

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: SB 1972
 SPONSOR: Senator Crist and others
 SUBJECT: Sentencing
 DATE: January 31, 2002 REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|-----------|
| 1. | Cellon | Cannon | CJ | Favorable |
| 2. | _____ | _____ | _____ | _____ |
| 3. | _____ | _____ | _____ | _____ |
| 4. | _____ | _____ | _____ | _____ |
| 5. | _____ | _____ | _____ | _____ |
| 6. | _____ | _____ | _____ | _____ |

I. Summary:

This bill reenacts sections 9, 10 and 12 of Chapter 99-188, Laws of Florida, as well as amendments thereto enacted in Chapters 2000-320, 2001-55, and 2001-57, Laws of Florida. The bill requires certain minimum mandatory sentences for drug trafficking offenses, prohibits most types of discretionary early release for drug traffickers, more precisely defines “cannabis plant” for trafficking purposes, and refines certain definitions and penalties with respect to “designer drugs.” The bill also requires the Executive Office of the Governor to inform the public of the penalties provided for in the bill.

This bill substantially amends, creates, or reenacts the following sections of the Florida Statutes: 397.451(7); 782.04(4)(a); 893.135; 893.1351; 903.133; 907.041(4)(b); 921.0022(3)(g)-(i); 921.0024(1)(b); 921.142(2); 943.0585; and 943.059. It becomes effective upon becoming law, but specifies that the provisions reenacted by the bill shall be applied retroactively to July 1, 1999, or as soon thereafter as appropriate under the Constitutions of Florida and the United States.

II. Present Situation:

In 1999 the Legislature enacted Committee Substitute for House Bill 121 (Chapter 99-188 Laws of Florida) which was commonly referred to as the “Three Strikes” law. The provisions of the bill became effective July 1, 1999.

The bill consisted of thirteen substantive sections which amended various sentencing provisions as well as created new repeat offender classifications called the “three-time violent felony offender” and the “repeat sexual batterer.” Additionally the bill revised some drug trafficking provisions, provided for mandatory minimum sentences upon conviction of certain offenses

against law enforcement officers or the elderly, amended the definition of “conveyance” as it relates to the burglary statute, and required the Clerks of the Court to notify the Immigration and Naturalization Service of the disposition of criminal cases wherein aliens are the defendants.

A more complete summary of the parts of the Act which are pertinent to this bill is as follows.
The Act:

- Provided for 3-year mandatory minimum terms for trafficking in cannabis, cocaine, “illegal drugs,” methaqualone, amphetamines and methamphetamines, phencyclidine, and flunitrazepam;
- Lowered the threshold for trafficking in cannabis from 50 pounds to 25 pounds;
- Provided for 7-year mandatory minimum terms for trafficking in cannabis, cocaine, amphetamines and methamphetamines, and a 15-year mandatory minimum term for trafficking in illegal drugs;
- Removed the upper caps for weight ranges applicable to high-weight, first degree felony trafficking offenses;
- Provided that sentencing can be based upon the number of cannabis plants, regardless of weight, which is conceptually similar to a former federal sentencing scheme;
- Defined “cannabis plant” and provided for how a court shall sentence cannabis trafficking offenses based upon weight and number;
- Provided that persons convicted of certain first degree felony trafficking offenses relating to trafficking in cocaine, illegal drugs, and flunitrazepam, are ineligible for any form of gain-time.

Finally, the Executive Office of the Governor was required by the Act to place public service announcements throughout the state explaining the penalties provided by the Act.

In Section 4, Chapter 2000-320, Laws of Florida, s. 893.135, F.S., was amended to create three new drug trafficking offenses and modify one other trafficking offense.

In Section 2, Chapter 2001-55, Laws of Florida, s. 893.135, F.S., was amended to clarify legislative intent as it relates to hydrocodone.

Section 7, Chapter 2001-57, Laws of Florida, amended s. 893.135, F.S., to create the offenses of trafficking in GBL and LSD along with the applicable penalties.

In an opinion filed January 23, 2002, the Second District Court of Appeals found that Chapter 99-188, Laws of Florida, violated the constitutional prohibition against enacting a law that includes more than a single subject. The single-subject rule provides that “[e]very law shall

embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title.” *Art. III, s. 6, Fla. Const.*

The Court found that the section of the Act that amended the definition of “conveyance” (section 13) was not “naturally or logically connected to the act’s other sections.” The Court further opined that section 11 of the Act, which required the Clerks of the Court to provide documents concerning an alien’s criminal convictions to the Immigration and Naturalization Service, “bears even less relationship to the [A]ct’s other provisions.” *Taylor v. State*, Case No. 2D01-1751, Fla. 2nd DCA, opinion issued January 23, 2002.

