUCER: Senators Brandes and Bracy

SUBJECT: Mandatory Sentences

DATE: December 1, 2017

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Jones</u>	<u>CJ</u>	<b>Favorable</b>
2.	_____	_____	<u>JU</u>	_____
3.	_____	_____	<u>ACJ</u>	_____
4.	_____	_____	<u>AP</u>	_____

---

**I. Summary:**

SB 694 authorizes a court to depart from a mandatory minimum term of imprisonment applicable to trafficking in various controlled substances. The departure is authorized if the court finds on the record that the person did not:

- Engage in a continuing criminal enterprise;
- Use or threaten violence or use a weapon during the commission of the crime; and
- Cause a death or serious bodily injury.

The Legislature’s Office of Economic and Demographic Research estimates that the bill will have a “negative indeterminate” prison bed impact (an unquantifiable decrease in prison beds). See Section V. Fiscal Impact Statement.

**II. Present Situation:**

**Florida’s Controlled Substance Schedules**

Section 893.03, F.S., classifies controlled substances into five categories, known as schedules. These schedules regulate the manufacture, distribution, preparation, and dispensing of the substances listed in the schedules. The most important factors in determining which schedule may apply to a substance are the “potential for abuse”<sup>1</sup> of the substance and whether there is a currently accepted medical use for the substance. The controlled substance schedules are as follows:

---

<sup>1</sup> Pursuant to s. 893.035(3)(a), F.S., “potential for abuse” means a substance has properties as a central nervous system stimulant or depressant or a hallucinogen that create a substantial likelihood of the substance being: (1) used in amounts that create a hazard to the user’s health or the safety of the community; (2) diverted from legal channels and distributed through illegal channels; or (3) taken on the user’s own initiative rather than on the basis of professional medical advice.

- Schedule I substances (s. 893.03(1), F.S.) have a high potential for abuse and no currently accepted medical use in treatment in the United States. Use of these substances under medical supervision does not meet accepted safety standards.
- Schedule II substances (s. 893.03(2), F.S.) have a high potential for abuse and a currently accepted but severely restricted medical use in treatment in the United States. Abuse of these substances may lead to severe psychological or physical dependence.
- Schedule III substances (s. 893.03(3), F.S.) have a potential for abuse less than the Schedule I and Schedule II substances and a currently accepted medical use in treatment in the United States. Abuse of these substances may lead to moderate or low physical dependence or high psychological dependence. Abuse of anabolic steroids may lead to physical damage.
- Schedule IV substances (s. 893.03(4), F.S.) have a low potential for abuse relative to Schedule III substances and a currently accepted medical use in treatment in the United States. Abuse of these substances may lead to limited physical or psychological dependence relative to Schedule III substances.
- Schedule V substances (s. 893.03(5), F.S.) have a low potential for abuse relative to the substances in Schedule IV and a currently accepted medical use in treatment in the United States. Abuse of these substances may lead to limited physical or psychological dependence relative to Schedule IV substances.

### **Punishment of Prohibited Drug Acts**

Section 893.13, F.S., in part, punishes unlawful possession, sale, purchase, manufacture, and delivery of a controlled substance. The penalty for violating s. 893.13, F.S., can depend on the act committed, the substance and quantity of the substance involved, and the location in which the violation occurred. For example, selling a controlled substance listed in s. 893.03(1)(c), F.S., which includes many synthetic controlled substances, is a third degree felony.<sup>2</sup> However, if that substance is sold within 1,000 feet of a K-12 school or other designated facility or location, the violation is a second-degree felony.<sup>3</sup> With three exceptions,<sup>4</sup> s. 893.13, F.S., does not provide for mandatory minimum terms of imprisonment.

Drug trafficking, which is punished in s. 893.135, F.S., consists of knowingly selling, purchasing, manufacturing, delivering, or bringing into this state (importation), or knowingly being in actual or constructive possession of, certain Schedule I or Schedule II controlled substances in a statutorily-specified quantity. The statute only applies to a limited number of such controlled substances. The controlled substance involved in the trafficking must meet a specified weight or quantity threshold.

