

**STORAGE NAME:** h1935.cpcs.doc

**DATE:** March 6, 2002

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
CRIME PREVENTION, CORRECTIONS & SAFETY  
ANALYSIS**

**BILL #:** HB 1935 (PCB CPCS 02-03)

**RELATING TO:** Controlled Substances

**SPONSOR(S):** Committee on Crime Prevention, Corrections & Safety

**TIED BILL(S):**

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

- (1) CRIME PREVENTION, CORRECTIONS & SAFETY YEAS 8 NAYS 0
  - (2)
  - (3)
  - (4)
  - (5)
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**I. SUMMARY:**

The bill overturns the holding of *Scott v. State*, 27 Fla. L. Weekly 31 (Fla. January 3, 2001) which held that for purposes of a prosecution relating to possession of a controlled substance, the state must prove that the defendant knew of the illicit nature of the controlled substance found in his or her possession.

The bill provides legislative findings that knowledge of the illicit nature of a controlled substance is not an element of any offense contained in chapter 893. Lack of knowledge of the illicit nature of a controlled substance is an affirmative defense to the offenses of the chapter.

The bill provides that when a defendant asserts an affirmative defense based on lack of knowledge of the illicit nature of the substance, the possession of the controlled substance, whether actual or constructive, will give rise to a permissive presumption that the possessor knew of the illicit nature of the substance.

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:

Section 893.13(6), F.S. provides that "it is unlawful for any person to be in actual or constructive possession of a controlled substance unless such controlled substance was lawfully obtained from a practitioner or pursuant to a valid prescription....".

The Standard Jury Instruction relating to possession of a controlled substance provides the following in part:

Before you can find the defendant guilty of possession of a controlled substance, the State must prove the following three elements beyond a reasonable doubt:

1. The defendant possessed a certain substance.
2. The substance was a controlled substance.
3. The defendant had knowledge of the presence of the substance.

To possess means to have personal charge of or exercise the right of ownership, management or control over the thing possessed.

Possession may be actual or constructive.

Actual possession means

- a) the thing is in the hand of or on the person, or
- b) the thing is in a container in the hand of or on the person, or
- c) the thing is so close as to be within ready reach and is under the control of the person.

Mere proximity to a thing is not sufficient to establish control over that thing when the thing is not in a place over which the person has control.

Constructive possession means the thing is in a place over which the person has control, or in which the person has concealed it.

In Chicone v. State, 684 So.2d 736 (Fla. 1996), the Florida Supreme Court held that "guilty knowledge is an element of possession of a controlled substance". Id. at 737. In reviewing the contrary holdings of a series of prior cases, the court recognized that the "state of the law on this

issue is unclear". Id. at 738. The court recognized that some of the case law suggested that "guilty knowledge" must be proved in constructive possession cases but not in actual possession cases. The state had argued that the lack of knowledge of the illicit nature of the item possessed should be raised and proven as an affirmative defense. The Court rejected this argument and held that although the existing jury instructions were adequate in requiring 'knowledge of the presence of the substance', "if specifically requested by a defendant, the trial court should expressly indicate to jurors that guilty knowledge means the defendant must have knowledge of the illicit nature of the substance allegedly possessed."

In Scott v. State, 27 Fla. Law Weekly 31 (Fla. January 3, 2002), the court held that the defendant's knowledge of the illicit nature of a controlled substance is an element of the offense of possession of a controlled substance. Scott had been convicted of introduction or possession of contraband in a correctional facility. Scott requested that the judge read a special jury instruction based on the holding of the Chicone case. The court held that the defendant had been entitled to a special jury instruction on the "element" of knowledge of the illicit nature of the substance and that failure to give the instruction was reversible error even though Scott had not argued at trial that he did not have knowledge of the illicit nature of the substance. The court held that the current standard jury instructions which were drafted by a committee appointed by the court did not adequately inform the jury of the "'illicit nature of the substance' requirement of the guilty knowledge element." The court instructed the committee to amend the standard jury instructions.

In dissent, Chief Justice Wells criticized the Court's holding in Chicone and stated

[I] fail to see how it follows that it is for the Legislature to define elements of crimes but, when the Legislature does not include an element, that this Court corrects this Legislature's definition by writing the element into the crime.

Chief Justice Wells further stated:

I conclude that what the State proposed in Chicone and which the Chicone Court rejected would be a more logical and less problematic approach. Lack of knowledge should be an affirmative defense. The State carries its burden by proving the possession of the contraband. This gives rise to the Medlin presumption [that the defendant knew of the illicit nature of the substance], and the defendant should then proceed to prove lack of knowledge and overcome the presumption through an affirmative defense. The present majority, by now assuming that this Court can write elements of crimes, has opened the door to many complications. I believe the Legislature should close this particular one by amending the statute to say that possession of contraband gives rise to a presumption of knowledge. More importantly, I believe that this Court should not write elements into statutory crimes

### **Affirmative Defenses**

"An 'affirmative defense' is any defense that assumes the complaint or charges to be correct but raises other facts that, if true, would establish a valid excuse or justification or a right to engage in the conduct in question." State v. Cohen, 568 So.2d 49, 51 (Fla.1990). A defendant has the burden of initially offering evidence to establish an affirmative defense, after which the burden shifts to the state to disprove the defense beyond a reasonable doubt. Hansman v. State, 679 So.2d 1216, 1217 (Fla. 4<sup>th</sup> DCA 1996).

#### **C. EFFECT OF PROPOSED CHANGES:**

The bill provides that the cases of Scott v. State and Chicone v. State holding that the state must prove that the defendant knew of the illicit nature of a controlled substance found in his or her actual or constructive possession were contrary to legislative intent.

The bill further provides that the legislature finds that knowledge of the illicit nature of a controlled substance is not an element of any offense in chapter 893. Lack of knowledge of the illicit nature of a controlled substance is an affirmative defense to the offenses in the chapter. The bill provides that when a defendant asserts an affirmative defense based on lack of knowledge, the possession of a controlled substance, whether actual or constructive, shall give rise to a permissive inference that the possessor knew of the illicit nature of the substance.

**D. SECTION-BY-SECTION ANALYSIS:**

This section need be completed only in the discretion of the Committee.

**III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

**1. Revenues:**

None.

**2. Expenditures:**

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

**1. Revenues:**

None.

**2. Expenditures:**

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.

**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.

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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:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON CRIME PREVENTION, CORRECTIONS & SAFETY:

Prepared by:

Staff Director:

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Trina Kramer

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