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DATE: April 17, 2001

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
CRIMINAL JUSTICE APPROPRIATIONS
ANALYSIS**

BILL #: CS/HB 1529

RELATING TO: Drug Trafficking Program/Orange County

SPONSOR(S): Committee on Crime Prevention, Corrections & Safety and Representative(s) Simmons

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) CRIME PREVENTION, CORRECTIONS & SAFETY YEAS 5 NAYS 0
- (2) CRIMINAL JUSTICE APPROPRIATIONS YEAS 9 NAYS 0
- (3) COUNCIL FOR HEALTHY COMMUNITIES
- (4)
- (5)

I. SUMMARY:

The committee substitute creates a three year pilot program in Orange County, Florida to target and intercept the illegal shipment of narcotics via package delivery services. The Orange County Sheriff's Office must make a formal report of its findings to the legislature by May 1, 2004.

The committee substitute also amends the drug schedules as follows:

- The committee substitute creates a third degree felony offense for violating the public nuisance law when any person willfully keeps or maintains a place which is visited by persons for the purpose of unlawfully using any controlled substance or which is used for the illegal keeping, selling or delivering of a controlled substance.
- The committee substitute adds 4-methoxmethamphetamine, a drug which is similar to Ecstasy, to Schedule I. The amendment also adds Gamma-butyrolactone (GBL), a substance that, when consumed, converts in the body to GHB, to Schedule I. The amendment reschedules 1,4-Butanediol and Gamma-hydroxybutyric acid (GHB) from Schedule II to Schedule I. The amendment will make GHB a Schedule III drug when its application is approved under the Federal Food, Drug, and Cosmetic Act. GHB is being researched for treatment of narcolepsy.
- The amendment creates the offenses of trafficking in GBL, LSD, and 4-methoxymethamphetamine. The offenses will have minimum mandatory sentences based on the quantity of substance involved.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|-----------------------------------------|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Florida and federal drug statutes lists controlled substances in "schedules" ranging from Schedule I to Schedule V. A Schedule I drug has a "high potential for abuse and has no currently accepted medical use in treatment in the United States". A schedule II substance has a high potential for abuse and has a currently accepted but severely restricted medical use in treatment in the United States, and abuse of the substance may lead to severe psychological or physical dependence. s. 893.03(2), F.S. A schedule III substance has a potential for abuse less than the substances contained in schedule I and II and has a currently accepted medical use in treatment in the United States, and abuse of the substance may lead to moderate or low physical dependence or high psychological dependence. s. 893.03(3), F.S.

C. EFFECT OF PROPOSED CHANGES:

Pilot Program: The committee substitute provides that the legislature finds that drug traffickers are increasingly employing package-delivery services to illegally transport narcotics into the state. The committee substitute authorizes the creation of a 3-year pilot program in Orange County, Florida to target and intercept the illegal shipment of narcotics via package delivery services. The program will be created and supervised by the Orange County Sheriff's Office who are required to make a formal report of its findings to the legislature by May 1, 2004.

Public Nuisance: The committee substitute amends s. 823.10, F.S. which currently provides that any place that is visited by persons for the purpose of unlawfully using any controlled substance or which is used for the illegal keeping, selling or delivery of a controlled substance shall be deemed a public nuisance. The committee substitute provides that any person who willfully violates this subsection commits a third degree felony.

Nitrous Oxide: The committee substitute clarifies the current exceptions to the unlawful possession and use of nitrous oxide, such as in the treatment of a disease or injury by a licensed practitioner.

Drug Schedules: The committee substitute adds 4-methoxmethamphetamine, a drug which is similar to Ecstasy, to Schedule I. The committee substitute also adds Gamma-butyrolactone (GBL), a substance that, when consumed, converts in the body to GHB, to Schedule I. The committee substitute reschedules 1,4-Butanediol and Gamma-hydroxybutyric acid (GHB) from Schedule II to Schedule I. The committee substitute will make GHB a Schedule III drug when its

application is approved under the Federal Food, Drug, and Cosmetic Act. GHB is being researched for treatment of narcolepsy.

Precursor Chemicals: The committee substitute adds "chloroephedrine" and "chloropseudoephedrine", two chemicals used in the manufacture of methamphetamines, to the list of precursor chemicals contained in s. 893.033.

Trafficking:

GBL: The committee substitute creates the offense of trafficking in GBL which mirrors the current GHB trafficking statute for any person who knowingly sells, purchases, manufactures, delivers or brings into this state, or who is knowingly in actual or constructive possession of 1 kilogram or more of any mixture containing GBL. The offense is a first degree felony. If the quantity involved:

1. Is 1 kilogram or more but less than 5 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and a \$50,000 fine.
2. Is 5 kilograms or more but less than 10 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years and a \$100,000 fine.
3. Is 10 kilograms or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and a \$250,000 fine.

Any person who knowingly manufactures or brings into the state 150 kilograms or more of GBL or any mixture containing GBL and who knows that the probable result of such manufacture or importation would be the death of any person commits capital manufacture or importation of GBL, a capital felony.

LSD: The amendment creates the offense of trafficking in lysergic acid diethylamide (LSD) if the quantity involved:

1. Is 1 gram or more, but less than 5 grams, such person shall be sentenced to a mandatory minimum term of 3 years and a \$50,000 fine.
2. Is 5 grams or more, but less than 7 grams, such person shall be sentenced to a mandatory minimum term of 7 years and a \$100,000 fine.
3. Is 7 grams or more, such person shall be sentenced to a mandatory minimum of 15 years and a \$500,000 fine.

Any person who knowingly manufactures or brings into the state 7 grams or more of LSD or any mixture containing LSD and who knows that the probable result of such manufacture or importation would be the death of any person commits capital manufacture or importation of LSD, a capital felony.

Phenethylamines: Current law provides that the possession of more than 10 grams of a list of phenethylamines including MDMA constitutes the offense of trafficking. The committee substitute adds 4-methoxymethamphetamine to the list of substances. If the quantity involved:

1. Is 10 grams or more but less than 200 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years and a fine of \$50,000.

2. Is 200 grams or more, but less than 400 grams, such person shall be sentenced to mandatory minimum term of imprisonment of 7 years and a fine of \$100,000.
3. Is 400 grams or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 years and a fine of \$250,000.

Any person who knowingly manufactures or brings into the state 30 grams or more of one of the phenethylamines and who knows that the probable result of such manufacture or importation would be the death of any person commits a capital felony.

D. SECTION-BY-SECTION ANALYSIS:

See effect of proposed changes.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See fiscal comments.

2. Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See fiscal comments.

2. Expenditures:

See fiscal comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

The committee substitute does not provide an appropriation to fund the creation of the pilot program that is authorized. The Criminal Justice Impact Conference met on April 16, 2001 and determined that the committee substitute would have an insignificant prison bed impact.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill is exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The original bill provided for the pilot program for Orange County. At the April 12, 2001 meeting of the Committee on Crime Prevention, Corrections and Safety, the sponsor offered a strike everything amendment which included the changes to the drug schedules as discussed above. The bill as amended was made a committee substitute.

VII. SIGNATURES:

COMMITTEE ON CRIME PREVENTION, CORRECTIONS & SAFETY:

Prepared by:

Trina Kramer

Staff Director:

David De La Paz

AS REVISED BY THE COMMITTEE ON CRIMINAL JUSTICE APPROPRIATIONS:

Prepared by:

James P. DeBeaugrine

Staff Director:

James P. DeBeaugrine