---

<sup>2</sup> Section 893.13(1)(a)2., F.S. A third-degree felony is punishable by up to 5 years in state prison, a fine of up to \$5,000, or both. Sections 775.082 and 775.083, F.S.

<sup>3</sup> Section 893.13(1)(c)2., F.S. A second-degree felony is punishable by up to 15 years in state prison, a fine of up to \$10,000, or both. Sections 775.082 and 775.083, F.S.

<sup>4</sup> Exceptions: s. 893.13(1)(c)1., F.S. (selling, etc., certain Schedule I and II controlled substances within 1,000 feet of a K-12 school, park, community center, or publicly owned recreational facility); s. 893.13(1)(g)1., F.S. (manufacturing methamphetamine or phencyclidine in a structure or conveyance where any child under 16 is present); and s. 893.13(1)(g)2., F.S. (manufacturing methamphetamine or phencyclidine causes a child under 16 to suffer great bodily harm).

Most drug trafficking offenses are first degree felonies<sup>5</sup> and are subject to a mandatory minimum term<sup>6</sup> and a mandatory fine, which is determined by the weight or quantity range applicable to the weight or quantity of the substance involved in the trafficking.<sup>7</sup> For example, trafficking in 28 grams or more, but less than 200 grams, of cocaine, a first degree felony, is punishable by a 3-year mandatory minimum term of imprisonment and a mandatory fine of \$50,000.<sup>8</sup> Trafficking in 200 grams or more, but less than 400 grams, of cocaine, a first degree felony, is punishable by a 15-year mandatory minimum term of imprisonment and a mandatory fine of \$100,000.<sup>9</sup>

### **Criminal Punishment Code**

The Criminal Punishment Code<sup>10</sup> (Code) is Florida's "primary sentencing policy."<sup>11</sup> Noncapital felonies sentenced under the Code receive an offense severity level ranking (Levels 1-10).<sup>12</sup> Points are assigned and accrue based upon the level ranking assigned to the primary offense, additional offenses, and prior offenses. Sentence points escalate as the level escalates. Points may also be added or multiplied for other factors such as victim injury or the commission of certain offenses like a Level 7 or 8 drug trafficking offense. The lowest permissible sentence is any nonstate prison sanction in which total sentence points equal or are less than 44 points, unless the court determines that a prison sentence is appropriate. If total sentence points exceed 44 points, the lowest permissible sentence in prison months is calculated by subtracting 28 points from the total sentence points and decreasing the remaining total by 25 percent.<sup>13</sup> Absent mitigation,<sup>14</sup> the permissible sentencing range under the Code is generally the lowest permissible sentence scored up to and including the maximum penalty provided under s. 775.082, F.S.<sup>15</sup>

### **Mandatory Minimum Sentences and Departures**

Mandatory minimum terms of imprisonment limit judicial discretion in Code sentencing: "If the lowest permissible sentence is less than the mandatory minimum sentence, the mandatory minimum sentence takes precedence."<sup>16</sup> As previously noted, the sentencing range under the

<sup>5</sup> A first degree felony is generally punishable by up to 30 years in state prison and a fine of up to \$10,000. However, when specifically provided by statute, a first degree felony may be punished by imprisonment for a term of years not exceeding life imprisonment. Sections 775.082 and 775.083, F.S.

<sup>6</sup> There are currently 56 mandatory minimum terms of imprisonment in s. 893.135, F.S., which range from three years to life imprisonment.

<sup>7</sup> See s. 893.135, F.S.

<sup>8</sup> Section 893.135(b)(1)a., F.S.

<sup>9</sup> Section 893.135(b)(1)b., F.S.

<sup>10</sup> Sections 921.002-921.0027, F.S. See chs. 97-194 and 98-204, L.O.F. The Code is effective for offenses committed on or after October 1, 1998.

<sup>11</sup> *Florida's Criminal Punishment Code: A Comparative Assessment (FY 2012-2013) Executive Summary (Offenses Committed On or After October 1, 1998)*, Florida Department of Corrections, available at [http://www.dc.state.fl.us/pub/sg\\_annual/1213/executives.html](http://www.dc.state.fl.us/pub/sg_annual/1213/executives.html) (last visited on Nov. 21, 2017).