The Court also found that the window for challenging the statutes enacted in Chapter 99-188, Laws of Florida, has not yet closed. Generally the window of opportunity closes upon the biennial reenactment of the statutes, but the Court found that the reenactment of the 1999 statutes did not occur.

III. Effect of Proposed Changes:

The bill provides ten “whereas” clauses which describe the history of Chapter 99-188, Laws of Florida, and specifies the legislative intent to correct the effect of the Second District Court of Appeals’ ruling in the *Taylor* case explained above.

Sections 9, 10 and 12 of Chapter 99-188, Laws of Florida, are reenacted by the bill to do the following:

- Provide for 3-year mandatory minimum terms for trafficking in cannabis, cocaine, “illegal drugs,” methaqualone, amphetamines and methamphetamines, phencyclidine, and flunitrazepam;
- Lower the threshold for trafficking in cannabis from 50 pounds to 25 pounds;
- Provide for 7-year mandatory minimum terms for trafficking in cannabis, cocaine, amphetamines and methamphetamines, methaqualone, phencyclidine, and flunitrazepam, and a 15-year mandatory minimum term for trafficking in illegal drugs;
- Remove the upper caps for weight ranges applicable to high-weight, first degree felony trafficking offenses;
- Provide that sentencing can be based upon the number of cannabis plants, regardless of weight, which is conceptually similar to a former federal sentencing scheme;
- Define “cannabis plant” and provides for how a court shall sentence cannabis trafficking offenses based upon weight and number; and
- Provide that a person shall not be eligible for statutory gain-time under s. 944.275, F.S., if the person is convicted of “trafficking in cocaine” (involving 150 kilograms or more, but less than 300 kilograms), “trafficking in illegal drugs” (involving 30 kilograms or more, but less than 60 kilograms), or “trafficking in flunitrazepam” (involving 30 kilograms or more of

flunitrazepam or any mixture containing flunitrazepam), which are first degree felonies for which a sentence of life imprisonment must be imposed.

Based upon these described changes to the law, the following changes (**in bold**) would be made to the offenses of trafficking in cannabis, trafficking in cocaine, trafficking in illegal drugs, trafficking in phencyclidine, trafficking in methaqualone, trafficking in amphetamines and methamphetamines, and trafficking in flunitrazepam:

- **Trafficking in Cannabis**

- ▶ In excess of 50 pounds, but less than 2,000 pounds, **or in excess of 300 cannabis plants, but not more than 2,000 cannabis plants**. Level 7 offense under the sentencing code, including a \$25,000 fine. **3-year mandatory minimum term**.
- ▶ 2,000 pounds or more, but less than 10,000 pounds, **or in excess of 2,000 cannabis plants, but not more than 10,000 cannabis plants**. Level 8 offense, including a \$50,000 fine. **5-year mandatory minimum term**.
- ▶ 10,000 pounds or more, **or is in excess of 10,000 cannabis plants**. Level 9 offense, including a \$200,000 fine. 15-year mandatory minimum term.

“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 greatest term of imprisonment provided for in this paragraph.”

This definition employs the “root test” and anticipates issues that have been raised in federal courts regarding what constitutes a “marijuana plant.” The sentencing provision also anticipates the case in which the weight of the cannabis falls into the weight range in which a 3-year mandatory minimum term applies but the number of cannabis plants falls within the range of the number of cannabis plants in which a 7-year or 15-year mandatory minimum term applies. In that case, the court sentences the defendant to the 7-year or 15-year mandatory minimum term, whichever is applicable.

- **Trafficking in Cocaine**

- ▶ **28 grams or more, but less than 200 grams**. Level 7 offense under the sentencing code, including a \$50,000 fine. **3-year mandatory minimum term**.
- ▶ **200 grams or more, but less than 400 grams**. Level 8 offense, including a \$100,000 fine. **5-year mandatory minimum term**.