<sup>12</sup> Offenses are either ranked in the offense severity level ranking chart in s. 921.0022, F.S., or are ranked by default based on a ranking assigned to the felony degree of the offense as provided in s. 921.0023, F.S.

<sup>13</sup> Section 921.0024, F.S. Unless otherwise noted, information on the Code is from this source.

<sup>14</sup> The court may "mitigate" or "depart downward" from the scored lowest permissible sentence if the court finds a mitigating circumstance. Section 921.0026, F.S., provides a list of mitigating circumstances.

<sup>15</sup> If the scored lowest permissible sentence exceeds the maximum penalty in s. 775.082, F.S., the sentence required by the Code must be imposed. If total sentence points are greater than or equal to 363 points, the court may sentence the offender to life imprisonment. Section 921.0024(2), F.S.

<sup>16</sup> Fla. R. Crim. P. 3.704(d)(26).

Code is generally the scored lowest permissible sentence up to and including the statutory maximum penalty. However, if there is a mandatory minimum sentence that is longer than the scored lowest permissible sentence, the sentencing range is narrowed to the mandatory minimum sentence up to and including the statutory maximum penalty.

Prosecutors have “complete discretion” in the charging decision.<sup>17</sup> The exercise of this discretion may determine whether or not a defendant is subject to a mandatory minimum term or a reduced mandatory minimum term. A prosecutor could determine in a particular case that mandatory minimum sentencing is inappropriate or too severe and avoid or ameliorate such sentencing. For example, the prosecutor could offer a plea to a violation of s. 893.13, F.S., or attempted drug trafficking, neither of which carries a mandatory minimum term. A prosecutor could also offer a plea to a drug trafficking violation that carries a 3-year mandatory minimum term, even though the defendant could be prosecuted for a drug trafficking violation that carries a greater mandatory minimum term. Further, a prosecutor could move the court to reduce or suspend a sentence if the defendant renders substantial assistance.<sup>18</sup>

There are few circumstances in which a court of its own accord can depart from a mandatory minimum term. A court may depart from a mandatory minimum term if the defendant is a youthful offender.<sup>19</sup> A court may also depart from a mandatory minimum term for a violation of s. 316.027(2)(c), F.S. (driver involved in a fatal crash fails to stop and remain at the scene of a crash), if the court “finds that a factor, consideration or circumstance clearly demonstrates that imposing a mandatory minimum term of imprisonment would constitute or result in an injustice.”<sup>20</sup>

### III. Effect of Proposed Changes:

The bill amends s. 893.135, F.S., to authorize a court to depart from a mandatory minimum term of imprisonment applicable to trafficking in various controlled substances. The departure is authorized if the court finds on the record that the person did not:

- Engage in a continuing criminal enterprise as defined in s. 893.20(1), F.S.;<sup>21</sup>
- Use or threaten violence or use a weapon during the commission of the crime; and
- Cause a death or serious bodily injury.

<sup>17</sup> “Under Florida’s constitution, the decision to charge and prosecute is an executive responsibility, and the state attorney has complete discretion in deciding whether and how to prosecute.” *State v. Bloom*, 497 So.2d 2, 3 (Fla. 1986).

<sup>18</sup> Sections 790.163(2), 790.164(2), 893.135(4), and 921.0024(1)(b), F.S. However, lower-level dealers or peripheral actors may have little, if any, information beneficial to prosecutors. Inmate population data reported in a 2009 Senate interim report indicated that the average sentence of inmates with a lower-level trafficking offense was above the mandatory minimum term, while the average sentence of inmates with a higher-level trafficking offense was below the mandatory minimum term. *A Policy Analysis of Minimum Mandatory Sentencing for Drug Traffickers*, Interim Report 2010-109 (October 2009), p. 7, Committee on Criminal Justice, The Florida Senate, [http://archive.flsenate.gov/data/Publications/2010/Senate/reports/interim\\_reports/pdf/2010-109cj.pdf](http://archive.flsenate.gov/data/Publications/2010/Senate/reports/interim_reports/pdf/2010-109cj.pdf) (last visited on Nov. 21, 2017).

<sup>19</sup> Section 958.04, F.S.

<sup>20</sup> Section 316.027(2)(g), F.S.

<sup>21</sup> Section 893.20(1), F.S., provides that any person who commits three or more felonies under ch. 893, F.S., in concert with five or more other persons with respect to whom such person occupies a position of organizer, a supervisory position, or any other position of management and who obtains substantial assets or resources from these acts is guilty of engaging in a continuing criminal enterprise.



The bill applies to all drug trafficking acts (possession, sale, manufacture, delivery, and importation) and to all drug trafficking mandatory minimum terms of imprisonment (ranging from 3 years to life imprisonment). The bill does not authorize departure from mandatory fines.

The bill impacts trafficking in specified quantities of the following controlled substances:

- Cannabis or cannabis plants;<sup>22</sup>
- Cocaine;<sup>23</sup>
- Various opiates or opioids, such as opium, morphine, heroin, hydromorphone, codeine, hydrocodone, oxycodone, fentanyl, and carfentanil and other fentanyl derivatives;<sup>24</sup>
- Phencyclidine;<sup>25</sup>
- Methaqualone;<sup>26</sup>
- Amphetamine or methamphetamine;<sup>27</sup>
- Flunitrazepam;<sup>28</sup>
- Gamma-hydroxybutyric acid (GHB);<sup>29</sup>
- Gamma-butyrolactone (GBL);<sup>30</sup>
- 1,4-Butanediol;<sup>31</sup>
- Specified phenethylamines and cathinones, substituted<sup>32</sup> phenethylamines, and substituted cathinones;<sup>33</sup>

<sup>22</sup> Section 893.135(1)(a), F.S.

<sup>23</sup> Section 893.135(1)(b), F.S.

<sup>24</sup> Section 893.135(1)(c), F.S.

<sup>25</sup> Section 893.135(1)(d), F.S. Phencyclidine “is a hallucinogen formerly used as a veterinary anesthetic, and briefly as a general anesthetic for humans.” “Phencyclidine,” PubChem, U.S. National Library of Medicine, <https://pubchem.ncbi.nlm.nih.gov/compound/phencyclidine> (last visited on Nov. 21, 2017).

<sup>26</sup> Section 893.135(1)(e), F.S. Methaqualone “is a quinazoline derivative with hypnotic and sedative properties.” “Methaqualone,” PubChem, U.S. National Library of Medicine, <https://pubchem.ncbi.nlm.nih.gov/compound/6292> (last visited on Nov. 21, 2017).

<sup>27</sup> Section 893.135(1)(f), F.S.

<sup>28</sup> Section 893.135(1)(g), F.S. “Flunitrazepam, trade name Rohypnol, is a central nervous system depressant in a class of drugs called benzodiazepines.” “Flunitrazepam (Rohypnol),” Center for Substance Abuse Research, <http://www.cesar.umd.edu/cesar/drugs/rohypnol.asp> (last visited on Nov. 21, 2017).

<sup>29</sup> Section 893.135(1)(h), F.S. “Gamma-hydroxybutyric acid (GHB) is a naturally occurring analog of gamma-aminobutyric acid (GABA) that has been used in research and clinical medicine for many years. GHB was used clinically as an anesthetic in the 1960s but was withdrawn due to side effects that included seizures and coma.” Kapoor P., Revati Deshmukh R., and Kukreja I., “GHB Acid: A rage or reprove” (abstract) (Oct.–Dec. 2013) 4(4): 173, *Journal of Advanced Pharmaceutical Technology and Research*, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3853692/> (last visited on Nov. 21, 2017). “The primary effects of GHB use are those of a CNS [central nervous system] depressant[.]” *Id.*

<sup>30</sup> Section 893.135(1)(i), F.S. “Analogues that are often substituted for GHB include GBL (gamma butyrolactone) and 1,4 BD (also called just “BD”), which is 1,4-butanediol.” “Drug Fact Sheet/GHB” (undated), U.S. Drug Enforcement Administration (on file with the Senate Committee on Criminal Justice).

<sup>31</sup> Section 893.135(1)(j), F.S. *Supra* n. 30.