- **Trafficking in Illegal Drugs (Morphine, Opium, Heroin and Other Drugs)**
 - ▶ **4 grams or more, but less than 14 grams.** Level 7 offense under the sentencing code, including a \$50,000 fine. **3-year mandatory minimum term.**
 - ▶ **14 grams or more, but less than 28 grams.** Level 8 offense, including a \$100,000 fine. **15-year mandatory minimum term.**

- **Trafficking in Phencyclidine**
 - ▶ 28 grams or more, but less than 200 grams. Level 7 offense under the sentencing code, including a \$50,000 fine. **3-year mandatory minimum term.**
 - ▶ 200 grams or more, but less than 400 grams. Level 8 offense, including a \$100,000 fine. **5-year mandatory minimum term.**

- **Trafficking in Methaqualone**
 - ▶ 200 grams or more, but less than 5 kilograms. Level 7 offense under the sentencing code, including a \$50,000 fine. **3-year mandatory minimum term.**
 - ▶ 5 kilograms or more, but less than 50 kilograms. Level 8 offense, including a \$100,000 fine. **5-year mandatory minimum term.**

- **Trafficking in Amphetamines/Methamphetamines**
 - ▶ 14 grams or more, but less than 28 grams. Level 7 offense under the sentencing code, including a \$50,000 fine. **3-year mandatory minimum term.**
 - ▶ 28 grams or more, but less than 200 grams. Level 8 offense, including a \$100,000 fine. **5-year mandatory minimum term.**

- **Trafficking in Flunitrazepam**
 - ▶ 2 grams or more, but less than 14 grams. Level 7 offense under the sentencing code, including a \$50,000 fine. **3-year mandatory minimum term.**
 - ▶ 14 grams or more, but less than 28 grams. Level 8 offense, including a \$100,000 fine. **5-year mandatory minimum term.**

For the purposes of incorporating the amendments to s. 893.135, F.S., in references thereto, the following sections of the Florida States are reenacted: 397.451(7); 782.04(4)(a); 893.1351(1); 903.133; 907.041(4)(b); 921.0022(3)(g), (h), and (i); 921.0024(1); 921.142(2); 943.0585; and 943.059.

Finally, the Executive Office of the Governor is required by the bill to place public service announcements throughout the state explaining the penalties provided by the bill.

For the purpose of incorporating amendments made subsequent to the enactment of Chapter 99-188, Laws of Florida, the bill provides:

- s. 893.135, F.S., is amended to create three new drug trafficking offenses and modify one other trafficking offense.
- s. 893.135, F.S., is amended to clarify legislative intent as it relates to hydrocodone.
- s. 893.135, F.S., creates the offenses of trafficking in GBL and LSD along with the applicable penalties.

The bill becomes effective upon becoming law, but specifies that the provisions reenacted by the bill shall be applied retroactively to July 1, 1999, or as soon thereafter as appropriate under the Constitutions of Florida and the United States.

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:

As noted above, in the *Taylor* opinion issued on January 23, 2002, the Second District Court of Appeals found that Chapter 99-188, Laws of Florida, violated the single subject rule set forth in the Florida Constitution and that the window of opportunity for challenging the law on those grounds remains open.

The Florida Supreme Court has been asked by the Second District Court of Appeals to answer the following questions it deems questions of great public importance:

- 1) Does Chapter 99-188, Laws of Florida, violate Article III, Section 6, Florida Constitution, which provides that every law shall embrace but one subject and matter properly connected therewith?
- 2) If so, what is the window period for challenging the act based on that constitutional infirmity?

Until the Florida Supreme Court rules on these questions, or until another District Court makes a contrary ruling on the questions before the *Taylor* court, the ruling of the Second District Court of Appeals in *Taylor v. State* (Case No. 2D01-1751, Fla. 2nd DCA, opinion issued January 23, 2002) is controlling law in Florida.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Although the Criminal Justice Estimating Conference reviewed the bill that was passed by the Legislature in 1999 and became Chapter 99-188, Laws of Florida, no recent fiscal analysis has been completed at this time. The estimate of the fiscal impact in 1999 was as follows:

| Fiscal Year | Projected Additional Annual Prison Beds Required | Annual Operating Costs | Annual Fixed Capital Outlay Costs | Total Annual Funds |
|--------------------|---|-------------------------------|--|---------------------------|
| 1999-00 | 7 | \$67,402 | \$1,125,840 | \$1,193,242 |
| 2000-01 | 45 | \$582,942 | \$3,261,445 | \$3,844,387 |
| 2001-02 | 127 | \$2,342,758 | \$3,852,373 | \$6,195,131 |
| 2002-03 | 146 | \$5,251,884 | \$3,146,522 | \$8,398,406 |
| 2003-04 | 116 | \$8,205,607 | \$3,739,893 | \$11,945,500 |
| TOTAL | 441 | \$16,450,593 | \$15,126,073 | \$31,576,667 |

VI. Technical Deficiencies:

None.

VII. Related Issues:

This bill is one of five bills which will reenact Chapter 99-188, Laws of Florida, except for sections 11 and 13, which the Second District Court of Appeals found violated the single subject rule. The other four bills are: SB 1964, SB 1966, SB 1968, and SB 1970.

VIII. Amendments:

None.