<sup>32</sup> “The term ‘substituted’ is a general term that means a portion of the chemical structure is removed and replaced with a different chemical structure.” Staff Analysis (CS/CS/CS/SB 150) (April 27, 2017), p. 11, n. 58, The Florida Senate, <http://www.flsenate.gov/Session/Bill/2017/150/Analyses/2017s00150.ap.PDF> (last visited on Nov. 21, 2017).

<sup>33</sup> Section 893.135(1)(k), F.S. “Phenethylamines” is a broad category of “psychoactive substances.” Sanders B., Lankenau S., Bloom J., and Hathazi D., “‘Research chemicals’: Tryptamine and Phenethylamine Use Among High Risk Youth” (2008) 43(3-4): 389, *Substance Use & Misuse*, <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2536767/> (last visited on Nov. 21, 2017). “Cathinone ... is a monoamine alkaloid found in the shrub *Catha edulis* (Khat)[.]” and is “[c]losely related to ephedrine, cathine and other amphetamines[.]” “Cathinone,” PubChem, U.S. National Library of Medicine, <https://pubchem.ncbi.nlm.nih.gov/compound/Cathinone#section=Top> (last visited on Nov. 21, 2017).

- Lysergic acid diethylamide (LSD);<sup>34</sup>
- Specified synthetic cannabinoids;<sup>35</sup> and
- N-benzyl phenethylamines.<sup>36</sup>

The effective date of the bill is July 1, 2018.

#### IV. Constitutional Issues:

##### A. Municipality/County Mandates Restrictions:

None.

##### B. Public Records/Open Meetings Issues:

None.

##### C. Trust Funds Restrictions:

None.

##### D. Other Constitutional Issues:

The bill does not provide for retroactive application. Consequently, drug trafficking departures authorized by the bill would apply to applicable drug trafficking offenses committed on or after July 1, 2018, the effective date of the bill. “In Florida, without clear legislative intent to the contrary, a law is presumed to apply prospectively.”<sup>37</sup>

Additionally, Article X, Section 9 of the Florida Constitution, provides that repeal or amendment of a criminal statute shall not affect prosecution or punishment for any crime previously committed.<sup>38</sup> This prohibition applies even if the retroactive application does not disadvantage the offender.<sup>39</sup>

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<sup>34</sup> Section 893.135(1)(l), F.S.

<sup>35</sup> Section 893.135(1)(m), F.S. “Synthetic [c]annabinoids are chemicals that act as cannabinoid receptor agonists. Chemically they are not similar to cannabinoids but ... they are cannabinoid-like in their activity.” “Synthetic Cannabinoids Drug Information,” Redwood Toxicology Laboratory, [https://www.redwoodtoxicology.com/resources/drug\\_info/synthetic\\_cannabinoids](https://www.redwoodtoxicology.com/resources/drug_info/synthetic_cannabinoids) (last visited on Nov. 21 2017).

<sup>36</sup> Section 893.135(1)(n), F.S. Supra n. 33.

<sup>37</sup> *Bates v. State*, 750 So.2d 6, 10 (Fla. 1999) (in the absence of explicit legislative direction, the court refused to retroactively apply amendments to a sentencing statute to offenses committed before the effective date of the amendments).

<sup>38</sup> This constitutional provision operates as a savings clause to preserve laws in effect at the time of a defendant’s crime that affect prosecution or punishment of the defendant for that crime.

<sup>39</sup> See *Castle v. State*, 305 So.2d 794, 796 (Fla. 4th DCA 1974), *affirmed*, 330 So.2d 10 (Fla. 1976) (Florida’s saving clause prohibits retroactive application of a reduced penalty for arson to a defendant sentenced under the pre-amended arson statute).

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation has not yet reviewed the bill. The Legislature's Office of Economic and Demographic Research's (EDR) preliminary estimates that the bill will have a "negative indeterminate" prison bed impact (an unquantifiable decrease in prison beds).<sup>40</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 893.135 of the Florida Statutes.

**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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<sup>40</sup> E-mail and prison bed impact analysis from EDR staff to staff of the Senate Committee on Criminal Justice, dated Nov. 20, 2017 (on file with the Senate Committee on Criminal Justice).

By Senator Brandes

24-00431A-18

2018694\_\_

1                           A bill to be entitled  
2       An act relating to mandatory sentences; amending s.  
3       893.135, F.S.; authorizing a court to issue a sentence  
4       shorter than a mandatory minimum term of imprisonment  
5       for a person convicted of trafficking if the court  
6       makes certain findings on the record; providing an  
7       effective date.  
8  
9   Be It Enacted by the Legislature of the State of Florida:  
10  
11       Section 1. Present subsections (6) and (7) of section  
12       893.135, Florida Statutes, are redesignated as subsections (7)  
13       and (8), respectively, and a new subsection (6) is added to that  
14       section, to read:  
15       893.135 Trafficking; mandatory sentences; suspension or  
16       reduction of sentences; conspiracy to engage in trafficking.—  
17       (6) Notwithstanding any mandatory minimum term of  
18       imprisonment under this section, the court may sentence a person  
19       who has been convicted of an offense under this section to a  
20       term of imprisonment less than the mandatory minimum if the  
21       court finds on the record that all of the following  
22       circumstances exist:  
23       (a) The person did not engage in a continuing criminal  
24       enterprise as defined in s. 893.20(1).  
25       (b) The person did not use or threaten violence or use a  
26       weapon during the commission of the crime.  
27       (c) The person did not cause a death or serious bodily  
28       injury.  
29       Section 2. This act shall take effect July 1, 2018.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

12/4/2017

Meeting Date

694

Bill Number (if applicable)

Topic Minimum Mandatory Sentences

Amendment Barcode (if applicable)

Name Jorge Chamizo

Job Title Attorney

Address 108 South Monroe Street

Phone 850-681-0024

Street Tallahassee, FL 32301

Email jorge@flapartners.com

City State Zip

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against

(The Chair will read this information into the record.)

Representing Fla. Association of Criminal Defense Lawyers

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

12/4/17  
Meeting Date

SB 694  
Bill Number (if applicable)

Topic Mandatory Sentences

Amendment Barcode (if applicable)

Name Kara Gross

Job Title Legislative Counsel

Address 4343 W. Plaglar St.  
Street

Phone 786-363-4436

Miami, FL  
City State Zip

Email Kgross@aclu.org

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing ACLU OF FLORIDA

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

12/4/17  
Meeting Date

694.  
Bill Number (if applicable)

Topic CJ

Amendment Barcode (if applicable)

Name Chelsea Murphy

Job Title State Director

Address 824 N. Duval St  
Street

Phone 954 557 0016

TLH FL 32303  
City State Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Right on Crime.

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

12/4/2017  
Meeting Date

694  
Bill Number (if applicable)

Topic Mandatory Sentences

Amendment Barcode (if applicable)

Name Heather Turnbull

Job Title Government Consultant

Address 2460 Lantana Ln

Phone 305-495-3868

Tallahassee FL 32311

Email TurnbulH@rubingroup.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against

(The Chair will read this information into the record.)

Representing Campaign for Criminal Justice Reform

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4 Dec 17

Meeting Date

694

Bill Number (if applicable)

Topic Mandatory Sentencing

Amendment Barcode (if applicable)

Name Barney Bishop III

Job Title Pres & CEO

Address 204 S. Monroe

Phone 510.9922

Street

Tall

City

FL

State

32301

Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Fla. Smart Justice Alliance

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Dec 4, 2017

Meeting Date

694

Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Robert Weissert ("Why-cert")

Job Title Executive Vice President

Address 106 N. Barnough St

Phone 850-222-5852

Street

Tallahassee Fl 32301

Email robert@floridataxwatch.org

City

State

Zip

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Florida Tax Watch

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

12/4/2017

694

Meeting Date

Bill Number (if applicable)

Topic Criminal Justice

Amendment Barcode (if applicable)

Name Sal Nuzzo

Job Title VP of Policy

Address 100 N Duval Street

Phone 850-322-9941

Street

Tallahassee

FL

32301

Email snuzzo@jamesmadison.org

City

State

Zip

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing The James Madison Institute

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

12-4-17

Meeting Date

SB 694

Bill Number (if applicable)

Topic Sentencing

Amendment Barcode (if applicable)

Name Greg Newburn

Job Title State Policy Director

Address PO Box 142933

Phone 352-682-2542

Street

Gainesville

FL

State

32614

Zip

Email gnewburn@fammm.org

City

Speaking: [X] For [ ] Against [ ] Information

Waive Speaking: [ ] In Support [ ] Against

(The Chair will read this information into the record.)

Representing Families Against Mandatory Minimums

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [X] Yes [ ] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

12/4/2017

SB 694

*Meeting Date*

*Bill Number (if applicable)*

Topic Mandatory Sentences

*Amendment Barcode (if applicable)*

Name Scott D. McCoy

Job Title Senior Policy Counsel

Address P.O. Box 10788

Phone 850-521-3042

*Street*

Tallahassee

FL

32301

Email scott.mccoy@splcenter.org

*City*

*State*

*Zip*

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
*(The Chair will read this information into the record.)*

Representing Southern Poverty Law Center

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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***This form is part of the public record for this meeting.***

S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

12/4/17  
Meeting Date

SB694  
Bill Number (if applicable)

Topic Mandatory Minimum Sentences

Amendment Barcode (if applicable)

Name Carey Haughwout

Job Title Public Defender of Palm Beach Co.

Address 421 3rd St  
Street

Phone 561-355-7651

WPB FL 33401  
City State Zip

Email careypd@pd15.org

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against  
(The Chair will read this information into the record.)

Representing Fl. Public Defenders

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

# CourtSmart Tag Report

Room: LL 37

Case No.:

Type:

Caption: Senate Criminal Justice Committee

Judge:

Started: 12/4/2017 4:07:17 PM

Ends: 12/4/2017 5:05:04 PM

Length: 00:57:48

4:07:19 PM Meeting called to order  
4:07:22 PM Roll call  
4:08:04 PM Chair turned over to Senator Baxley  
4:08:11 PM Tab 3 /SB 644 by Senator Bracy Juvenile Civil Citation and Similar Diversion Programs  
4:09:31 PM Amendment Barcode 890946 by Senator Bracy  
4:10:45 PM Back on SB 644 as amended  
4:12:12 PM Senator Bean with a question regarding the difference between retail and petty theft  
4:14:40 PM Discussion regarding the removal of battery as one of the listed offenses  
4:16:06 PM Speaker Barney Bishop representing FL Smart Justice Alliance  
4:17:39 PM Debate by the members  
4:19:39 PM Roll call on SB 644  
4:20:58 PM A brief recess is taken by the Senators  
4:22:32 PM Tab 1 /SB 482 by Senator Bracy Driving While a Driver License or Driving Privilege is  
4:22:43 PM Canceled, Suspended, or Revoked  
4:24:16 PM Speaker Barney Bishop representing FL Smart Justice Alliance  
4:25:45 PM Speakers waive in support  
4:26:08 PM Debate on SB 482  
4:27:31 PM Close on SB 482  
4:27:55 PM Roll call on SB 482  
4:29:05 PM Tab 4/ SB 694 by Senator Brandes Mandatory Sentences  
4:30:58 PM Questions on SB 694  
4:39:45 PM Speaker Greg Newborn from Families Against Mandatory Minimums  
4:44:46 PM Speaker Barney Bishop FL Smart Justice Alliance  
4:49:35 PM Speakers waive in support  
4:49:50 PM Debate on SB 694  
4:58:24 PM Close on SB 694  
4:59:37 PM Roll call on SB 694  
5:00:12 PM Tab 2 /SB 602 by Senator Bracy Mandatory Minimum Sentences  
5:00:24 PM Amendment Barcode 600702 by Senator Bracy  
5:01:57 PM Back on SB 602 as amended  
5:02:59 PM Speakers waive in support  
5:03:57 PM Debate on SB 602  
5:04:05 PM Senator Bracy waives close  
5:04:09 PM Roll call on SB 602  
5:04:58 PM Meeting moved to adjourn by Senator Rouson